

DATED

[ ● ]

2018

---

**(1) THE GOVERNMENT OF MONTENEGRO**

**(AS CONTRACTING AUTHORITY)**

**(2) [ ● ]**

**(AS CONCESSIONAIRE)**

**And**

**(3) [ ● ]**

**[ ● ]**

**[ ● ]**

**(AS SPONSORS)**

---

## **CONCESSION AGREEMENT**

relating to

**PODGORICA AND TIVAT AIRPORTS**

---

**STRICTLY PRIVATE AND CONFIDENTIAL**

***[General Comment: this draft concession agreement is subject to ongoing due diligence]***

## CONTENTS

<b>PART I - GENERAL.....</b>	<b>2</b>
1. DEFINITIONS AND INTERPRETATION.....	2
2. CONDITIONS PRECEDENT, INITIAL TRANSFER AND TERM .....	23
3. GENERAL UNDERTAKINGS OF THE SPONSORS AND THE CONCESSIONAIRE.....	28
4. CONSENTS - COOPERATION .....	29
5. INDEPENDENT ENGINEER.....	29
<b>PART II - TITLE, AIRPORT SITES AND PRE-FEASIBILITY STUDIES .....</b>	<b>31</b>
6. TITLE .....	31
7. OBLIGATIONS OF THE CONCESSIONAIRE IN RELATION TO THE AIRPORT SITES - ACCEPTANCE OF THE AIRPORT SITES.....	31
8. OBLIGATIONS OF THE CONTRACTING AUTHORITY IN RELATION TO THE AIRPORT SITES .....	32
9. ANTIQUITIES .....	32
10. POLLUTION EVENTS.....	32
11. PRE-FEASIBILITY STUDIES .....	33
<b>PART III - MANAGEMENT AND OPERATION OF THE AIRPORT.....</b>	<b>34</b>
12. GRANT OF CONCESSION.....	34
13. MANAGEMENT OF THE AIRPORT BUSINESS.....	34
14. MAINTENANCE OF THE CONCESSION ASSETS.....	35
15. STOCK .....	35
16. SECURITY .....	35
17. RESTRICTION OF ACTIVITIES .....	36
18. RESERVED ACTIVITIES.....	36
19. PERFORMANCE CRITERIA AND SERVICE LEVELS .....	38
20. MONITORING .....	42
21. ENVIRONMENTAL AND SOCIAL OBLIGATIONS .....	48
22. INSURANCE .....	55
23. SUBCONTRACTING .....	55
24. EMPLOYEES.....	58
25. PERFORMANCE CRITERIA - PERFORMANCE CONTRACTUAL PENALTIES.....	59
<b>PART IV - WORKS .....</b>	<b>61</b>
26. WORKS .....	61
<b>PART V - TECHNOLOGY WATCH AND VARIATION .....</b>	<b>66</b>
27. TECHNOLOGY WATCH .....	66
28. VARIATION.....	66

<b>PART V - FINANCIAL MATTERS.....</b>	<b>68</b>
29. AIRPORT REVENUES .....	68
30. SECURITIES.....	69
31. PROJECT DEVELOPMENT FEE.....	70
32. TAXES, COSTS AND EXPENSES.....	71
33. REFINANCING .....	71
<b>PART VI - FORCE MAJEURE - MATERIAL ADVERSE GOVERNMENT ACTION - CHANGE IN LAW .....</b>	<b>72</b>
34. FORCE MAJEURE EVENT .....	72
35. MATERIAL ADVERSE GOVERNMENT ACTION .....	75
36. QUALIFYING CHANGE IN LAW .....	77
<b>PART VII - TERM, TERMINATION AND TERMINATION PAYMENTS.....</b>	<b>79</b>
37. CONCESSION TERM AND EXPIRY .....	79
38. EVENTS OF DEFAULT .....	79
39. TERMINATION IN CONNECTION WITH AN EVENT OF DEFAULT .....	80
40. CONTRACTING AUTHORITY STEP-IN RIGHTS .....	81
41. EARLY TERMINATION .....	82
<b>PART VIII - HANDBACK.....</b>	<b>84</b>
42. MAINTENANCE OF CONCESSION .....	84
43. HANDBACK UPON EXPECTED EXPIRY OF THE CONCESSION PERIOD .....	85
44. HANDBACK UPON EARLY TERMINATION OF THE CONCESSION AGREEMENT.....	89
45. HANDBACK SECURITY.....	90
46. ASSOCIATED OBLIGATIONS.....	91
47. RE-TRANSFER OF CONCESSION ASSETS.....	92
<b>PART IX - REPRESENTATIONS AND WARRANTIES.....</b>	<b>93</b>
48. WARRANTIES BY THE CONCESSIONAIRE .....	93
<b>PART X - RELATIONS WITH THIRD PARTIES .....</b>	<b>95</b>
49. EXCLUSION OF LIABILITY AND INDEMNITY .....	95
<b>PART XI - LAW AND DISPUTE RESOLUTION .....</b>	<b>97</b>
50. DISPUTE RESOLUTION PROCEDURES.....	97
51. GOVERNING LAW AND JURISDICTION.....	98
<b>PART XII - GENERAL PROVISIONS.....</b>	<b>99</b>
52. NOTICES.....	99
53. ENTIRE AGREEMENT – CONFLICTS.....	99
54. WAIVER.....	99
55. AMENDMENT .....	100

56.	ASSIGNMENT .....	100
57.	CONFIDENTIALITY .....	100
58.	LANGUAGE.....	101
59.	FURTHER ASSURANCES.....	101
60.	INVALIDITY .....	101
61.	COUNTERPARTS .....	101
62.	DEFAULT INTEREST .....	101
63.	VALUE ADDED TAX .....	102
64.	SET OFF .....	102
65.	NO PARTNERSHIP OR JOINT VENTURE.....	102
66.	SURVIVAL .....	102

## **LIST OF SCHEDULES**

SCHEDULE 1. CONDITIONS PRECEDENT.....	104
SCHEDULE 2. INITIAL TRANSFER OF ASSETS AND LIABILITIES .....	108
SCHEDULE 3. INITIAL ENVIRONMENTAL SITE ASSESSMENT TERMS OF REFERENCE .....	109
SCHEDULE 4. AIRPORT SERVICES .....	110
SCHEDULE 5. AIRPORT FORUM.....	112
SCHEDULE 6. CONCESSION RECORDS .....	113
SCHEDULE 7. CONTRACTING STANDARDS .....	116
SCHEDULE 8. INSURANCE .....	117
SCHEDULE 9. RETRANSFER OF ASSETS .....	118
SCHEDULE 10. TERMINATION PAYMENTS .....	128
SCHEDULE 11. AIRPORT SITES PLAN .....	133
SCHEDULE 12. WORKS AND TECHNICAL SPECIFICATIONS .....	134
SCHEDULE 13. PERFORMANCE CRITERIA.....	135
SCHEDULE 14. MAINTENANCE PROGRAMME .....	136
SCHEDULE 15. LIST OF CONSENTS .....	137
SCHEDULE 16. RESERVED ACTIVITIES ASSETS, FACILITIES AND MINIMUM SPACE REQUIREMENTS.....	138
SCHEDULE 17. INDEPENDENT ENGINEER / EXPERT / LFS ENGINEER /ENVIRONMENTAL CONSULTANT .....	139
SCHEDULE 18. TESTING PROCEDURE.....	147
SCHEDULE 19. MNE EMPLOYEES .....	148
SCHEDULE 20. KEY PRINCIPLES OF THE FUNDERS' DIRECT AGREEMENT .....	149
SCHEDULE 21. AERONAUTICAL REVENUES.....	151

<b>SCHEDULE 22. SCOPE OF PREFEASIBILITY STUDIES .....</b>	<b>152</b>
---	------------

**THIS CONCESSION AGREEMENT** is made the [●] 2018

**BETWEEN:**

- (1) **The Government of Montenegro**, represented by the [●] (the "**Contracting Authority**"); and
- (2) [[*insert name of the company*]], a company incorporated under the laws of Montenegro and having its registered office at [*insert address of the company*] (the "**Concessionaire**");
- (3) [[*insert name of the company*]], a company incorporated under the laws of [•] and having its registered office at [*insert address of the company*] ("[•]");
- (4) [[*insert name of the company*]], a company incorporated under the laws of [•] and having its registered office at [*insert address of the company*] ("[•]");
- (5) [[*insert name of the company*]], a company incorporated under the laws of [•] and having its registered office at [*insert address of the company*] ("[•]");

[•], [•] and [•] are individually referred hereinafter to as a "**Sponsor**" and collectively referred to as the "**Sponsors**".

**PREAMBLE:**

- (A) The Podgorica and Tivat Airports (together the "**Airports**") are the main international airports in Montenegro and as such key assets of strategic importance. As of the date hereof, the Airports of Montenegro, being a joint stock company incorporated to operate the Airports, operates the Airports. Airports of Montenegro holds a valid Airport operator license issued by the Civil Aviation Authority of Montenegro.
- (B) The Contracting Authority adopted on [*insert date*] the concession act on the basis of which an invitation for tendering in a two tier tender process was issued by the MOTMA on behalf of the Contracting Authority, in response to which [*insert number of consortia and individual bidders which submitted bids*] bidders submitted tenders for a long term concession for the modernization, expansion, operation, maintenance and financing of Airports (hereinafter referred to as the "**Tender**").
- (C) Following the evaluation of the Tender, the Sponsors were selected as the preferred bidder on the basis of the decision on awarding the concession adopted by the Contracting Authority [*specification of decision to be included*] (the "**Preferred Bidder**").
- (D) Following the selection of the Preferred Bidder, the Contracting Authority finalized the terms and conditions of this concession agreement with the Preferred Bidder on terms that the Preferred Bidder would establish the Concessionaire as the legal vehicle for the carrying out of the works and the provision of services described generally above and more particularly in this agreement (the "**Concession Agreement**"). The purpose of this Concession Agreement is amongst others, to delegate to the Concessionaire the planned modernization and expansion of the facilities at the Airports and to improve the efficiency of operations.
- (E) Pursuant to the foregoing the Preferred Bidder formed the Concessionaire, and the Contracting Authority, the Sponsors and the Concessionaire have entered into this Concession Agreement.

## IT IS AGREED AS FOLLOWS:

### PART I - GENERAL

#### 1. DEFINITIONS AND INTERPRETATION

##### 1.1 Definitions

In this Concession Agreement (including the recitals), except to the extent the context otherwise requires:

**“Abandonment”** means (a) in relation to the Initial Operation Period, the Concessionaire ceases to implement its material obligations, or to have them implemented, under this Concession Agreement for more than one (1) month and fails to reasonably demonstrate to the Contracting Authority that the Works will be achieved on or before the Scheduled Works Completion Date; and (b) during the Operation Period, a persistent failure by the Concessionaire to perform its obligations under this Concession Agreement such as to suggest to the Contracting Authority an intention to repudiate this Concession Agreement.

**["Access Charges"]** means charges for services and activities which are commercial in nature but which have an effect on Airline Users, and consequently, overall travel costs. The following minimum charges shall be levied in relation to agreements entered into by the Concessionaire after the Commencement Date:

- a) in relation to aircraft fueling services, a charge of [•] (Index Linked) per gallon of fuel supplied;
- b) in relation to Ramp Handling Services, a charge representing a fixed value per ICAO aircraft code as listed below per turnaround operation (arrivals and departures, individually, should be charged as a fifty percent (50%) of the access charge) (Index Linked) :]

ICAO Code	Final Proposed - Access Charge (in Euros)
B	[•]
C	[•]
D	[•]
E	[•]
F	[•]

**[Note: definition under review]**

**"Accounts"** means audited accounts prepared in accordance with generally accepted accounting standards as in effect from time to time in Montenegro (including IFRS, as applicable), consistently applied, including the cash flow statement and the notes to the financial statements, the auditors' report on those accounts and the directors' report for that year.

["**ADRM IATA Level of Service Optimum**" refers, in the context of the 10<sup>th</sup> edition of IATA framework for the design and expansion of terminal facilities and for the monitoring of existing terminal facilities, to an 'optimum level of service'. [**Note: definition under review**]

"**Aeronautical Revenues**" means all revenues that result from the collection of fees and charges by or on behalf of the Concessionaire from Airline Users or Passengers in accordance with the Applicable Law and the tariffs set out in **Schedule 21** (*Aeronautical Revenues*).

"**Affected Party**" has the meaning given in Clause 34.1.1(a) (*Definition of Force Majeure Event*).

"**Affiliate**" of any Person means any entity by which that person is Controlled or which is Controlled by that Person, or any entity which is Controlled by any Affiliate of that Person.

"**Air Traffic Control Services**" means the services provided by the Government Entities in respect of air traffic control at the Airports and in the airspace of Montenegro in accordance with Applicable Law, including, without limitation, all services necessary to expedite and maintain the orderly flow of air traffic and to avoid accidents between aircraft and aircraft or obstacles in the air or within the movement area of the Airports, to provide en-route flight information services, air traffic advisory services, area control services, approach control services, ground control services and meteorological services and safety management services.

"**Airline User**" means any Person responsible for the carriage of Passengers, mail or freight (including live cargo) by air from or to the Airports.

"**Airports of Montenegro**" means the joint stock company Airports of Montenegro (in Montenegrin "*akcionarsko društvo za uslužne djelatnosti u vazdušnom saobraćaju "Aerodromi Crne Gore" Podgorica*"), corporate identification number: 40009414, tax identification number: 02305623.

"**Airports**" means the airports and all associated facilities located at the Airport Sites and currently known as Podgorica Airport and Tivat Airport and which comprises all the land, buildings and structures at the Airport Sites.

"**Airport Business**" means the business of operating, developing, designing, constructing, upgrading, financing, managing, operating and maintaining the Airports at the Airport Sites and including providing the Airport Services.

"**Airport Emergency Plan**" means the plan to be employed by the Concessionaire in the event of an Emergency, which details procedures, duties and responsibilities for the deployment of emergency services, including, without limitation, the deployment of fire brigades and search and rescue and medical emergency services.

"**Airport Forum**" means the consultation forum formed in accordance with Clause 20.10 (*Airport Forum*) and as described more fully in **Schedule 5** (*Airport Forum*).

"**Airport Safety Management System**" means the system designed by the Concessionaire to efficiently manage safety at the Airport Sites, which includes the Airport Emergency Plan, and which shall at least:

- (i) identify safety hazards;



- (ii) ensure the implementation of remedial action necessary to maintain agreed safety performance;
- (iii) provide for continuous monitoring and regular assessment of the safety performance;
- (iv) aim at continuous improvement of the overall performance of the safety management system; and
- (v) include safety organizational structures, accountabilities and safety policies and procedures.

**"Airport Services"** means the services in connection with the Airports and their operation and management as listed in **Schedule 4** (*Airport Services*), but excluding Reserved Activities.

**"Airport Sites"** means the sites of the Airports shown edged red on the plan annexed hereto as **Schedule 11** (*Airport Sites Plan*).

**"Annual Concession Fee"** means the aggregate Concession Fee payable by the Concessionaire for a Concession Year.

**"Annual Concession Fee Certificate"** means the certificate established pursuant to and in accordance with Clause 20.5 (*Annual Concession Fee Certificate*).

**"Antiquities"** means all fossils, articles of value or antiquity and structures or other remains or things of particular geological, historical or archaeological interest or having artistic, historic or monetary value according to Applicable Law, discovered on the Airport Sites or in the course of the Project.

**"Applicable Law"** means the legislation or subordinate legislation of Montenegro from time to time and all other laws, regulations, by-laws, standards, requirements and orders (including for the avoidance of doubt with respect to the protection or conservation of the Environment, human health, and labour aspects), whether national or international, from time to time legally binding upon the Contracting Authority, operator or manager of the Airports.

**"ASTM Guidelines"** means the following international standard practices issued by the American Society for Testing and Materials:

- (a) ASTM E1527 - 13 "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process or Equivalent";
- (b) ASTM E1903 - 11 "Standard Practice for Environmental Site Assessments: Phase II Environmental Site Assessment Process or Equivalent"; and
- (c) ASTM E2081 - 00 (2015) "Standard Guide for Risk-Based Corrective Actions".

**[Note: definition under review]**

**"Base Case Equity IRR"** means *[insert the percentage set out in the Financial Model submitted with the bid of the Preferred Bidder]* %.

**"Berane Airport"** means the airport and all associated facilities located at the Berane airport sites and currently known as Berane airport and which comprises all the land,

buildings and structures.

**"Business Day"** means any day on which commercial banks are normally open for business in Montenegro excluding any day which, in Montenegro, is a public, bank or other statutory holiday, or a Sunday or Saturday.

**"Capital Expenditure"** means any expenditure which is treated as capital expenditure in accordance with generally accepted accounting principles in Montenegro from time to time.

**"Cargo Handling Services"** means the services provided in relation to cargo handling at the Airports.

**"Change in Law"** means the enactment of any new Applicable Law (other than any Applicable Law which had been published prior to the Execution Date), the repeal, modification or re-enactment of any existing Applicable Law or a change in the interpretation or application of any Applicable Law but excluding:

- (a) any change in the interpretation of Applicable Law by a court of competent jurisdiction;
- (b) the performance or exercise by any Government Entity of any function or discretion pursuant to any of its functions under Applicable Law; and
- (c) any change in or new Applicable Law for the purpose of complying with any international obligations or undertakings of the Contracting Authority related to airport operations and/or air transport including the Chicago Convention or any annex thereto and any International Air Service Agreement,

in each case, which takes place after the Execution Date.

**"Chicago Convention"** means the Convention on International Civil Aviation of 1944.

**"Closing Security"** means the security issued by a bank in favor of the Contracting Authority in respect to the Concessionaire's obligations during the Interim Period to be provided by the Concessionaire to the Contracting Authority in the agreed form, in compliance with the requirements of Clause 30.1 (*Closing Security*).

**"Commencement Date"** has the meaning given to this term in Clause 2.3.1 (*Transfer and Commencement Date*).

**"Completion Security"** means the performance security issued by a bank in favor of the Contracting Authority in respect of the Concessionaire's obligations to carry out the Works to be provided by the Concessionaire to the Contracting Authority in the agreed form, in compliance with the requirements of Clause 30.1 (*Closing Security*).

**"Concessionaire"** has the meaning given to such term in the Preamble.

**"Concession Agreement"** means the present agreement (including the Schedules), as the same may be varied, amended or supplemented from time to time.

**"Concession Assets"** means at the relevant time, the Moveable Property and the Immoveable Property at the Airport Sites.

**"Concession Documents"** means this Concession Agreement and the Project Agreements.

**"Concession Employee"** means any Person (including the employees of the Concessionaire from time to time together with any Person employed by any of the Concessionaire's Affiliates) whose contract of employment would be transferred to the Contracting Authority or the Successor Concessionaire following the expiry or early termination of the Concession Period pursuant to any Applicable Law.

**"Concession Fee"** means an amount equal to [*percentage to be inserted from the Bid*] per cent (%) of the Gross Revenue payable by the Concessionaire in accordance with Clause 29.2.1 (*Concession Fee*).

**"Concession Period"** means the period commencing on the Commencement Date and, unless terminated earlier under this Concession Agreement, expiring on the [twenty fifth (25<sup>th</sup>)/thirtieth (30<sup>th</sup>)] anniversary unless extended in accordance with Clause 2.4 (*Term*).

**"Concession Year"** means each of the following periods within the Concession Period:

- (a) the period from the Commencement Date until 31 December [•] [*to be updated if the Commencement Date occurs after this date*] (which shall be the first "Concession Year");
- (b) the period of twelve months beginning on 1 January [•] [*to be updated if the Commencement Date occurs after this date*], and each other period of twelve months beginning on the day after the end of a Concession Year; and
- (c) the period beginning on the day after the last day of the last Concession Year preceding the end of the Concession Period and ending on the date of the end of the Concession Period.

**"Concessionaire Event of Default"** has the meaning given to this term in Clause 38 (*Events of default*).

**"Concessionaire's Representative"** means the Person notified to the Contracting Authority as the agent or representative of the Concessionaire.

**"Conditions Precedent"** means the conditions precedent specified in Parts 1 to 3 (inclusive) of **Schedule 1** (*Conditions Precedent*).

**"Confidential Information"** has the meaning given to this term in Clause 57.1 (*Confidentiality*).

**"Conflicting Environmental Standard"** has the meaning given to this term in Clause 21.8.1 (*Conflicting Environmental Requirements*).

**"Connected Person"** means

- (a) in relation to the Concessionaire:
  - (i) any Shareholder of, or other provider or owner of subordinated loans or capital contributions to, the Concessionaire or an Affiliate of the Concessionaire, or any Affiliate of that shareholder or provider; or
  - (ii) any Sponsor or any Affiliate of a Sponsor; or

- (iii) any Affiliate or director of the Concessionaire; or
  - (iv) any Person in which any one or more of the Concessionaire, a Shareholder, a Sponsor, or any Affiliate of the Concessionaire, of a Shareholder, of a Sponsor, or of any other person within the description in paragraph (a) above, has any direct or indirect interest or connection (whether that interest or connection is financial, economic or of any other nature), and indirect shall include (without limitation) through a chain of any one or more Persons or interests; and
- (b) in relation to an Airline User:
- (i) any shareholder in that Airline User or any provider or Contracting Authority of any subordinated loan to that Airline User or any Affiliate of that shareholder or provider or Contracting Authority; or
  - (ii) any Affiliate or director of that Airline User;

provided that the Contracting Authority shall not be construed as a Connected Person of the Concessionaire or an Airline User.

**"Consent"** means any approval, consent, license, permit or other authorization of any kind that is required from any Government Entity under the Applicable Law in connection with the performance of the Concession Documents, any planning permission delivered by the Government Entity and any building permit and environmental permit, including permits listed in **Schedule 15** (*List of Consents*).

**"Construction Contract"** means any contract entered into by the Concessionaire from time to time and approved by the Contracting Authority under which the Concessionaire sub-contracts the design and/or carrying out of any the Works.

**"Construction Contractor"** means any contractor employed by the Concessionaire under the relevant Construction Contract.

**"Construction Period"** means the period commencing on the Commencement Date and ending on the date on which the Works Completion Certificate is issued in accordance with Clause 26.6 (*Works Completion Certificate*).

**"Contracting Authority"** has the meaning ascribed to this term in the Preamble.

**"Contracting Authority Event of Default"** has the meaning given to this term in Clause 38.2 (*Contracting Authority Events of Default*).

**"Contracting Authority's Representative"** means the legal representative of the Contracting Authority or any other Person nominated from time to time by the legal representative and, in either case, notified to the Concessionaire to undertake the duties as the representative of the Contracting Authority for the purposes of this Concession Agreement.

**"Contracting Authority Step-In Right"** has the meaning given to this term in Clause 40.1 (*Contracting Authority Step-in Rights*).

**"Contracting Standards"** means those standards governing (a) the commercial terms of contracts, leases or similar agreements or arrangements entered into by the Concessionaire

with Affiliates or third parties, including Sub-Contractors, in respect of the Airports and (b) the selection of third parties who are parties to any contract, lease or similar agreement or arrangement entered into by the Concessionaire in respect of the Airports, as set forth in **Schedule 7** (*Contracting Standards*).

**"Contractor"** means the Construction Contractor and the [Shareholder Operator].

**"Control"** means (i) the power to elect a majority of the board of directors (or other similar constituent body) or otherwise direct the management and policies of a Person, directly or indirectly, whether through the ownership of securities, by contract or otherwise; and/or (ii) the holding of the majority of the rights to dividends with respect to a Person (and **"Controlled"** shall be construed accordingly).

**"CP Satisfaction Date"** has the meaning given to this term in Clause 2.1.5 (*Conditions Precedent*).

**"Curable Event of Default"** has the meaning given to this term in Clause 39.2.2 (*Cure Period - Mitigation*).

**"Cure Period"** has the meaning given to this term in Clause 39.2.1 (*Cure Period - Mitigation*).

**"Default Interest Rate"** has the meaning given to this term in Clause 62 (*Default Interest*).

**"Default Notice"** has the meaning given to this term in Clause 39.1.1 (*Notification*).

**"Dimensioning Parameters"** has the meaning given to this term in Clause 19.6.1(a) (*Enhancements*).

**"Dimensioning Shortfall"** has the meaning given to this term in Clause 19.6 (*Enhancements*).

**"Discriminatory Change in Law"** means a Change in Law, the terms of which apply expressly to:

- (a) the Project and not to similar infrastructure concession projects;
- (b) the Concessionaire and not to other Persons; and/or
- (c) the private partner of concessions and not to other Persons.

**"Dispute"** has the meaning given to this term in Clause 50.1.1 (*Amicable Settlement*).

**"Distribution"** means whether in cash or in kind, any:

- (a) dividend or other distribution in respect of share capital;
- (b) reduction of capital of the Concessionaire, redemption or purchase of shares or any other reorganization or variation to share capital of the Concessionaire;
- (c) payments under any subordinated financing agreements (whether of principal, interest, fees, charges, breakage costs or otherwise) to a Shareholder or one of its Affiliates or any Connected Person of the Concessionaire;

- (d) payment, loan, contractual arrangement or transfer of assets or rights to the extent (in each case) it was put in place after Financial Close and was neither in the ordinary course of business nor on reasonable commercial terms; or
- (e) the receipt of any other benefit which is not received in the ordinary course of business and on reasonable commercial terms.

**"EHS Guidelines"** means the World Bank Group environmental, health, and safety (i) general guidelines (2007) and (ii) guidelines for airports (2007), available at <http://www.ifc.org/ehsguidelines>.

**"Emergency"** means a condition, situation or occurrence, stipulated as an "Emergency" in the Airport Emergency Plan, whereby the security of the Airports is in danger or where bodily injury or death or damage to property located within the Airport Sites is likely to occur or has occurred.

**"Employee Transfer Plan"** means the employee transfer plan to be prepared by the Concessionaire before the Commencement Date in accordance with Clause 2.2 (*Initial Transfer Plan and Employee Transfer Plan*).

**"Encumbrance"** means any mortgage, charge, easement, pledge or other preferential arrangement of similar effect, other than title retention in the ordinary course of business or as may arise by operation of law in the ordinary course of business and **"Encumber"** shall be construed accordingly.

**"Enhancement Plan"** has the meaning given to this term in Clause 19.6.3 (*Enhancements*).

**"Enhancement Works"** has the meaning given to this term in Clause 19.6.3(b) (*Enhancements*).

**"Enhancement Works Programme"** has the meaning given to this term in Clause 19.6.3(c) (*Enhancements*).

**"Environment"** means any part of the environment or surroundings, including air (within or outside any structure or above and below ground), water (above and below ground) and land (surface, sub-surface or under water).

**"Environmental and Social Impact Assessment"** means an assessment of environmental and social risks and impacts, which identifies the Concessionaire's detailed actions for mitigating environmental impacts and risks in relation to the Works, the Enhancement Works (if applicable), the Handback Works and any other works to be developed by the Concessionaire in accordance with the Operational and Strategic Plans.

**"Environmental and Social Management and Monitoring Plans"** or **"ESMMP"** means the plans detailing the actions recommended as a result of (i) the Environmental and Social Impact Assessment and of (ii) the environmental and social assessment process which is part of the ESMS, including the plans listed in Clause 21.3.

**"Environmental and Social Management System" or "ESMS"** means the environmental and social management system which shall include plans and programmes to manage and monitor the environmental and social components of Works, the Enhancement Works (if applicable), the Handback Works, any other works to be developed by the Concessionaire and the Airport Services throughout the Concession Period, including the items set out in Clause 21.1.

**"Environmental and Social Sustainability Reports"** means the environmental and social sustainability reports to be produced by the Concessionaire in accordance with Part 7 of **Schedule 6** (*Concession Records*), including at least the information set out in Part 7 of **Schedule 6** (*Concession Records*).

**"Environmental Consultant"** has the meaning given to this term in Clause 20.13.1 (*Environmental and Social Audits*).

**"Environmental Site Assessment"** means the plan assessing the existence of any Pollution Event resulting from the Concessionaire's activities on the Airport Sites during the Concession Period.

**"Equity"** means the capital of the Concessionaire attributed to its Shareholders in respect of their investment in the Concessionaire (including indebtedness for money borrowed by the Concessionaire from a Shareholder or any Affiliate of a Shareholder which by its terms is subordinated to any indebtedness for borrowed money incurred by the Concessionaire under any Funding Document).

**"Equity IRR"** means the projected blended internal rate of return to the Shareholders and any of their Affiliates over the entire Concession Period, having regard to Distributions made and projected to be made, calculated on a nominal basis and post-tax for the Concessionaire and pre-tax for the Shareholders. The Equity IRR initially is equal to the Base Case Equity IRR.

**"Estimated Change in Project Costs"** means the aggregate of any estimated increase in construction costs, operating costs and financing costs less the aggregate of any estimated reduction in construction costs, operating costs and financing costs, in each case incurred in relation to the Works or the Airport Services.

**"EUR"** or **"Euros"** means the lawful currency of the European Union and Montenegro.

**"Event of Default"** means a Contracting Authority Event of Default or a Concessionaire Event of Default.

**"Execution Date"** means the date of the execution of this Concession Agreement by all Parties.

**"Exempt Refinancing"** means:

- (a) a change in taxation or change in accounting treatment;
- (b) the exercise of rights, waivers, consents and similar actions which relate to day to day administrative and supervisory matters, and which are in respect of:
  - (i) breach of representations and warranties or undertakings;
  - (ii) movement of monies between the project accounts in accordance with the terms of the Funding Documents as at Financial Close (or as amended with the prior written approval of the Contracting Authority);
  - (iii) late or non-provision of information, consents or licenses;
  - (iv) approval of revised technical and economic assumptions for Financial Model runs (to the extent required for forecasts under the Funding Documents) as at

Financial Close (or as amended with the prior written approval of the Contracting Authority);

- (v) restrictions imposed by the Funders on the dates at which the senior debt can be advanced to the Concessionaire under the Funding Documents and/or amounts released from the escrow account during the initial availability period, each as defined in the Funding Documents as at Financial Close (or as amended with the prior written approval of the Contracting Authority) and which are given as a result of any failure by the Concessionaire to ensure that the Works are performed in accordance with the Works Programme and which are notified in writing by the Concessionaire or the Funders to the Contracting Authority prior to being given;
  - (vi) changes to milestones for drawdown and/or amounts released from the escrow account during the initial availability period set out in the Funding Documents as at Financial Close (or as amended with the prior written approval of the Contracting Authority) and which are given as a result of any failure by the Concessionaire to ensure that the Works are performed in accordance with the Works Programme and which are notified in writing by the Concessionaire or the Funders to the Contracting Authority prior to being given;
  - (vii) failure by the Concessionaire to obtain any consent by statutory bodies required by the Funding Documents as at Financial Close (or as amended with the prior written approval of the Contracting Authority); or
  - (viii) voting by the Funders and the voting arrangements between the Funders in respect of the levels of approval required by them under the Funding Documents as at Financial Close (or as amended with the prior written approval of the Contracting Authority);
- (c) any amendment, variation or supplement of any agreement approved by the Contracting Authority as part of any Variation under this Concession Agreement; and
- (d) any sale of shares in the Concessionaire by the Shareholders or securitization of the existing rights and/or interests attaching to shares in the Concessionaire.

**"Extension Events"** means any of the following:

- (a) a Force Majeure Event;
- (b) a Material Adverse Government Action;
- (c) a Variation Order;
- (d) a Contracting Authority Event of Default; or
- (e) a Qualifying Change in Law.

**"Financial Close"** means the date on which all conditions precedent to initial disbursement under the Funding Documents have been fulfilled or waived.

**"Financial Model"** means the financial model provided by the Concessionaire as part of its bid and as amended from time to time.



**"Force Majeure Event"** has the meaning given to it in Clause 34 (*Force Majeure Event*).

**"Funders"** means any Person or Persons providing debt financing or refinancing under the Funding Documents to the Concessionaire for the Project and their permitted successors and assigns, including any agent or trustee for such Person or Persons but excluding any Shareholder or its Affiliate with respect to Equity.

**"Funders' Direct Agreement"** means a direct agreement executed between the Concessionaire, any of the Funders and the Contracting Authority, based on the principles set out in **Schedule 20** (*Key Principles of the Funders' Direct Agreement*).

**"Funding Documents"** means any and all loan agreements, notes, bonds, indentures, security agreements, registration or disclosure statements, subordination agreements, mortgages, deeds of trust, credit agreements, note or bond purchase agreements, participation agreements and other documents entered into by the Concessionaire (including the Funders' Direct Agreement) relating to the financing, refinancing or interest rate hedging of the Project provided by any Funder, including any modifications, supplements, extensions, renewals and replacements of any such financing or refinancing.

**"General Change in Law"** means a Change in Law which is not a Discriminatory Change in Law or a Specific Change in Law.

**"Good Industry Practice"** means the practices, methods, standards, procedures and recommendations conforming to the Applicable Law and generally followed in the air transport and airport management industry with respect to the design, construction, operation and maintenance of airports, which can be reasonably expected from a skilled and experienced contractor, engineer or operator, as the case may be, under the same or similar circumstances, which practices, methods, standards and procedures shall include (i) ICAO Standards and Recommended Practices (SARPs) (ii) relevant IATA guidelines (iii) EHS Guidelines and (iv) relevant European Union regulations, directive and other acts [**Note: definition under review**].

**"Government Entity"** means (i) the Government of Montenegro, or any ministry, department or political or military subdivision thereof, and (ii) (A) any court or tribunal or (B) any other governmental entity, agency or authority under the direct or indirect control of the Government of Montenegro, or any ministry, department or political subdivision thereof, and having jurisdiction under Applicable Law over the Concessionaire or its contractors, or any independent regulatory authority, in each case within Montenegro. For the purposes of this Concession Agreement the MOTMA shall not be considered as a Government Entity.

**"Gross Revenue"** means, for any Concession Year, the sum (as determined in Euros in accordance with IFRS) of:

- (a) the aggregate gross revenues received by the Concessionaire deriving from Aeronautical Revenues;
- (b) the aggregate gross revenues received by the Concessionaire deriving from Non-Aeronautical Revenues;
- (c) amounts received or receivable from sales and services which the Concessionaire would or should credit or attribute to the Airport Business;
- (d) any Insurance Proceeds received by the Concessionaire, only to the extent that such proceeds are in respect of lost gross revenues set out under Paragraphs (a) or (b)

above (including under business interruption insurance policies) and shall exclude any reimbursement of utility charges and any other Insurance Proceeds (including under property damage insurance policies); and

- (e) any and all other revenue of the Concessionaire generated by the Airport Business not otherwise included in the calculation of aggregate gross revenues under sub-clauses (a) to (d) above, such as interest earnings and penalties and fines assessed to third parties for late payment of Aeronautical Revenues and Non-Aeronautical Revenues.

**"Handback Amount"** means the cost of carrying out the Handback Works as agreed or determined in accordance with Clauses 43.1 (*Initial Inspection - Handback Works*) or 44 (*Handback upon early Termination of the Concession Agreement*).

**"Handback Certificate"** means the certificate issued by the Contracting Authority after the Handback Inspection.

**"Handback Inspection"** has the meaning given to this term in Clause 43.4.1 (*Handback Inspection*).

**"Handback Payment"** has the meaning given to this term in Clause 43.4.7 (*Handback Inspection*).

**"Handback Programme"** means the programme for the carrying out of the Handback Works over the remainder of the Concession Period as agreed, determined or revised in accordance with Clause 43.1 (*Initial Inspection - Handback Works*).

**"Handback Security"** means the performance guarantee issued by a bank on behalf of the Concessionaire in favor of the Contracting Authority in respect of the Concessionaire's obligations to carry out the Handback Works in accordance with Clause 45 (*Handback Security*).

**"Handback Works"** means the works, if any, required and including any work required to remedy any Pollution Event, as agreed or determined at any time in accordance with Clause 43.1 (*Initial Inspection - Handback Works*) or 44 (*Handback upon early Termination of the Concession Agreement*), to be carried out in order to procure that the Airports and the Concession Assets will be in full compliance with Clause 14 (*Maintenance of the Concession Assets*) and all other provisions of this Concession Agreement upon Handover Effective Time.

**"Handover Effective Time"** has the meaning given in **Schedule 9** (*Retransfer of Assets*).

**"HICPI"** means the European Consumer Price Index, reflecting all items in the basket of goods and services surveyed, published from time to time by Eurostat.

**"IATA"** means the International Air Transport Association or any successor thereof.

**"ICAO"** means the International Civil Aviation Organization established by the Chicago Convention or any successor thereof.

**"IFC"** means the International Finance Corporation, a member of the World Bank group.

**"IFC Performance Standards"** means the IFC Performance Standards on Environmental and Social Sustainability dated January 1, 2012 available at <http://www.ifc.org/performancestandards>.

**"IFRS"** means International Financial Reporting Standards.

**"Immoveable Property"** means all terminals, buildings and structures on the Airport Sites, including all fixtures and fittings as determined in accordance with Applicable Law.

**"Indemnifier"** has the meaning given to this term in Clause 49.3.1 (*Conduct of Claims*).

**"Indemnitee"** has the meaning given to this term in Clause 49.3.1 (*Conduct of Claims*).

**"Independent Engineer"** has the meaning given to this term in **Schedule 17** (*Independent Engineer / Expert / LFS Engineer / Environmental Consultant*).

**"Index Linked"** means with respect to an amount designated in Euros, that amount as increased in line with the cumulative inflation from [*to be inserted prior to signing*] as shown by the HICPI.

**"Initial Environmental Site Assessment"** means the environmental site assessment conducted by a technical expert appointed by the Parties based on the terms of reference set out in **Schedule 3** (*Initial Environmental Site Assessment Terms of Reference*) in order to identify any Pre-existing Environmental Condition in relation to the Airport Sites.

**"Initial Inspection"** has the meaning given to this term in Clause 43.4.1 (*Handback Inspection*).

**"Initial Insurances"** means the initial insurances to be effected from the Commencement Date by the Concessionaire and details of which are set out in Part 4 of **Schedule 8** (*Insurance*).

**"Initial Operation Period"** means the period commencing from the Commencement Date and ending on the Works Completion Date.

**"Initial Transfer Plan"** means the initial transfer plan to be prepared by the Concessionaire before the Commencement Date in accordance with Clause 2.2 (*Initial Transfer Plan and Employee Transfer Plan*).

**"Insurances"** means those insurances required to be effected and maintained by the Concessionaire pursuant to Clause 22(*Insurance*) and **Schedule 8** (*Insurance*).

**"Insurance Policies"** means each of the policies issued to the Concessionaire in respect of the Insurances.

**"Insurance Proceeds"** means the proceeds received or receivable under any insurance taken out by or on behalf of the Concessionaire or any Contractor or which should have been received or receivable under any insurance which the Concessionaire or any Contractor is obliged to take out or procure, including pursuant to Clause 22 (*Insurance*) and **Schedule 8** (*Insurance*).

**"Insured Risk"** means any risk which under the terms of this Concession Agreement the Concessionaire is obliged to insure against in accordance with Clause 22 (*Insurance*) and **Schedule 8** (*Insurance*).

**"Intellectual Property"** means all legal and/or equitable interests in registered or unregistered trademarks, patents, registered and unregistered designs, applications for any of the foregoing, trading names, get-up, copyrights (including computer software),

topographies of semi-conductor products, inventions, confidential information and any other similar intellectual property.

**"Interim Period"** has the meaning given to this term in Clause 2.6.1 (*Interim Management*).

**"International Air Service Agreement"** means the treaties, agreements, memoranda of understanding and other arrangements between the Contracting Authority and the governments of other states or countries from time to time relating to the provision of air services for passengers, cargo and mail.

**"Labour Code"** means the labour code of Montenegro, as amended and restated from time to time.

**"LFS Engineer"** has the meaning given to this term in Clause 16.4.1 (*LFS Engineer*).

**"Maintenance Programme"** means the programme of maintenance, repair, renewal or replacement of the Concession Assets prepared by the Concessionaire and approved by the Contracting Authority, in accordance with the provisions of **Schedule 14** (*Maintenance Programme*).

**"Material Adverse Government Action"** has the meaning given to this term in Clause 35 (*Material Adverse Government Action*).

**"Material Asset"** means assets listed in Part 2 of **Schedule 2** (*Initial Transfer of Assets and Liabilities*).

**"Material Transferred Contract"** means Transferred Contracts listed in Part 1 of **Schedule 2** (*Initial Transfer of Assets and Liabilities*).

**"Maximum Cap"** means, the Initial Operation Period Maximum Cap during the Initial Operation Period and the Operation Maximum Cap during the Operation Period, as these terms are defined in **Schedule 13** (*Performance Criteria*).

**"MNE Employees"** means these employees of the Contracting Authority, its Affiliates or Airports of Montenegro working at or in relation to the Airports and listed in **Schedule 19** (*MNE Employees*) as may be adjusted from time to time up to the Commencement Date.

**"MOTMA"** means the Ministry of Transport and Maritime Affairs of Montenegro.

**"Moveable Property"** means moveable plant, machinery, motor vehicles, tools, equipment, furniture and other articles used in connection with the Airport Business owned or leased by the Concessionaire.

**"Net Present Value"** means the aggregate of the discounted values, calculated as of the estimated date of the Refinancing, of each of the relevant projected Distributions, in each case discounted using the Base Case Equity IRR.

**"Non-Aeronautical Revenues"** means all revenues of the Concessionaire that result from fees, charges, tariffs and other levies and that are not Aeronautical Revenues including:

- (a) all Access Charges;
- (b) all proceeds derived by the Concessionaire from rental of spaces for commercial use,

either calculated as per area lease or as a percentage of sales or a combination of both, to third party vendors of goods and services (including duty free shop goods, duty paid goods, food and beverage, general retailing, car parks, car rentals, advertising and rental space within the Airports, including offices, banking and financial services, transportation services, communication services); and

- (c) in relation to all activities referred to in paragraph (b) above that are provided by the Concessionaire directly, the total sales of the Concessionaire arising from such activities.

**"Occupier"** means any tenant or licensee occupying any part of the Airports.

**"Operation Period"** means the period commencing from the Works Completion Date and ending on the expiry or early termination of the Concession Agreement.

**"Operational and Strategic Plan"** means the operational and strategic plan referred to under Clause 20.1 covering development of the Airports over a thirty (30) year period to be updated every five (5) years, including inter alia commercial development and environmental and social development.

**"Operational Performance Report"** has the meaning set out in **Schedule 6** (*Concession Records*).

**"Operator Lock-In Period"** has the meaning given to this term in Clause 3.1.3 (*Change in Shareholding*).

**"Party"** means either the Contracting Authority or the Concessionaire (and **"Parties"** means both the Contracting Authority and the Concessionaire).

**"Passenger"** means any Passenger arriving by aircraft at or departing by aircraft from the Airport whether or not such Passenger deplanes from the aircraft, and **"Passengers"** shall mean all of them.

**"Passenger Satisfaction Survey"** has the meaning given to this term in Clause 19.3 (*Airport Services Surveys*).

**"Performance Criteria"** means the performance criteria set out in **Schedule 13** (*Performance Criteria*).

**"Performance Contractual Penalties"** means the contractual penalties payable by the Concessionaire as a result of breach of the Performance Criteria, calculated in accordance with **Schedule 13** (*Performance Criteria*).

**"Performance Security"** means the performance security issued by a bank in favor of the Contracting Authority in respect to the Concessionaire's obligations for the operation and maintenance of the Airports to be provided by the Concessionaire to the Contracting Authority in the agreed form, in compliance with the requirements of Clause 30.3 (*Performance Security*).

**"Person"** means any Montenegrin or foreign natural or legal person, partnership, enterprise, governmental agency or any other entity or instrumentality, whether public or private.

**"Pollution Event"** means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the Environment

(including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant) affecting the Airport Sites, but excluding emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine.

**"Pre-Existing Environmental Condition"** means any Pollution Event existing prior to the Commencement Date.

**"Pre-feasibility Studies"** means the pre-feasibility studies on the Berane Airport and Ulcinj Airport, scope of which is described in Schedule 22 (*Scope of Prefeasibility Studies*).

**"Preferred Bidder"** has the meaning given to this term in Paragraph (B) of the Preamble.

**"Pre-Refinancing Equity IRR"** means the Equity IRR calculated immediately prior to any Refinancing, but without taking into account the effect of such Refinancing and using the Financial Model as updated (including as to the performance of the Project).

**"Project"** means the project of development, financing, management and operation of the Airports.

**"Project Agreements"** means (i) the Construction Contract(s) and (ii) any operation and maintenance agreement to be entered into by the Concessionaire for the purpose of the Airport Business, from time to time.

**"Project Development Fee"** has the meaning given to this term in Clause 31 (*Project Development Fee*).

**"Property Right of Use"** means the right to use of the Airport Sites and Immoveable Property to be granted by the Contracting Authority to the Concessionaire in line with this Concession Agreement.]

**"Qualifying Change in Law"** means:

- (a) a Discriminatory Change in Law;
- (b) a Specific Change in Law; and/or
- (c) a General Change in Law which involves Capital Expenditure.

**"Qualifying Refinancing"** means any Refinancing that will give rise to a Refinancing Gain greater than zero that is not an Exempt Refinancing.

**"Ramp Handling Services"** means the provision of ground handling services at the Airports, including baggage handling and ramp handling services.

**"Reference Interest Rate"** means the interest rate determined by the European Central Bank on the main refinancing operations (MRO).

**"Refinancing"** means:

- (a) any amendment, variation, novation, supplement or replacement of any Funding Documents;
- (b) the grant of any waiver or consent, or the exercise of any similar right under any Funding Documents (other than the grant of any waiver or consent or the exercise of

any right which relates to day to day administration and supervisory matters);

- (c) the disposition of any rights or interests in, or the creation of any rights of participation in respect of the Funding Documents, or the creation of or granting of any other form of benefit or interest in the Funding Documents, or the creation or granting of any rights or interest in any contracts, revenues or assets of the Concessionaire whether by way of security or otherwise (save for any transfers of participation in the Funding Documents);
- (d) any restructuring of capital, which has an effect of increasing the Equity IRR; or
- (e) any other arrangement having been put in place by any Person which has an effect similar to any of (a) to (d) or which has the effect of limiting the Concessionaire's ability to carry out any of (a) to (c).

**"Refinancing Gain"** means a positive amount equal to  $(A-B) - C$ , where:

A = the Net Present Value of Distributions, as projected immediately prior to the Refinancing (taking into account the effect of the Refinancing and using the Financial Model as updated (including as to the actual past performance of the Project) so as to be current immediately prior to the Refinancing) to be made to each Shareholder or Affiliate over the remaining term of this Concession Agreement following the Refinancing.

B = the Net Present Value of Distributions, as projected immediately prior to the Refinancing (but without taking into account the effect of the Refinancing and using the Financial Model as updated (including as to the actual past performance of the Project) so as to be current immediately prior to the Refinancing) to be made to each Shareholder or Affiliate over the remaining term of this Concession Agreement following the Refinancing, and

C = any adjustment required to raise the Pre-Refinancing Equity IRR to the Base Case Equity IRR (if the Pre-Refinancing Equity IRR is lower than the Base Case Equity IRR, the adjustment is calculated as the amount that, if received by the Concessionaire at the estimated date of the Refinancing, would increase the Pre-Refinancing Equity IRR to be the same as the Base Case Equity IRR).

**"Remediation Works"** has the meaning given to this term in Clause 10.1(b) (*Obligation to Remedy*).

**"Reserved Activities"** means those functions and activities of any Government Entity contemplated in Clause 18 (*Reserved Activities*).

**"Reserved Activities Service Level Agreement"** means an agreement entered between the Concessionaire and the relevant Government Entity governing the terms and conditions under which certain Reserved Activities will be carried out on the Airport Sites in accordance with the terms of this Concession Agreement.

**"Reserved Discretion"** has the meaning given to this term in Clause 2.6.2 (*Interim Management*).

**"Restricted Person"** means any Airline User or any Connected Person in relation to an Airline User.

**"Reviewed Item"** has the meaning given to this term in Clause 26.2.1 (*Drawings Review*).

**"Rules"** has the meaning given to this term in Clause 50.3 (*Arbitration*).

**"Scheduled CP Satisfaction Date"** has the meaning given to this term in Clause 2.1.1 (*Conditions Precedent*).

**"Scheduled Works Completion Date"** means the date which falls [•] months from the Commencement Date.

**"Second Inspection"** has the meaning given to this term in Clause 43.2.1 (*Second Inspection*).

**"Security Services"** means, without however assuming responsibilities entrusted to Montenegro police, those security services safeguarding civil aviation against acts of unlawful interference, as specified in ICAO Annex 17 and any Applicable Law with respect to aviation security in and pertaining to the Airports and the Airport Sites to be provided by the Contracting Authority during the Concession Period, under its responsibility and at its own cost, including, without limitation, (a) in the areas of any terminal area comprising and beyond the Passenger screening area, including Passenger screening, operation of checkpoints and access control to restricted areas, (b) in the airfield and aircraft movement area, including but not limited to aprons, runway and taxiways, the control tower, and all support areas and utilities, (c) the employee entrances to the Airports and cargo entrances to the Airports and (d) in the areas of the Airports which are accessible by the general public without security passes or relevant and valid air carrier boarding passes.

**"Self-Handler"** means any Airline User which provides for itself (including by procuring the required equipment and staff) one or more categories of Ramp Handling Services and concludes no contract of any description with a third party (which does not include an Affiliate of that Airline) for the provision of those services.

**"Senior Management Staff"** means the managing director (or other chief executive officer) and the heads of the different functions within the Concessionaire or, as the case may be, the Airport Business, including (subject to organizational changes):

- (a) commercial;
- (b) marketing or business development;
- (c) finance;
- (d) human resources;
- (e) operations;
- (f) safety;
- (g) planning and development; and
- (h) estate management.

**"Services Quality Report"** means the services quality report to be provided by the Concessionaire, in accordance with **Schedule 13** (*Performance Criteria*).



**"Shareholder"** means any shareholder in the Equity of the Concessionaire from time to time, including, as of the Execution Date, the Sponsors.

**"Shareholders' Agreement"** means the agreement to be entered into between certain Shareholders setting out certain rights and obligations in relation to the governance and management of the Concessionaire.

**"Shareholder Operator"** means *[to be inserted from the bids]*, or any other Affiliate of *[to be inserted from the bids]* approved by the Contracting Authority in accordance with Clause 3.1 as the case may be. *[Note: this definition may be amended depending on the position retained as regards the equity contribution of the Operator.]*

**"Specific Change in Law"** means any Change in Law which specifically refers to the provision of airport services the same as or similar to the Airport Services or to the holding of shares in companies whose main business is providing services the same as or similar to the Airport Services.

**"Sponsor"** has the meaning given to such term in the Preamble.

**"Stakeholder Engagement Plan"** means the plan outlining the Concessionaire's engagement strategies with stakeholders, including affected communities, and providing for an ongoing grievance mechanism for affected communities, in particular in relation to the Works, the Enhancement Works (if applicable) and other works to be developed by the Concessionaire in accordance with the Operational and Strategic Plan.

**"Stock"** means stocks of consumables, spare parts, stock-in-trade and operating supplies.

**"Sub-Contractor"** means any Person, including the Contractors, to whom any works or services to be carried out by the Concessionaire are sub-contracted, whether or not that sub-contract is directly with the Concessionaire.

**"Successor Concessionaire"** means any Person (other than the Contracting Authority) who succeeds the Concessionaire after the expiry or sooner termination of the Concession Period in the management and operation of the Airports.

**"Survey"** has the meaning given to this term in Clause 19.3.1 (*Airport Services Surveys*).

**"Taxation"** means all taxes (direct and indirect) and including:

- (a) customs and excise duties, corporate tax, income tax (including pay-as-you-earn withholdings), airline Passenger duty, departure tax, national insurance contributions, VAT and stamp duty;
- (b) all other levies (including contractor's levy), imposts, duties, charges or withholdings in the nature of taxes imposed by any Government Entity having functions (including the right to levy Tax) in relation to Taxation in Montenegro; and
- (c) all interest, penalties, fines and other charges relating to any of the above or to a failure to make any return or supply any information in connection with any of the above,

and **"Tax"** and **"Taxes"** shall be construed accordingly.

**"Technical Bid"** means the technical bid submitted by the Preferred Bidder as part of the

Tender.

**"Technical Dispute"** has the meaning given to this term in Clause 50.2.1 (*Technical Expert*).

**"Technical Expert"** means:

- (a) the Independent Engineer if a Technical Dispute arises between the Parties during the Initial Operation Period (other than any Dispute involving the Independent Engineer or arising from comments, suggestions or modifications made or suggested by the Independent Engineer); or
- (b) the independent engineer appointed in relation to the Enhancement Works if a Technical Dispute arises in relation to the Enhancement Works from the time on which the Enhancement Works Programme is agreed until the date on which the Enhancement Works are completed; or
- (c) an expert designated in accordance with the procedure described in Part 2 of **Schedule 17** (*Independent Engineer / Expert / LFS Engineer / Environmental Consultant*) if a Technical Dispute arises in all other instances.

**"Technical Specifications"** means the document attached as **Schedule 12** (*Works and Technical Specifications*).

**"Tender"** has the meaning given to this term in Paragraph (A) of the Preamble.

**"Termination Date"** means the date that any termination of this Concession Agreement takes effect.

**"Termination Notice"** has the meaning given to this term in Clause 41.3.1 (*Termination Procedure*).

**"Termination Payment"** has the meaning given to this term in Clause 41.4.1 (*Termination Payments*).

**"Trade Union"** means any trade union as defined under Applicable Law.

**"Transfer Date"** has the meaning given to this term in Clause 2.3.1 (*Transfer and Commencement Date*).

**"Ulcinj Airport"** means the airport and all associated facilities located at the Ulcinj airport sites and currently known as Ulcinj airport and which comprises all the land, buildings and structures.

**"Upfront Concession Fee"** means an amount equal to [•] payable by the Concessionaire to the Contracting Authority.

**"Utility Services"** means the provision of services relating to utilities networks including but not limited to water, sewerage, electricity, gas, refuse collection, sewerage, drainage, telecommunication, thermo power and electronic communications, existing in/on the Airport Sites and which includes any pipes, electric or electronic communications cables, sewer, underwater conduits, thermo power, gas or gathering lines, networks consisting thereof or any other device or equipment which is a component of the power, water, gas, thermo power, sewage and electronic communications networks, or which is required for the

operation thereof.

**"Variation"** has the meaning given to this term in Clause 28.1 (*Variation*).

**"Variation Order"** has the meaning given to this term in Clause 28.4 (*Variation*).

**"VAT"** means Value Added Tax or any similar tax from time to time levied in place thereof.

**"Works"** means those works to be undertaken by the Concessionaire in accordance with **Schedule 12** (*Works and Technical Specifications*).

**"Works Completion Certificate"** means a certificate certifying completion of all the Works issued in accordance with Clause 26.6 (*Works Completion Certificate*).

**"Works Completion Date"** means the date at which the Works Completion Certificate is issued.

**"Works Monthly Report"** has the meaning set out in **Schedule 6** (*Concession Records*).

**"Works Programme"** means the programme for Works prepared in accordance with the Works Requirements.

**"Works Requirements"** means the requirements applicable to the Works as set out in **Schedule 12** (*Works and Technical Specifications*).

**"Works Timeline"** means the timeline for completion of the Works set out in the Works Programme.

## 1.2 **Construction and Interpretation**

In this Concession Agreement, except to the extent that the context otherwise requires:

- 1.2.1 the words "include" and "including" are to be construed without limitation;
- 1.2.2 references to documents "in the agreed form" are references to documents initialed as agreed by or on behalf of the Contracting Authority and the Concessionaire;
- 1.2.3 references to Preamble, Clauses, Parts, Paragraphs, Schedules, Parts of Schedules are to Preamble, Clauses, Parts, Paragraphs, Schedules, Parts of Schedules of this Concession Agreement, unless expressly specified to the contrary, and the Schedules form part of this Concession Agreement;
- 1.2.4 headings and references to headings shall be disregarded in construing this Concession Agreement;
- 1.2.5 references to any legislation are to Applicable Law and are to be construed as references to that legislation (including subordinate legislation) as from time to time amended or modified or to any legislation for the time being replacing or amending it (whether or not bearing the same name);
- 1.2.6 references to an agreement or any other document shall be construed as referring to that agreement or document as from time to time supplemented, varied or amended and any references in this Concession Agreement to "amend", "amendment" or "amended" shall be

construed to include "vary", "variation" or "varied";

- 1.2.7 words importing the masculine gender include the feminine and *vice versa*, and words in the singular include the plural and *vice versa*;
- 1.2.8 wherever provision is made for the giving or issuing of any notice, consent, approval, certificate or determination by any Person, unless otherwise specified, such notice, consent, approval, certificate or determination shall be in writing and the words "notify", "consent", "approval", "certify" or "determine" and other cognate expressions shall be construed accordingly;
- 1.2.9 references to materials, information, data and other records shall be to materials, information, data and other records whether stored in electronic, written or other form;
- 1.2.10 definitions contained in any Schedule shall have the same meanings in any part of this Concession Agreement;
- 1.2.11 "function", in relation to any Person, includes any duty or power of that Person;
- 1.2.12 references to the "equivalent" amount of any currency in any other currency shall be construed as the amount in the other currency required when converted into the first currency at the weighted average spot rate as published by the European Central Bank from time to time for the purchase of the first currency using the other currency;
- 1.2.13 [for the purpose of construing HICPI published by Eurostat, if the basis on which the relevant index is calculated is materially changed, such index shall be recalculated on the basis on which it was calculated prior to such change taking effect, or, if such index ceases to be published, it shall be replaced by such other index as may from time to time be published by any Government Entity which produces a result which is closest to that which the index would have produced if it had continued to be calculated on the same basis as that on which it was calculated (or recalculated for the purposes of this Concession Agreement) immediately prior to the date on which it ceased to be published;] **[Note: Indexation to be discussed]**
- 1.2.14 "writing" and other cognate expressions means all means of reproducing words in a tangible and permanent visible form; and
- 1.2.15 in the computation of time from a specified date to a later specified date the word "from" means from and including and "to" means to but excluding.
- 1.2.16 If there is any inconsistency between a provision of this Concession Agreement and a provision of any Project Agreement, this Concession Agreement shall prevail.
- 1.2.17 All figures used in the Concession Agreement must be rounded up to 0.01 or 0.01%.
- 1.2.18 In the interpretation of this Concession Agreement, no rule of construction shall apply to the disadvantage of any party on the basis that such party drafted or put forward the Concession Agreement or any provision thereof.

## **2. CONDITIONS PRECEDENT, INITIAL TRANSFER AND TERM**

### **2.1 Conditions Precedent**

- 2.1.1 Subject to Clause 2.3.2 (*Transfer and Commencement Date*), the rights and obligations of

the Parties under this Concession Agreement shall be conditional upon the fulfillment of the Conditions Precedent. The Parties shall exercise their reasonable endeavors to meet the Conditions Precedent no later than [six (6) months] from the Execution Date (the "**Scheduled CP Satisfaction Date**").

- 2.1.2 The Concessionaire shall exercise its reasonable endeavors to meet the Conditions Precedent specified in Part 1 of **Schedule 1** (*Conditions Precedent*), as soon as possible following the Execution Date and, in any event, no later than the Scheduled CP Satisfaction Date. The Concessionaire acknowledges that the Conditions Precedent specified in Part 1 of **Schedule 1** (*Conditions Precedent*) are provided for the benefit of the Contracting Authority. The Concessionaire shall provide written notice to the Contracting Authority as soon as it has met or considers that it is in a position to meet the Conditions Precedent specified in Part 1 of **Schedule 1** (*Conditions Precedent*), except for those that may have been waived by the Contracting Authority in writing. The Contracting Authority may not waive the Conditions Precedent set out in **[to be completed once CP list is finalized]**.
- 2.1.3 The Contracting Authority shall exercise its reasonable endeavors to meet the Conditions Precedent specified in Part 2 of **Schedule 1** (*Conditions Precedent*) as soon as possible following the Execution Date and, in any event, no later than the Scheduled CP Satisfaction Date. The Parties acknowledge that the Conditions Precedent specified in Part 2 of **Schedule 1** (*Conditions Precedent*) are provided for the benefit of the Contracting Authority and the Concessionaire. The Contracting Authority shall provide written notice to the Concessionaire as soon as it has met or considers that it is in a position to meet the Conditions Precedent specified in Part 2 of **Schedule 1** (*Conditions Precedent*), except for those that may have been waived by both the Contracting Authority and the Concessionaire in writing.
- 2.1.4 The Contracting Authority and the Concessionaire shall exercise their reasonable endeavors to meet the Conditions Precedent specified in Part 3 of **Schedule 1** (*Conditions Precedent*) as soon as possible following the Execution Date and, in any event, no later than the Scheduled CP Satisfaction Date, except for those that may have been waived by both Parties in writing.
- 2.1.5 Within five (5) days from the date on which the Concessionaire and the Contracting Authority have provided to the other written notice that they have met or are in a position to meet or waive (as applicable) the Conditions Precedent, the Contracting Authority and the Concessionaire shall meet to evidence the fulfillment of the Conditions Precedent and if they are satisfied that all the Conditions Precedent have been satisfied or waived pursuant to Clauses 2.1.2, 2.1.3 and 2.1.4 (*Conditions Precedent*) they shall sign a joint statement to that effect. The date of signature of such joint statement shall be the "**CP Satisfaction Date**".
- 2.1.6 If any of the Conditions Precedent is not satisfied (or waived in accordance with the foregoing) on the last day before the Scheduled CP Satisfaction Date, the Parties shall promptly meet to discuss how to satisfy the outstanding Conditions Precedent. If within sixty (60) days of the Scheduled CP Satisfaction Date, the CP Satisfaction Date has not occurred and the Parties have not agreed an extension to the Scheduled CP Satisfaction Date for satisfaction of the outstanding Conditions Precedent:
  - (a) if the only conditions that have not been satisfied at that time are Conditions Precedent specified in Part 1 of **Schedule 1** (*Conditions Precedent*) and/or Conditions Precedents specified in Part 3 of **Schedule 1** (*Conditions Precedent*) where such failure to satisfy such Conditions Precedents is due to the Concessionaire:
    - (i) upon the expiry of such period, the Contracting Authority may choose to

terminate this Concession Agreement by giving thirty (30) days' notice to the Concessionaire unless, during such period, the Concessionaire has provided notice that all the outstanding Conditions Precedent have been satisfied and the Contracting Authority is satisfied of the same, in which case this Concession Agreement shall not terminate; and

- (ii) in the event of termination in accordance with Clause 2.1.6(a)(i) (*Conditions Precedent*) the Contracting Authority shall be entitled to draw on the Closing Security for its full amount (or on the Performance Security and the Completion Security for the amount of the Closing Security, if the latter have already been provided) and all payments made by the Concessionaire shall be treated as non-refundable, which amount shall be deemed to cover all losses, costs and expenses suffered or incurred by the Contracting Authority in connection with this Concession Agreement and with the necessary action to find an alternative solution to the termination of this Concession Agreement and no Party shall otherwise have any liability to the other Party in connection with this Concession Agreement or its termination,
- (b) if the only conditions that have not been satisfied at that time are the Conditions Precedent specified in Part 2 of **Schedule 1** (*Conditions Precedent*), and/or Conditions Precedents specified in Part 3 of **Schedule 1** (*Conditions Precedent*) if such failure to satisfy such Conditions Precedents is due to the Contracting Authority:
  - (i) upon the expiry of such period, either Party may choose to terminate this Concession Agreement by giving a thirty (30) days' notice to the other Party unless, during such period, the Contracting Authority has provided notice that all the outstanding Conditions Precedent have been satisfied and the Concessionaire is satisfied of the same, in which case this Concession Agreement shall not terminate; and
  - (ii) in the event of termination in accordance with Clause 2.1.6(b)(i) (*Conditions Precedent*), the Contracting Authority shall:
    - (A) return the Closing Security to the Concessionaire (or the Performance Security and the Completion Security, if the latter have already been provided); and
    - (B) pay to the Concessionaire an amount equal to the Project Development Fee and the Upfront Concession Fee (if these have already been paid by the Concessionaire to IFC), but no Party shall be liable to any other Party in connection with this Concession Agreement or its termination.

## **2.2 Initial Transfer Plan and Employee Transfer Plan**

- 2.2.1 The Concessionaire shall, as soon as reasonably practicable after the Execution Date, commence the preparation of the Initial Transfer Plan and the Employee Transfer Plan.
- 2.2.2 The Concessionaire shall submit proposed drafts of the Initial Transfer Plan and the Employee Transfer Plan to the Contracting Authority for approval by not later than [90] days after the Execution Date.

2.2.3 In accordance with the IFC Performance Standards, when preparing the Employee Transfer Plan, the Concessionaire shall:

- (a) prior to implementing any collective dismissals, carry out an analysis of alternatives to retrenchment. If the analysis does not identify viable alternatives to retrenchment, a retrenchment plan will be developed and implemented to reduce the adverse impacts of retrenchment on MNE Employees. The retrenchment plan will be based on the principle of non-discrimination and will reflect the Concessionaire's consultation with MNE Employees, their organisations', and, where appropriate, the relevant Government Entity, and comply with collective bargaining agreements. The Concessionaire will comply with all legal and contractual requirements related to notification of public authorities, and provision of information to, and consultation with workers and their organizations.
- (b) ensure that all MNE Employees receive notice of dismissal and severance payments mandated by Applicable Law and collective agreements in a timely manner. All outstanding back pay and social security benefits and pension contributions and benefits will be paid (i) on or before termination of the working relationship to the MNE Employees, (ii) where appropriate, for the benefit of the MNE Employees, or (iii) payment will be made in accordance with a timeline agreed through a collective agreement. Where payments are made for the benefit of MNE Employees, workers will be provided with evidence of such payments.

2.2.4 For each draft of the Initial Transfer Plan or Employee Transfer Plan received:

- (a) as soon as reasonably practicable after receiving the draft, but in any event within [30] days of the receipt of that draft, the Contracting Authority shall provide written notice to the Concessionaire either (i) approving that draft, or (ii) rejecting that draft;
- (b) if the Contracting Authority rejects any draft, the Contracting Authority shall specify in writing the reasons for such rejection. Unless otherwise agreed in writing by the Contracting Authority, the Concessionaire shall provide the Contracting Authority with a revised draft within a period of thirty (30) days after the date of receipt of the Contracting Authority's reasons for rejecting the draft. During this thirty (30) days' period, the Parties undertake to discuss and negotiate in good faith any comment received from the Contracting Authority, and the Concessionaire may make any additional proposal in order to reach an agreement on the draft; and
- (c) at any time following the receipt of the Contracting Authority's rejection notice (including during the thirty (30) days period set out in paragraph (b) above, either Party may require the draft (and any disagreement related to the estimate of the related costs)) to be submitted to the Dispute resolution process in accordance with Clause 50 (*Dispute Resolution Procedures*).

## 2.3 **Transfer and Commencement Date**

2.3.1 On the date falling one (1) day after the CP Satisfaction Date (or any later date as the Parties may agree in writing) (the "**Transfer Date**"), the Parties shall meet and implement the Initial Transfer Plan and the Employee Transfer Plan in order to complete the initial transfer of assets and liabilities of the Airport Business from the Contracting Authority and to implement transfer of MNE Employees from Airports of Montenegro to the Concessionaire. The date on which the Parties have complied with all the Initial Transfer Plan and the

Employee Transfer Plan shall be the "**Commencement Date**".

- 2.3.2 The provisions of Clause 1 (*Definitions and Interpretation*), Clause 2 (*Conditions Precedent, Initial Transfer and Term*), Clause 3 (*General Undertakings of the Sponsors and the Concessionaire*), Clause 4 (*Consents - Cooperation*), Clause 20.6.2 (*Provision of Registered Details*), Clause 30.1 (*Closing Security*), Clause 31 (*Project Development Fee*), Clause 34 (*Force Majeure Event*), Clause 35 (*Material Adverse Government Action*), Clause 48 (*Warranties by the Concessionaire*), Clause 50 (*Dispute Resolution Procedures*), Clause 51 (*Governing Law and Jurisdiction*) and Clauses 52 (*Notices*) to 66 (*Survival*) and **Schedule 1** (*Conditions Precedent*), **Schedule 2** (*Initial Transfer of Assets and Liabilities*), **Schedule 8** (*Insurance*), **Schedule 14** (*Maintenance Programme*), **Schedule 15** (*List of Consents*), **Schedule 17** (*Independent Engineer / Expert / LFS Engineer / Environmental Consultant*), **Schedule 19** (*MNE Employees*) and **Schedule 20** (*Key Principles of the Funders' Direct Agreement*) shall take effect and be binding on the Parties and the Sponsors immediately upon the Execution Date **[•to be completed as the case may be]**.

## 2.4 **Term**

The Concession Agreement shall remain in full force and effect for the Concession Period. [If no event which, with prior notice and/or the lapse of time, shall permit either Party to terminate this Concession Agreement has occurred and is continuing at the end of the Concession Period, the Concession Period may be extended at the option of the Contracting Authority for an additional five (5) year period. Such extension shall be upon such terms and conditions as may be agreed between the Contracting Authority and the Concessionaire.]

## 2.5 **Role of Sponsors**

### 2.5.1 The Sponsors:

- (a) have signed this Concession Agreement in compliance with Applicable Law; and
- (b) have formed [or shall form within [•] days of the Execution Date] the Concessionaire.

- 2.5.2 [Once the Concessionaire is formed,] Sponsors have no other rights and obligations under this Concession Agreement, except under Clause 3 (*General Undertakings of the Sponsors and the Concessionaire*).

## 2.6 **Interim Management**

- 2.6.1 During the period between the Execution Date and the Commencement Date (the "**Interim Period**"), the Concessionaire shall diligently work with the Contracting Authority's Representatives, and the Contracting Authority's Representatives shall cooperate with the Concessionaire, to ensure a transition of operational control (including, without limitation, of all Concession Assets and MNE Employees) of the Airports on the Commencement Date from the Contracting Authority to the Concessionaire without any interruption in the provision of any Airport Services. For sake of clarity, since the MNE Employees are free to decide on the transition to the Concessionaire, the Contracting Authority shall provide its best efforts to facilitate such transition, but shall not be liable if some of MNE Employees eventually decide not to transfer to the Concessionaire.

- 2.6.2 During the Interim Period, the Contracting Authority shall not (or ensure that Airports of Montenegro shall not):

- (a) vary or terminate any Material Transferred Contract;



- (b) encumber, assign, mortgage, pledge, dispose of, sell, any Material Asset;
- (c) increase the salaries or benefits of any MNE Employee or increase the number of the MNE Employees; or
- (d) adopt or amend any bonus, profit-sharing, compensation, severance, termination, pension, retirement or deferred compensation of any MNE Employee, or increase the compensation or fringe benefits of MNE Employee or pay any benefit not required by any existing plan or arrangement or by the Applicable Law,

(the actions described in paragraph (a) to (d) above are each referred to as a "**Reserved Discretion**"),

in each case without the prior written consent of the Concessionaire, provided that the Concessionaire shall only be entitled to withhold its consent if it can demonstrate that such Reserved Discretion would cause him to incur costs in excess of [•] Euros (EUR [•]) for the purpose of complying with its obligations under this Concession Agreement after the Commencement Date, in which case the Contracting Authority may only proceed with such Reserved Discretion by compensating the Concessionaire for the amount of costs incurred by the Concessionaire in excess of that amount.

- 2.6.3 During the Interim Period, the Contracting Authority shall provide its best efforts to ensure that the Airports of Montenegro provide the Concessionaire with (i) such access to the MNE Employees and (ii) such information and documents, as the Concessionaire may reasonably require for the purpose of achieving a smooth and efficient hand-over of the operation and management of the Airports, to the extent permitted by the Applicable Law.
- 2.6.4 During the Interim Period, the MNE Employees will remain employed by Airports of Montenegro (without prejudice to (i) the right of such MNE Employees to resign (ii) the cases of retirement, disability, prison sentence or other case of termination of employment directly by the force of law in line with the Applicable Law or (iii) the right of the Airports of Montenegro to dismiss any MNE Employee on the grounds of gross negligence or willful misconduct, in, each case in accordance with Applicable Law).

### **3. GENERAL UNDERTAKINGS OF THE SPONSORS AND THE CONCESSIONAIRE**

#### **3.1 Change in Shareholding**

##### **3.1.1 The Sponsors shall not:**

- (a) transfer or otherwise dispose any Equity to a third party;
- (b) decide or approve any Equity increase in the Concessionaire for the benefit of a third party; or
- (c) otherwise do or permit to be done anything which would cause the percentage of Equity held by each Sponsor to vary,

until the expiration of a [two (2) year-period] as from the Works Completion Date.

- 3.1.2 The Sponsors shall retain Control until [five (5) years] after the Works Completion Date, unless otherwise agreed by the Contracting Authority. ***[Note: need and conditions for a sponsors' lock-in period to be discussed]***

**3.1.3** Notwithstanding Clause 3.1.2 (*Change in Shareholding*) above, the Shareholder Operator or its Affiliates shall retain at least [twenty percent (20%)] of the Equity until the end of the [eighth (8<sup>h</sup>) year] of the Concession Period (the "**Operator Lock-In Period**").

3.1.4 Upon expiration of the Operator Lock-In Period, any transfer of Equity by the Shareholder Operator shall be subject to the Contracting Authority's prior approval which may only be withheld if the Concessionaire cannot demonstrate that the transferee's level of airports operational expertise and financial standing are at least equivalent to those of the Shareholder Operator.

**[Note: the drafting of this clause might be adjusted depending on the position retained as regards the equity contribution of the Operator]**

### **3.2 Restricted Persons**

Notwithstanding Clause 3.1 (*Change in Shareholding*) above, the Concessionaire shall not permit or suffer any Restricted Person to hold any Equity or other investment in the Concessionaire (directly or indirectly) or hold any Encumbrance over any assets of the Concessionaire or any shares or other investment in the Concessionaire or otherwise be entitled to exercise any Control or influence over or have any involvement in the Airport Business, and the memorandum and articles of association of the Concessionaire and the Shareholders Agreement shall entrench this restriction to the satisfaction of the Contracting Authority (which entrenchment shall not be breached or varied).

## **4. CONSENTS - COOPERATION**

4.1 The Concessionaire shall obtain, maintain and renew, in a timely fashion, all Consents that may be required under any Applicable Law and in accordance with Good Industry Practice for maintaining its corporate existence and for the performance of its obligations under the Concession Documents.

4.2 The Concessionaire shall bear all costs and expenses associated with obtaining, maintaining and renewing such Consents.

4.3 The Contracting Authority shall provide to the Concessionaire and at the Concessionaire's cost, any reasonable administrative assistance as may be reasonably required in expediting the applications for, and issuance of, requisite planning and environmental Consents, application for which shall be submitted by the Concessionaire in his own name or for and on behalf of the Contracting Authority or by any Contractor in relation to the Project.

4.4 The Contracting Authority shall, at the Concessionaire's request, provide reasonable administrative assistance as may be required in seeking the assistance of the appropriate Government Entities in carrying out the Airport Services and the Works.

## **5. INDEPENDENT ENGINEER**

5.1 The Parties shall jointly appoint the Independent Engineer in accordance with **Schedule 17** (*Independent Engineer / Expert / LFS Engineer / Environmental Consultant*).

5.2 The appointment procedure and terms, and the scope of works of the Independent Engineer are set out in **Schedule 17** (*Independent Engineer / Expert / LFS Engineer / Environmental Consultant*). All fees, costs, charges and expenses payable to the Independent Engineer shall be equally borne by the Contracting Authority and the Concessionaire.



## **PART II - TITLE, AIRPORT SITES AND PRE-FEASIBILITY STUDIES**

### **6. TITLE**

#### **6.1 Airport Sites - Immovable Property**

- 6.1.1 All the Airport Sites and the Immoveable Property, granted to the Concessionaire under the Concession Agreement or constructed by the Concessionaire during the Concession Period, shall remain in the ownership of the [Contracting Authority] until the expiry or termination of this Concession Agreement.
- 6.1.2 The Concessionaire shall have no right of property or ownership over the Airport Sites or the Immoveable Property. The Concessionaire shall not create or permit to subsist any security interest over the whole or any part of the Airport Sites or the Immoveable Property.
- 6.1.3 The Concessionaire shall have the right to use the Airport Sites and all Immoveable Property in accordance with the Applicable Law and this Concession Agreement.
- 6.1.4 The Concessionaire may register the right to use the Airport Sites and the Immoveable Property before the competent land registry, solely on grounds of this Concession Agreement, without any further activity or consent of the Contracting Authority.
- 6.1.5 All the Airport Sites and the Immoveable Property shall be transferred to the Contracting Authority on expiry or termination of this Concession Agreement in accordance with the Applicable Law and **Schedule 9** (*Retransfer of Assets*).

#### **6.2 Moveable Property**

- 6.2.1 The Concessionaire shall have rights to access and use the Moveable Property present on the Airport Sites on the Execution Date.
- 6.2.2 During the Concession Period, the Concessionaire shall retain title of any Moveable Property purchased by it. Such Moveable Property shall be, alongside with the Moveable Property from the Clause 6.2.1, transferred to the Contracting Authority on expiry or termination of this Concession Agreement, in accordance with the **Schedule 8** (*Retransfer of Assets*).

### **7. OBLIGATIONS OF THE CONCESSIONAIRE IN RELATION TO THE AIRPORT SITES - ACCEPTANCE OF THE AIRPORT SITES**

- 7.1 The Concessionaire shall ensure the protection and security of the Airport Sites in accordance with Applicable Law and Good Industry Practice.
- 7.2 The Airport Sites shall not be used by the Concessionaire for any purpose other than the implementation of the Project.
- 7.3 The Concessionaire shall give, or cause to be given, access to the Airport Sites and the Airports to the Contracting Authority or its representatives or advisors for the purpose of monitoring the Works and the Airport Services and ensuring the Concessionaire's compliance with its obligations under this Concession Agreement; provided that the Contracting Authority or its representatives or advisors, as applicable, (i) shall be subject to, and shall comply with, applicable safety and security procedures generally applied by the Concessionaire to individuals given access to the Airport Sites and the Airports and (ii) such individuals shall not unreasonably interfere with the Concessionaire's conduct of the Airport

Business.

7.4 The Concessionaire shall be responsible, at its own cost and risk, for the removal of all structures, buildings and other impediments necessary to carry out the Works.

7.5 The Concessionaire warrants and represents to the Contracting Authority that it has conducted its own analysis and review of any such surveys (including land surveys if applicable) or any such technical information provided by the Contracting Authority and that it has satisfied itself as to their accuracy, completeness and fitness for purpose and as to their authors' expert qualifications, results and methodology and the Concessionaire shall not in any way be relieved from any obligation under the Concession Agreement nor shall it be entitled to claim against the Contracting Authority on the grounds that such surveys are incorrect or insufficient; the Contracting Authority shall not be liable to the Concessionaire as a result of any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in any surveys (including land surveys, if applicable) or any technical information provided by the Contracting Authority to the Concessionaire regardless of whether prepared negligently or not.

## **8. OBLIGATIONS OF THE CONTRACTING AUTHORITY IN RELATION TO THE AIRPORT SITES**

8.1 The Contracting Authority shall, throughout the Concession Period maintain peaceful and unencumbered possession of the Airport Sites.

8.2 The Contracting Authority shall comply with IFC Performance Standards and Good Industry Practice when carrying out any necessary resettlement and/or land expropriation for the purpose of land acquisition or extension of the Airport Sites.

## **9. ANTIQUITIES**

The Concessionaire acknowledges that any Antiquities are and shall remain the property of the Contracting Authority. In the event of discovery of such Antiquities after the Commencement Date, the Concessionaire shall:

- (a) immediately inform the Contracting Authority and give the Contracting Authority, relevant Government Entities and their representatives access to conduct inspections and remove items if they are moveable goods;
- (b) take such steps as any appropriate Government Entity may require, which may include ceasing and not carrying out any operations which may hinder the excavation of the Antiquities or in any way interfere with the Antiquities; and
- (c) take all necessary steps to preserve the Antiquities in the same position and condition in which it was found,

provided that any actions taken by the Contracting Authority or any Government Entity in relation to Antiquities which have a material adverse effect on (i) the ability of the Concessionaire to observe and perform any of its material rights and obligations under this Concession Agreement, and/or (ii) the cost or the profits arising from such performance shall constitute a Material Adverse Government Action.

## **10. POLLUTION EVENTS**

### **10.1 Obligation to Remedy**

Upon discovery of any Pollution Event, the Concessionaire shall:

- (a) immediately notify the Contracting Authority and the Government Entity in charge of the Environment of the occurrence of such Pollution Event;
- (b) as soon as practicable, provide the Contracting Authority with all details and with the actions it proposes to implement to remedy such Pollution Event in accordance with Applicable Law, Good Industry Practice (including the provisions of Section 1.8 (Contaminated Land) of the EHS Guidelines (General EHS Guidelines)) and IFC Performance Standards (the "**Remediation Works**"); and
- (c) carry out, in consultation with the Contracting Authority, the Remediation Works.

## 10.2 **Consequences of a Pre-Existing Environmental Condition**

10.2.1 The Contracting Authority shall compensate the Concessionaire for all reasonable, duly documented and properly incurred costs in carrying out the Remediation Works if:

- (a) the Pollution Event is a Pre-Existing Environmental Condition provided that any dispute as to whether a Pollution Event is a Pre-Existing Environmental Condition shall be submitted to the Technical Expert by reference to the Initial Environmental Impact Assessment;
- (b) the Concessionaire has complied with its obligations under Clause 10.1 (
- (c) *Obligation to **Remedy***) above; and
- (d) the Concessionaire can demonstrate that it has taken all reasonable steps to mitigate such costs, in accordance with Good Industry Practice.

10.2.2 Any expenses and costs incurred by the Concessionaire in carrying out Remediation Works in respect of any Pollution Events other than as set out in Clause 10.2.1 shall be borne by the Concessionaire.

## 11. **PRE-FEASIBILITY STUDIES**

11.1 The Concessionaire shall complete the Pre-feasibility Studies no later than [•] for the Berane Airport and [•] for the Ulcinj Airport.

11.2 Upon receipt of the Pre-feasibility Studies, the Contracting Authority will have the right to develop the Berane Airport and Ulcinj Airport through a competitive tender process or otherwise according to Applicable Law.

11.3 Subject to Applicable Law, the Concessionaire shall have the right to participate in any competitive tender to develop the Berane Airport and Ulcinj Airport.

## **PART III - MANAGEMENT AND OPERATION OF THE AIRPORT**

### **12. GRANT OF CONCESSION**

The Contracting Authority grants to the Concessionaire for the Concession Period the exclusive right to:

- (a) carry out the Works and any Enhancement Works (if applicable);
- (b) carry on the Airport Business; and
- (c) collect and retain the Aeronautical Revenues and the Non-Aeronautical Revenues,

in each case subject to and in accordance with the terms of this Concession Agreement and Applicable Law.

### **13. MANAGEMENT OF THE AIRPORT BUSINESS**

13.1 The Concessionaire shall carry on the Airport Business throughout the Concession Period in accordance with:

- (a) the terms of the Concession Documents;
- (b) Applicable Law;
- (c) Technical Bid;
- (d) Good Industry Practice;
- (e) IFC Performance Standards;
- (f) the terms of the Insurance Policies; and
- (g) the terms of the Operational and Strategic Plan,

provided that if the Concessionaire is aware of a conflict between any of the above requirements, it shall inform the Contracting Authority accordingly and the Parties shall discuss and agree upon the manner in which the Concessionaire should perform its obligations and failing agreement the Contracting Authority shall direct the manner in which such conflict shall be resolved.

#### **13.2 Uniform Conditions**

Except as may be approved in writing by the Contracting Authority, the Concessionaire shall ensure that Airport Services are provided on a non-discriminatory basis as between different Passengers, Airline Users and other Airports users of all countries subject to:

- (a) any bilateral agreement, treaty, or other agreement or arrangement to which the Contracting Authority is a party granting reciprocal "most favoured nation" or other similar rights to the nationals (including airlines) of another country; or
- (b) [any special rights and privileges granted to any airline designated as "Montenegro's national carrier"; or] [**Note: to be confirmed whether such rights are currently granted**]

- (c) any embargo or other executive action taken by the Contracting Authority in exercise of its sovereign rights,

in the case of (a) and (b) above, only to the extent that the action is compatible with regulations issued by ICAO, IATA, the European Union, World Trade Organization (WTO) or any other international or multilateral bodies to which Montenegro is a participant.

## **14. MAINTENANCE OF THE CONCESSION ASSETS**

The Concessionaire shall ensure at all times that the Concession Assets are kept in good repair and condition during the Concession Period and otherwise comply with the Maintenance Programme prepared in accordance with the provisions of **Schedule 14** (*Maintenance Programme*).

## **15. STOCK**

The Concessionaire shall at all times maintain or ensure that it has access to sufficient Stock for use in connection with the Airport Business.

## **16. SECURITY**

### **16.1 Security Services**

- 16.1.1 The Contracting Authority shall provide, or procure that the relevant Government Entity provides, the Security Services.

- 16.1.2 The Concessionaire shall assess the risks caused by the provision of Security Services for the MNE Employees and the public using the Airports and shall make reasonable efforts to ensure that the security personnel provided by the Contracting Authority or by a Government Entity (as the case may be) are (i) screened for implication in past abuses and (ii) adequately trained in the use of force and appropriate conduct toward communities, the public using the Airports and the MNE Employees.

- 16.1.3 The Concessionaire shall also design and implement thereafter throughout the Concession Period, a mechanism to ensure that any grievances related to the conduct of security personnel providing Security Services are properly raised, and that any incidents in relation to the conduct of the security personnel providing Security Services is properly investigated.

### **16.2 Security of the Airport Sites**

The Concessionaire shall implement all measures that are required for keeping unauthorized Persons off the Airport Sites at all times.

### **16.3 Security Fencing**

The Concessionaire shall provide and maintain, at its sole cost, perimeter and other fencing or barriers within or around the Airport Sites in accordance with the ICAO standards described in [Annex 17 to the Chicago Convention and Good Industry Practice]. [**Note: this provision may be amended subject to technical review**]

### **16.4 LFS Engineer**

- 16.4.1 The Concessionaire shall appoint a life, fire and safety engineer (the “**LFS Engineer**”) in accordance with **Schedule 17** (*Independent Engineer / Expert*).



- 16.4.2 All fees, costs, charges and expenses payable to the LFS Engineer shall be equally borne by the Contracting Authority and the Concessionaire.

**16.5 Emergency**

The Concessionaire shall coordinate with the relevant Persons and Government Entities, to maintain and update the Airport Emergency Plan in accordance with ICAO Accident Prevention Programme (Chapter 19) and ICAO Airport Services Manual (Document 9137) and be responsible for the coordination of all activities in the event of an Emergency including response, rescue and early warning system. The Concessionaire acknowledges that any Government Entity may take such steps as it deems desirable to mitigate or prevent any Emergency pursuant to the Airport Emergency Plan. The Concessionaire shall provide all reasonable assistance to any such Government Entity for this purpose.

**16.6 [Narcotics]**

The Concessionaire shall regard narcotics substances that are illegal in Montenegro and/or in any of the principal destinations of Passengers arriving at, and departing from, the Airports as materials which may be harmful to the conduct of civil aviation and as such, the Concessionaire shall cooperate with the Government Entities to facilitate the screening of Persons, Passenger baggage and cargo (included un-accompanied baggage for such substances as is required to be done for other materials, objects and equipment not permitted under Applicable Law and ICAO rules and guidelines).]

**[Note: this provision may be amended subject to technical review]**

**17. RESTRICTION OF ACTIVITIES**

**17.1 Other Businesses**

The Concessionaire shall not carry on any business other than the Airport Business.

**17.2 Other Material Investments**

The Concessionaire shall not hold any shares, ownership participation or any other ownership interest in any other Person (except for investments made in the ordinary course of treasury management of the Airport Business).

**17.3 Employees**

The Concessionaire shall not require, permit or suffer any Concession Employee to carry on any activity or business which the Concessionaire may not conduct or engage in under this Concession Agreement.

**18. RESERVED ACTIVITIES**

**18.1 Air Traffic Control**

- 18.1.1 The Concessionaire shall provide the Contracting Authority and any relevant Government Entity (at the cost of the Concessionaire) with the following access, rights and facilities at the Airports at all times:

(a) exclusive use of the control tower site as identified on the Airport Sites plan;

- (b) the right to install and maintain navigational aids and any antennae or communication equipment (howsoever described) and their respective power supply units (including emergency equipment); and
  - (c) such access to, and use of facilities at, the Airports as it may require for the purpose of carrying out its functions and other lawful activities at the Airports.
- 18.1.2 The Concessionaire shall not be entitled to reduce the space and facilities currently provided to a Government Entity at the Airports without the consent of that Government Entity.
- 18.1.3 In the event of any redevelopment at the Airports which involves the refurbishment or movement of facilities or equipment used by the Contracting Authority, the Concessionaire shall obtain the Contracting Authority's prior written consent.
- 18.1.4 The Concessionaire shall liaise and co-operate fully with the Contracting Authority in connection with the performance by the Contracting Authority of Air Traffic Control Services, air navigation and its other functions carried out at the Airports.
- 18.1.5 The Concessionaire shall provide to the Contracting Authority such information and other services as would reasonably be expected of an airport operator to enable the Contracting Authority to comply with its functions and lawful activities carried out by it at the Airports.
- 18.2 **Customs, Immigration and Quarantine**
  - 18.2.1 The Concessionaire shall at all times provide any relevant Government Entity (at the cost of the Concessionaire) with such access, space and facilities at the Airports as it may reasonably require for the purpose of performing its functions in relation to customs control, immigration control and quarantine (human or animal) activities at the Airports. Such facilities shall include the provision of a customs inspection hall and, an immigration inspection hall, and exclusive use of office space and parking spaces for the personnel of the Government Entities.
  - 18.2.2 The Parties shall in any case comply with the provisions of Annex 9 ("Facilitation") to the Chicago Convention in relation to customs control, immigration control and quarantine arrangement.
- 18.3 **Meteorological Service**

The Concessionaire shall provide (at the cost of the Concessionaire) at all times access and reasonable office accommodation for the Government Entity and such space at the Airport Sites as the Government Entity may require for the purpose of installing and using rainfall and wind speed measuring equipment and other equipment relating to its functions and lawful activities.
- 18.4 **Montenegro Police**
  - 18.4.1 The Concessionaire shall at all times provide the Montenegro police and other security forces of the Contracting Authority or such other state or country as the Contracting Authority so authorizes with such access to the Airports as they may require for the purpose of performing their functions under Applicable Law or carrying out other lawful activities, and shall co-operate fully with the officers of the Montenegro police and other security forces at all times.
  - 18.4.2 The Concessionaire shall provide (at the cost of the Concessionaire) the Montenegro police

and other security forces with such facilities at the Airports as they may reasonably require (being no less than currently provided) for the purpose of performing their functions or activities, including exclusive use of office space and parking spaces for officers of the Montenegro police stationed at the Airports.

#### 18.5 **Security Services**

The Concessionaire shall provide (at the cost of the Concessionaire) the relevant Government Entity or any Person duly authorized by such relevant Government Entity with such facilities at the Airports as they may reasonably require (being no less than currently provided) for the purpose of providing the Security Services.

#### 18.6 **Emergency Response**

The Concessionaire shall provide the relevant Government Entity or any Person duly authorized by such relevant Government Entity (at the cost of the Concessionaire) with such facilities at the Airports as they may reasonably require (being no less than currently provided) for the purpose of Emergency response.

#### 18.7 **Reduction and Redevelopment of Space related to Reserved Activities**

18.7.1 During the Initial Operation Period, the Concessionaire shall not be entitled to reduce the space and facilities currently provided to a Government Entity at the Airports for any purposes referred to in Clauses 18 (*Reserved Activities*) to 18.6 (*Emergency Response*) without the consent of that Government Entity.

18.7.2 On and from the Works Completion Date, the Concessionaire shall provide the spaces and facilities set out in **Schedule 16** (*Reserved Activities Assets, Facilities and Minimum Space Requirements*).

#### 18.8 **Reserved Activities Service Level Agreements**

18.8.1 The Concessionaire shall, throughout the Concession Period, maintain and renew all Reserved Activities Service Level Agreements.

18.8.2 The Contracting Authority shall, at the Concessionaire's request, provide reasonable administrative assistance as may be required in maintaining and renewing the Reserved Activities Service Level Agreements with any appropriate Government Entities.

### 19. **PERFORMANCE CRITERIA AND SERVICE LEVELS**

#### 19.1 **Performance Criteria**

19.1.1 The Concessionaire shall monitor compliance with the Performance Criteria set out in **Schedule 13** (*Performance Criteria*) and shall notify the Contracting Authority of any breach of such performance criteria immediately upon becoming aware of the same.

19.1.2 The Performance Criteria set out in **Schedule 13** (*Performance Criteria*) shall be updated by the Contracting Authority to remain compliant with the latest published versions of the [ADRM IATA Level of Service Optimum] [*Note: this provision may be amended subject to technical review*].

19.1.3 Without prejudice to any other remedies available to the Contracting Authority under this Concession Agreement, the Concessionaire shall comply with any requirements imposed by

the Contracting Authority for the purpose of complying with the Performance Criteria set out in **Schedule 13** (*Performance Criteria*).

- 19.1.4 The Concessionaire shall use all its reasonable efforts to operate and maintain the Airports in a manner calculated to optimize the availability, capacity and efficiency of the Airports, including the flow of Passengers and the allocation of space.

19.2 **Certification**

- 19.2.1 The Concessionaire shall, no later than [three (3) years] from Commencement Date, obtain the ISO 14001 environmental management system certification of Airports.

- 19.2.2 The Concessionaire shall notify the Contracting Authority promptly after obtaining the certificate mentioned above and shall procure that the Airports remains so certified at all times during the Concession Period. The Contracting Authority may request from the Concessionaire copies of the certificate mentioned above at any time.

19.3 **Airport Services Surveys**

- 19.3.1 The Concessionaire shall at its own cost procure the conduct of independent satisfaction surveys of:

- (a) Passengers ("**Passenger Satisfaction Survey**");
- (b) Airline Users; and
- (c) customers and other consumers of Airport Services including Passenger (or freight) handling agencies and visitors, other than Passengers and Airline Users,

(each a "**Survey**") in respect of such aspects of the Airport Services as the Contracting Authority may require from time to time.

- 19.3.2 The Concessionaire shall, at its cost, conduct the first Passenger Satisfaction Survey at the latest [six (6) months] after the Commencement Date and shall conduct each Passenger Satisfaction Survey no less than quarterly during each Concession Year (and additionally whenever required on reasonable grounds by the Contracting Authority) and shall conduct each other Survey no less than once during each Concession Year (and additionally whenever required on reasonable grounds by the Contracting Authority) and further shall (unless the Contracting Authority otherwise agrees in writing) use a firm or firms of independent market researchers for such purpose, and shall obtain the prior approval of the Contracting Authority to such firm (such approval not to be unreasonably withheld by the Contracting Authority).

- 19.3.3 The form and methodology of the Passenger Satisfaction Survey shall follow the requirements set out in **Schedule 13** (*Performance Criteria*). The Concessionaire shall deliver copies of the results of each Survey to the Contracting Authority as soon as reasonably practicable, and in any event within [eight (8) weeks] of the completion date of such Survey.

- 19.3.4 The Contracting Authority shall be entitled to verify that the Passenger Satisfaction Survey and each of the other Surveys have been conducted in the form and manner prescribed by the provisions of this Clause 19.3 (*Airport Services Surveys*) and the Concessionaire shall provide such information as the Contracting Authority may reasonably so request for such purposes. If any such verification exercise reveals that the Concessionaire has not complied

in any material respect with the requirements of Clause 19.3.2 (*Airport Services Surveys*) or Clause 19.3.3 (*Airport Services Surveys*), the Contracting Authority may require the relevant Survey(s) to be carried out again at the Concessionaire's cost.

- 19.3.5 Nothing in this Clause 19.3 (*Airport Services Surveys*) shall prejudice the rights and remedies of the Contracting Authority under any other provision of this Concession Agreement.

#### 19.4 **Service Level Monitoring**

- 19.4.1 The Concessionaire shall implement within two (2) months of the Commencement Date and maintain at all times thereafter a system of continuous monitoring of the Airport Services either through the use of an internet platform to receive comments from users (which shall be accessible to the Contracting Authority at all times) or by another method or methods (in each case as reasonably required by the Contracting Authority). The Contracting Authority shall be entitled at any time to review the results of such monitoring.

- 19.4.2 The Concessionaire shall:

- (a) throughout the Concession Period, regularly monitor traffic flows at the Airports and regularly examine operations at the Airports, for the purpose of determining the compliance with the [ADRM IATA Level of Service Optimum]; and [*Note: this provision may be amended subject to technical review*]
- (b) after the Works Completion Date, regularly monitor busy peak hour Passengers enplaning to and deplaning from aircrafts at the Airports to determine the impact on terminal area space.

#### 19.5 **Disputes**

If the Contracting Authority disagrees with any determination made by the Concessionaire for the purpose of assessing its compliance with **Schedule 13** (*Performance Criteria*), the Contracting Authority shall refer the Dispute for determination by the Technical Expert in accordance with Clause 50.2 (*Technical Expert*).

#### 19.6 **Enhancements**

- 19.6.1 Throughout the Concession Period, the Concessionaire shall monitor and immediately notify the Contracting Authority upon occurrence of the following:

- (a) any failure to comply with the dimensioning parameters set out in **Schedule 13** (*Performance Criteria*) (the "**Dimensioning Parameters**"); and
- (b) when at least one of the Dimensioning Parameters will not, or is likely not to be, complied with, within the next [two (2) years],

(each, a "**Dimensioning Shortfall**").

- 19.6.2 If the Contracting Authority reasonably believes that a Dimensioning Shortfall has occurred, it shall provide the Concessionaire with a notification of the same, including details to demonstrate the Dimensioning Shortfall. If the Concessionaire disagrees that a Dimensioning Shortfall has occurred, it shall notify the Contracting Authority accordingly and the Parties may refer the dispute to the Technical Expert in accordance with Clause 50.2 (*Technical Expert*).

- 19.6.3 If a Dimensioning Shortfall has occurred, the Concessionaire shall promptly, and in any case within [forty five (45)] days from the date on which the Concessionaire or the Authority as the case may be, notifies a Dimensioning Shortfall (or, if applicable, from the date on which the Technical Expert decides that a Dimensioning Shortfall has occurred), submit to the Contracting Authority for approval a plan (the "**Enhancement Plan**") which shall:
- (a) forecast the months during which the Dimensioning Parameters are not met (at any one or more times during such months);
  - (b) include details of any works and facilities which shall be required for the purpose of remedying the Dimensioning Shortfall (the "**Enhancement Works**");
  - (c) include the programme for the carrying out of the Enhancement Works (the "**Enhancement Works Programme**") (in at least the same level of details as the Works Programme); and
  - (d) demonstrate to the Contracting Authority's satisfaction that the proposed Enhancement Works shall remedy the Dimensioning Shortfall.
- 19.6.4 If the Parties fail to agree on the Enhancement Plan within [forty five (45) days] from its submission to the Contracting Authority, any Party may refer the dispute in relation to the Enhancement Plan to the Technical Expert in accordance with Clause 50.2 (*Technical Expert*).
- 19.6.5 The Concessionaire shall (subject to clause 19.6.6 (*Enhancements*) below) finance, or arrange for the financing of, the works set forth in such Enhancement Plan and shall carry out and complete the design, construction and installation of the Enhancement Works in a good and workmanlike manner with good quality new materials in accordance with:
- (a) the Enhancement Works Programme;
  - (b) the necessary Consents;
  - (c) all Applicable Law (including in relation to health and safety);
  - (d) Good Industry Practice;
  - (e) IFC Performance Standards;
  - (f) the terms of this Concession Agreement; and
  - (g) the terms of Insurance Policies.
- 19.6.6 The Concessionaire shall not finance, or arrange for the financing of the Enhancement Works by way of any loan or debt instrument having a final maturity scheduled to occur after the expiration of the Concession Period without the Contracting Authority's prior written approval.
- 19.6.7 The Parties shall appoint an independent engineer and a life, fire and safety engineer in relation to the Enhancement Works, in each case, being appointed in the same manner and in relation to the same scope of works and responsibilities in relation to the Enhancement Works than the Independent Engineer and the LFS Engineer in relation to the Works.
- 19.6.8 The Concessionaire shall, in relation to any Enhancement Work, conduct an Environmental

and Social Impact Assessment in accordance with Clause 21.2.2 (*Environmental and Social Impact Assessment*).

- 19.6.9 For the sake of clarity, nothing in this Clause 19.6 (*Enhancements*) shall relieve the Concessionaire from its obligations (including paying Performance Contractual Penalties) under this Concession Agreement.

## **20. MONITORING**

### **20.1 Operational and Strategic Plan**

- 20.1.1 Subject to Clause 20.1 (*Operational and Strategic Plan*), not later than [six (6)] months prior to the [fifth (5th)] anniversary of the Commencement Date, and then not later than [six (6) months] prior to the end of each [five (5)] Concession Years period thereafter, the Concessionaire shall provide the Contracting Authority a new draft of the Operational and Strategic Plan covering the following [five (5)] Concession Years.

- 20.1.2 In preparing a draft Operational and Strategic Plan, the Concessionaire shall consult with:

- (a) the Airline Users;
- (b) the Contracting Authority;
- (c) the Sub-Contractors;
- (d) local communities to the extent the Operational and Strategic Plan may impact (positively or negatively) such communities;
- (e) Ramp Handling Services providers; and
- (f) relevant Government Entities in relation to matters of civil and military interface regarding the air space design,

and the draft Operational and Strategic Plan submitted to the Contracting Authority shall be accompanied by a written statement signed on behalf of the Concessionaire listing the names of the Persons consulted in preparing this draft Operational and Strategic Plan and their comments.

- 20.1.3 Furthermore, in the preparation of the draft Operational and Strategic Plan, the Concessionaire shall give due regard to Surveys carried out pursuant to Clause 19.3 (*Airport Services Surveys*).

- 20.1.4 As soon as reasonably practicable after receiving the draft Operational and Strategic Plan, but in any event within [ninety (90) days] after the receipt, the Contracting Authority shall provide written notice to the Concessionaire either (i) approving the draft Operational and Strategic Plan or (ii) rejecting the draft Operational and Strategic Plan.

- 20.1.5 When reviewing the draft Operational and Strategic Plan, the Contracting Authority shall reasonably consider the following matters:

- (a) the extent to which carrying out the draft Operational and Strategic Plan would meet present and future requirements of Airline Users for service quality and facilities relating to the Airports;

- (b) the effect that carrying out the draft Operational and Strategic Plan would be reasonably likely to have on the use of the Airports and its surrounding areas;
  - (c) the consultations undertaken by the Concessionaire in preparing the draft Operational and Strategic Plan, including the outcome of said consultations; and
  - (d) the views of relevant Government Entities insofar as they relate to safety and operational aspects of the draft Operational and Strategic Plan.
- 20.1.6 If the Contracting Authority rejects the draft Operational and Strategic Plan, the Contracting Authority shall specify in writing the reasons for such rejection. Unless otherwise agreed in writing by the Contracting Authority, the Concessionaire shall provide the Contracting Authority with a revised draft Operational and Strategic Plan within a period of [one hundred and twenty (120)] days after the date of receipt of the Contracting Authority's reasons for rejecting the initial draft Operational and Strategic Plan. The Contracting Authority shall then either approve or reject the revised draft Operational and Strategic Plan in accordance with the provisions of Clauses 20.1.4 and 20.1.5 (*Operational and Strategic Plan*) above, failing which any Dispute in this respect shall be determined by the Technical Expert.
- 20.1.7 Once approved by the Contracting Authority, the draft Operational and Strategic Plan shall become the Operational and Strategic Plan and shall remain in full force and effect for a period of [five (5)] Concession Years. However, if, at the end of that [five (5)] Concession Years, a new Operational and Strategic Plan has not been approved by the Contracting Authority, then the existing Operational and Strategic Plan shall remain in full force until a new Operational and Strategic Plan is approved.
- 20.1.8 Notwithstanding Clause 20.1.1 (*Operational and Strategic Plan*), at any time during the Concession Period, the Concessionaire may, in accordance with the procedure set out in this Clause 20.1, provide the Contracting Authority with a revised draft Operational and Strategic Plan that is expressed to replace the then applicable Operational and Strategic Plan. Upon approval of the revised Operational and Strategic Plan in accordance with Clauses 20.1.4 and 20.1.5 (*Operational and Strategic Plan*), the then existing Operational and Strategic Plan shall cease to be in effect.
- 20.1.9 If, at any time throughout the Concession Period, there is a change in or development of circumstances which has or may have a material effect on the Airport Business, the Contracting Authority may, by written notice to the Concessionaire, direct the Concessionaire to provide the Contracting Authority with a revised Operational and Strategic Plan that is expressed to replace in part or in full the then applicable Operational and Strategic Plan. Upon approval of the revised Operational and Strategic Plan in accordance with Clauses 20.1.4 and 20.1.5 (*Operational and Strategic Plan*), the then existing Operational and Strategic Plan shall cease to be in effect and the provisions of Clause 20.1.7 (*Operational and Strategic Plan*) shall apply.
- 20.1.10 The Concessionaire shall provide the Contracting Authority with progress reports within [forty-five (45)] days of the end of each Concession Year, which outline the level of consistency with the Operational and Strategic Plan, and the suggested action plan to mitigate any significant deviations from the Operational and Strategic Plan.
- 20.2 **Reports - Maintenance of Records - Maintenance Plan**
- 20.2.1 The Concessionaire shall prepare reports and maintain accurate, up-to-date and complete records as listed in and in accordance with the requirements set out in **Schedule 6**



(*Concession Records*), as such requirements may reasonably (but not retrospectively) be amended from time to time by the Contracting Authority or by the Concessionaire in consultation with the Contracting Authority in order to take account of changed circumstances.

- 20.2.2 The Concessionaire shall make available and, if reasonably requested by the Contracting Authority, provide copies of, on reasonable notice by the Contracting Authority and at reasonable times, the records referred to in Clause 20.2.1 (*Reports - Maintenance of Records - Maintenance Plan*) for inspection by the Contracting Authority. The Contracting Authority shall be entitled to appoint one or more authorized representatives to check and take copies of any such records. The Concessionaire shall provide the Contracting Authority with such further information, explanations and other assistance as may be reasonably required by the Contracting Authority or any of its authorized representatives for the purpose of checking any of such records.
- 20.2.3 All records required to be maintained in accordance with this Clause 20.2 (*Reports - Maintenance of Records - Maintenance Plan*) shall be held for a period of [six (6)] years from the date of creation of the relevant records or until [twelve (12)] months after the expiry or earlier termination of the Concession Period, whichever is the earlier, provided that the Concessionaire shall notify the Contracting Authority before any such disposal and provide the Contracting Authority with a reasonable opportunity to take delivery of such records.
- 20.2.4 The Concessionaire shall prepare and agree with the Contracting Authority a Maintenance Programme in accordance with the provisions of **Schedule 14** (*Maintenance Programme*).

### 20.3 **Disruption and Suspension**

The Concessionaire shall provide the Contracting Authority with immediate written notice of any disruption or suspension of Airport Services, or Works or Enhancement Works at, or the closure of, any Airport. The Concessionaire shall, within twenty four (24) hours of any disruption or suspension of the Airport Services or Works or Enhancement Works at, or the closure of, any Airport, provide the Contracting Authority with a report detailing the circumstances of such disruption, suspension or closure. The Contracting Authority shall have the right to request any and all information it deems necessary or reasonable from the Concessionaire relating to any disruption or suspension of the Airport Services or the Works at, or the closure of, any Airport, such requests to be complied with by the Concessionaire within ten (10) days following the receipt thereof.

### 20.4 **Accounting**

- 20.4.1 The Concessionaire shall, at its sole cost and expense: (a) put in place an accounting and cost control system; and (b) retain a firm of independent accountants of recognized international standing and expertise and with offices in Montenegro acceptable to the Contracting Authority, as auditors of the Concessionaire. The Concessionaire shall prepare and maintain its Accounts in Euros in accordance with Applicable Law and IFRS.
- 20.4.2 The accounting reference period of the Concessionaire shall be a [twelve (12)] month period ending on 31 December of each year unless the Contracting Authority otherwise agrees.
- 20.4.3 The Concessionaire shall, as soon as available but, in any event, on the date that is no later than the last Business Day of the third (3<sup>rd</sup>) month following the end of each accounting reference period during the Concession Period, provide to the Contracting Authority copies of the annual report and audited profit and loss account and balance sheet and cash flow

statement for the Concessionaire (and (if applicable) for any Person Controlled by the Concessionaire), in each case for the immediately preceding financial year or part thereof, together with copies of all related directors' and auditors' reports.

- 20.4.4 Each set of Accounts delivered under Clause 20.4.3 (*Accounting*) shall, save as stated in the notes thereto, be prepared and audited in accordance with accounting principles and auditing standards and practices generally accepted in Montenegro and consistently applied and in accordance with all Applicable Law and, together with those notes and subject to any qualifications contained in any relevant auditors' report, shall give a true and fair view of the state of affairs and of the results of its operations, changes in equity and cash flows and profits for the period covered by such Accounts.

## **20.5 Annual Concession Fee Certificate**

- 20.5.1 The Concessionaire shall promptly and, in any event, prior to the last Business Day of the third (3<sup>rd</sup>) month of each Concession Year during the Concession Period, provide to the Contracting Authority a certificate issued by an authorized signatory and certified by its auditor setting forth:

- (a) the Gross Revenue for the immediately preceding Concession Year (or part thereof); and
- (b) a calculation of the Annual Concession Fee for such financial year or part thereof.

- 20.5.2 The amount of such Annual Concession Fee shall be conclusive evidence in relation to the same. If the Contracting Authority believes that the amount of Annual Concession Fee provided by the Concessionaire under this Clause is incorrect, it shall proceed in accordance with Clause 50 (*Dispute Resolution Procedures*).

## **20.6 Provision of Registered Details**

- 20.6.1 The Concessionaire shall not change any of the following information without the prior approval of the Contracting Authority:

- (a) business address and registered office; and
- (b) corporate status.

- 20.6.2 The Concessionaire shall inform the Contracting Authority of any change of the following information relating to the Concessionaire thereto within [fourteen (14)] days of the occurrence of any such change:

- (a) name;
- (b) directors and company secretary; and
- (c) trading name or names.

- 20.6.3 The Concessionaire shall in addition provide to the Contracting Authority, at the same time as the relevant issue or delivery (or, if effected by another Person, as soon as practicable thereafter), a copy of:

- (a) each material circular, notice of meeting or similar document issued to its Shareholders, Funders or debenture holders (save to the extent it contains confidential

material or information or commentary relating to any Dispute with the Contracting Authority) including (if the Concessionaire becomes listed on a stock exchange) any circular required to be delivered to its shareholders or debenture holders pursuant to the rules of that stock exchange;

- (b) any document which is delivered to the registrar of companies and intellectual property in Montenegro by the Concessionaire or any notice required to be delivered by the Concessionaire or served upon the Concessionaire concerning the occurrence of any of the events referred to in Clause 38.1(a) (*Concessionaire Events of Default*) together with any resolution which amends the memorandum and/or articles of association of the Concessionaire and each annual return; and
- (c) a copy of any material document delivered to the Contracting Authority or any Government Entity, pursuant to any request made by the Contracting Authority or that Government Entity, which is required to be delivered to maintain any Consent or as a result of any non-compliance with any Consent.

## 20.7 Further Information

The Concessionaire shall deliver, or procure the delivery of, such other information, records or documents relating to, or connected with, the management and operation of the Airports and the provision of the Airport Services to the Contracting Authority, and within such period, as the Contracting Authority may in each case reasonably require from time to time.

## 20.8 Rights of Audit and Inspection

- 20.8.1 The Contracting Authority and its representatives shall be permitted to inspect, at any reasonable time during regular business hours, upon reasonable notice the books, records and other material kept by or on behalf of the Concessionaire in order to check or audit any information supplied to the Contracting Authority under this Concession Agreement or to monitor compliance with the Concessionaire's obligations under this Concession Agreement. The Concessionaire shall make available to the Contracting Authority and its representatives such information and grant such access or procure the grant of such access (including to or from third parties) as they shall reasonably require in connection therewith. If any such exercise reveals that information previously supplied to the Contracting Authority was in any material respect inaccurate on the basis of information available to the Concessionaire at the time, the costs of any such exercise shall be borne by the Concessionaire.
- 20.8.2 The Contracting Authority and its representatives shall also be permitted to inspect at any reasonable time any part of the Airport Sites or any of the Concession Assets in order to monitor compliance with the Concessionaire's obligations under this Concession Agreement, for which purpose the Concessionaire shall grant such access or procure the grant of such access (including to or from third parties) as they shall reasonably require in connection therewith, provided that such persons shall not interfere with the performance of the Works or give any instruction in relation thereto or interfere with the carrying on of the Airport Services. If any such exercise reveals that the Concessionaire has not complied in any material respect with its obligations under this Concession Agreement, the costs of any such inspection shall be borne by the Concessionaire. The Contracting Authority shall exercise its rights of inspection under this Clause 20.8.2 (*Rights of Audit and Inspection*) in a manner intended to minimize interference with the Airport Business.
- 20.8.3 The Concessionaire shall notify immediately the Contracting Authority as soon as a breach of the Concessionaire's obligations under this Concession Agreement occurs or is likely to

occur.

## 20.9 **Performance Reviews**

The Concessionaire shall [on a semi-annual basis and so as to coincide with meetings of the Airport Forum] attend meetings with the Contracting Authority or its representatives for the purpose of enabling the Contracting Authority to conduct periodic reviews of the financial and operational performance of the Concessionaire and the performance of its obligations under this Concession Agreement. The Persons attending such meetings on behalf of the Concessionaire shall be of appropriate seniority and responsibility and shall include such Senior Management Staff of the Concessionaire as the Contracting Authority may reasonably require. If requested to do so on reasonable notice by the Contracting Authority, the Concessionaire shall prepare and present reports at such meetings in respect of such aspects of its performance as the Contracting Authority may reasonably request.

## 20.10 **Airport Forum**

The Parties undertake to establish Airport Forums in accordance with **Schedule 5** (*Airport Forum*).

## 20.11 **Access to Management**

The Contracting Authority shall be entitled to reasonable access from time to time to the Senior Management Staff of the Concessionaire and other relevant officers and employees of the Airport Business at reasonable times and following reasonable notice to the Person(s) concerned.

## 20.12 **Disputes**

20.12.1 The Concessionaire shall notify the Contracting Authority of any dispute (excluding routine litigation conducted in the ordinary course of business relating to claims not exceeding [•] [(Index Linked)]) at the time the claim is made, for each individual claim, unless the aggregate of such individual claims exceeds [•] [(Index Linked)] or the equivalent as aforesaid in any one Concession Year), to which it is a party in respect of which steps have been taken (including the commencement of proceedings) for its resolution either by the courts or by any other procedure for dispute resolution. Such notification shall be made at the time of such steps being taken (including reasonable details of the nature of the dispute) and (in any case) at the time of the resolution of the dispute, whether or not subject to appeal, (including reasonable details of the result of the dispute, any associated award and whether it is subject to appeal). The Concessionaire shall provide such further details of any such dispute as the Contracting Authority may reasonably request from time to time.

20.12.2 The Concessionaire shall also notify the Contracting Authority of any dispute which arises or is threatened, the adverse outcome of which might have a material adverse effect on the Concessionaire or the Airport Business, or the provision by the Concessionaire of any of the Airport Services.

## 20.13 **Environmental and Social Audits**

20.13.1 The Parties shall jointly appoint an environmental consultant (the "**Environmental Consultant**") in accordance with **Schedule 17** (*Independent Engineer / Expert / LFS Engineer / Environmental Consultant*).

- 20.13.2 The appointment procedure and terms and the scope of works of the Environmental Consultant are set out in **Schedule 17** (*Independent Engineer / Expert / LFS Engineer / Environmental Consultant*).
- 20.13.3 All fees, costs, charges and expenses payable to the Environmental Consultant shall be equally borne by the Contracting Authority and the Concessionaire.
- 20.13.4 The Concessionaire shall promptly provide a copy to the Contracting Authority of the report of the Environmental Consultant summarizing the outcome of the environmental investigation.
- 20.13.5 The Concessionaire shall (at its sole cost and expense) prevent or remedy the effect of any significant adverse impact on the Environment or the local communities or any Person using, or working at, the Airports, which the Environmental Consultant concludes in his report has been caused by the Concessionaire and which the Environmental Consultant reasonably recommends must be remedied in order to comply with Applicable Law, the applicable provisions of the EHS Guidelines and IFC Performance Standards.
- 20.13.6 For the sake of clarity, nothing in this Clause 20.13 shall prejudice or override the requirements of the Applicable Law or the obligations of the Concessionaire to comply with the same.

20.14 **Information Warranty**

The Concessionaire hereby warrants to the Contracting Authority at all times during the Concession Period that:

- (a) each set of Accounts to be provided by the Concessionaire under this Concession Agreement will present a true and fair view of the financial state and condition of the Concessionaire as at the date prepared;
- (b) each report will be prepared in good faith with proper care and diligence and will represent, in all material respects, fair, reasonable and complete information, estimates and forecasts and shall have no material omissions, in each case, as of the date prepared;
- (c) the certificates and other information provided to the Contracting Authority (including the Annual Concession Fee Certificate) are true, accurate and complete in all respects; and
- (d) all other information provided to the Contracting Authority under this Concession Agreement is true, accurate and complete in all material respects.

**21. ENVIRONMENTAL AND SOCIAL OBLIGATIONS**

**[Note: this provision may be amended subject to environmental review ]**

The Concessionaire shall, throughout the Concession Period, carry out the Airport Services, the Works, the Enhancement Works (if applicable), the Handback Works and any other works to be developed by the Concessionaire in accordance with the Operational and Strategic Plans with a view to protect the Environment at the Airport Sites and to limit damages and nuisance to people, property and livelihoods resulting from pollution and other environmentally harmful results of the performance of the Works, the Enhancement Works (if applicable), the Handback Works and any other works to be developed by the

Concessionaire in accordance with the Operational and Strategic Plans, the provision of the Airport Services and the activities of the Airports more generally.

## **21.1 Environmental and Social Management System**

21.1.1 The Concessionaire shall implement the Environmental and Social Management System in accordance with Applicable Law, IFC Performance Standards and applicable provisions of the EHS Guidelines.

21.1.2 The ESMS may, at the Concessionaire's option, be either a standalone system or be embedded in an overall integrated management system or quality assurance management system such as ISO 9001 or similar, provided that the following elements are included:

- (a) an overarching policy indicating the principles guiding the achievement of sound environmental and social performance;
- (b) an organizational structure, capacity and competency to implement the ESMS;
- (c) a process to identify the environmental and social risks and impacts associated to the Airport Services (which shall include conducting Environmental and Social Impact Assessments in accordance with Clause 21.2 below);
- (d) the Environmental and Social Management and Monitoring Plans (ESMMP); and
- (e) the Stakeholder Engagement Plan.

## **21.2 Environmental and Social Impact Assessment**

21.2.1 As part of the ESMS process to identify environmental and social risks and impacts, the Concessionaire shall conduct an Environmental and Social Impact Assessment with respect to:

- (a) the Works in accordance with Clause 21.2.4 below;
- (b) the Enhancement Works (if applicable) in accordance with Clause 19.6.8 above; and
- (c) the Handback Works and any other works to be developed by the Concessionaire in accordance with the Operational and Strategic Plans, but only to the extent such works require changes to the Airport structure or the Airport Services which have, or are likely to have, (i) a significant impact on the Environment and (ii) in accordance with Good Industry Practice and IFC Performance Standards, may not be addressed by the application of Applicable Law, design criteria or construction standards requirements or the existing ESMPP.

21.2.2 Any Environmental and Social Impact Assessment shall be commensurate with the extent of the works and the risks and impacts that might reasonably be expected to be associated with their implementation (full-scale environmental and social impact assessment, or limited or focused impact assessment). It shall identify Concessionaire's detailed actions for mitigating these impacts and risk and shall be conducted in accordance with Applicable Law, IFC Performance Standards and applicable provisions of the EHS Guidelines.

21.2.3 Any Environmental and Social Impact Assessment shall be completed and approved by the Environmental Consultant and relevant Government Entities prior to the commencement of the works to which it relates. It shall be carried out by competent professional advisers

having relevant experience in aeronautical transactions in Europe and with appropriate experience in applying Applicable Law, the IFC Performance Standards and the applicable provisions of the EHS Guidelines.

21.2.4 The Environmental and Social Impact Assessment in relation to the Works shall detail the environmental and social risks and impacts associated with the Works, the Airport Services and the operations of both the new and upgraded facilities and the existing facilities and the mitigation measures necessary to comply with Applicable Law, IFC Performance Standards, Good Industry Practice and meet the principles and applicable provisions of the EHS guidelines. This Environmental and Social Impact Assessment shall include (but not be limited to):

- (a) a detailed assessment of the noise impacts and related mitigation measures, including a comparative analysis of threshold values defined according to Good Industry Practice in order to identify the most appropriate values to be adopted in relation to the Project;
- (b) an analysis of the current wastewater and storm water discharge systems, including but not limited to the fire training area, and definition of mitigating measures to ensure that (i) the systems are designed and operated following the principles indicated in the ‘Storm water and Wastewater’ section of the EHS Guidelines for Airports and the ‘Wastewater and Ambient Water Quality’ section of the EHS General Guidelines and (ii) the discharge values comply with national standards for discharging in surface water or, in their absence, the values in table 1.3.1 of the EHS General Guidelines;
- (c) a description of impacts on biodiversity;
- (d) a description of waste management, including demolition and hazardous waste;
- (e) a description of hazardous material management; and
- (f) a description of the risks and impacts associated with the operations at the fuel farm.

### 21.3 **Environmental and Social Management and Monitoring Plans**

21.3.1 The ESMMP shall, in accordance with Good Industry Practice and Applicable Law, include:

- (a) the plans forming part of the Airport Safety Management System in accordance with Chapter 4 of the ICAO Accident Prevention Programme including:
  - (i) an emergency preparedness and response plans in accordance with Clause 16.5 (*Emergency*); and
  - (ii) a life fire safety plan, covering all aspects of the EHS General Guidelines;
- (b) the occupational health and safety management plan regulating all activities on the Airport Sites during the Concession Period. This plan shall include:
  - (i) a system in place for occupational health and safety risk management at the Airport Sites, including coordination between the Concessionaire and its Sub-Contractors;

- (ii) systems for job- and task-specific hazard analysis and controls for all activities;
  - (iii) provisions of personal protection equipment (“PPE”), requirements for use of PPE, and enforcement of PPE use;
  - (iv) an induction and ongoing safety training for all personnel in their language, covering hazards and safety protocols of their jobs;
  - (v) a special training for specific hazards: working at heights, in excavations, with electricity;
  - (vi) arrangements in place to manage occupational, health and safety accidents and incidents, including the process for their management, first aid arrangements, emergency response plans and system for reporting and acting on ‘near misses’;
  - (vii) provisions for emergency medical treatment; and
  - (viii) a system for recording accident and incident statistics, including total work hours, lost time incidents, major injuries, fatalities;
- (c) a sediment and erosion control plan which shall detail the measures undertaken by the Concessionaire to reduce the amount of soil particles that are carried off of a land area and deposited in a receiving water body;
  - (d) a surface water, groundwater and wastewater management plan which shall detail the measures and the monitoring activities implemented by the Concessionaire to ensure the management of surface, ground and waste water in accordance with the principles set out in the ‘Stormwater and Wastewater’ section of the EHS Guidelines for Airports and the “Wastewater and Ambient Water Quality” section of the EHS Guidelines (general guidelines);
  - (e) a climate change adaptation plan which shall be updated at least every five (5) years and include coordination procedures with stakeholders in charge of local climate adaptation monitoring and measures, and monitoring of climate change effects (sea level rise) in case of absence of third-party data;
  - (f) a solid and hazardous waste, construction waste management plan defining the measures and the monitoring activities undertaken by the Concessionaire to ensure that waste is safely and properly disposed of in accordance with the principles set out in the ‘Waste Management’ sections of the EHS Guidelines;
  - (g) in accordance with ICAO guidelines on the balanced approach to aircraft noise management, a noise management plan (i) detailing mitigation measures that are under the Concessionaire responsibility for prevention, reduction and monitoring of noise and (ii) describing the roles and responsibility of each stakeholder and Government Entities involved in the management of the Airports noise for which the Concessionaire has no direct control or oversight. For mitigations measures with respect to reduction and monitoring of noise that are directly managed by other stakeholders or Government Entities, the Concessionaire shall work in coordination with the relevant counterparts;
  - (h) an air emissions monitoring plan;



- (i) if relevant, an environmental health and safety management plan (covering air pollution, noise and vibration, water, solid waste, and land conversion);
- (j) a traffic and transport management plan;
- (k) a community health, safety and security management plan detailing measures and monitoring activities implemented by the Concessionaire in relation to the management of potential community exposure to risks and impacts arising from accidents, structural failures, and releases of hazardous materials;
- (l) a biodiversity management plan including birds strike management;
- (m) in accordance with the applicable provisions of the occupational health and safety section of the EHS Guidelines (general guidelines), an asbestos management plan identifying locations on the Airport Sites where asbestos containing material (ACM) is present, condition and procedures to monitor the same, procedures to access the locations where ACM is present to avoid damage, procedure to train staff who may potentially come into contact with the material to avoid damage and prevent exposure;
- (n) a Sub-Contractor management plan to manage environmental social health and safety planning and performance of construction Sub-Contractors, setting out:
  - (i) a system to ensure that all Sub-contractors are contractually obliged to comply with Applicable Law and IFC Performance Standards on labour and occupation health and safety and relevant aspects of the ESMMP;
  - (ii) a clear assignment of the Concessionaire and Sub-Contractors' obligations regarding environmental and health and safety requirements;
  - (iii) a system for managing and monitoring the performance of Sub-Contractors on occupation health and safety and labour matters, including how the Sub-Contractor intends to implement and ensure compliance with the plan and how non-compliance will be addressed;
  - (iv) a system to ensure that all workers on site have access to a grievance mechanism, are informed of the mechanism when they start work and can identify who is responsible for administering it;
  - (v) a system to ensure that Concessionaire is provided with all relevant environmental and social monitoring data and has full access to key personnel, workers and the site in order to prepare the Environmental and Social Sustainability Report and evaluate the need of corrective actions.

21.3.2 The ESMMP shall include full details on environmental, social, health and safety mitigation and performance improvement measures that address the identified environmental and social risks and impacts. Each plan forming part of the ESMMP shall include:

- (a) detailed timelines for implementation of specific mitigation measures and strong monitoring activities,
- (b) allocation of responsibilities for each of the actions set out therein,
- (c) monitoring activities to measure the effectiveness of such implementation to meet

Applicable Law and IFC Performance Standards requirements, and

- (d) sub plans for works and operation as applicable and should be tailored to each phase (operation, Works, the Enhancement Works if applicable, Handback Works and any other works to be developed by the Concessionaire in accordance with the Operational and Strategic Plans).
- 21.3.3 The Concessionaire shall update the ESMMP based on the outcome of any Environmental and Social Impact Assessment or based on the outcome of the process for identifying environmental and social risks and impacts of the Project and Airport Services.
- 21.4 **Stakeholder Engagement Plan**
- 21.4.1 The Concessionaire shall maintain the Stakeholder Engagement Plan to manage relations with the affected communities and other stakeholders throughout the Concession Period.
- 21.4.2 The Concessionaire shall disclose the initial Stakeholder Engagement Plan to the stakeholders listed in Clause 21.4.4 below as part of the ESIA in relation to the Works.
- 21.4.3 The Stakeholder Engagement Plan shall be updated as necessary based on the risks and potential impacts of the Project and the Airport Services throughout the Concession Period. The Concessionaire shall confirm or update the list of relevant stakeholders and shall present any necessary update to the Stakeholder Engagement Plan at minimum:
- (a) at the beginning of the preparation of any Environmental and Social Impact Assessment to guide the engagement with the affected communities to ensure that their key concerns are taken into account when assessing risks and impacts of any works to be developed by the Concessionaire;
  - (b) at the end of the preparation of any Environmental and Social Impact Assessment to provide a roadmap for engagement in monitoring the effectiveness of impact mitigation measures defined in the ESMMP, as relevant;
  - (c) during any work periods; and
  - (d) as part of the maintenance of the Environmental and Social Management System to consult with the stakeholders listed in Clause 21.4.4 below on matters including but not limited to (A) the monitoring of implementation of the ESMMPs, (B) changes to Project design and operational procedures, as per the Operational and Strategic Plan, that may impact certain stakeholders and (C) unforeseen impacts related to developments to be undertaken by the Concessionaire or emergency response plans.
- 21.4.4 The Stakeholder Engagement Plan shall guide the Concessionaire in consulting with:
- (a) affected local communities and their representatives (including in relation to the noise management of the Airports);
  - (b) the Airline Users;
  - (c) the Contracting Authority;
  - (d) the Contractors;
  - (e) Ramp Handling Services providers; and

- (f) any relevant Government Entity.
- 21.4.5 Any update or amendment of the Stakeholder Engagement Plan shall be disclosed by the Concessionaire to the stakeholders listed in Clause 21.4.4 above within [thirty (30)] days of the Contracting Authority's approval.
- 21.5 **Environmental and Social Sustainability Report**
- Each Concession Year, the Concessionaire shall prepare an Environmental and Social Sustainability Report in accordance with Part 7 of **Schedule 6** (*Concession Records*).
- 21.6 **Human Resources Policy and Occupation Health and Safety**
- 21.6.1 The Concessionaire shall provide a safe and healthy work environment to its employees, taking into account inherent risks in its particular sector and specific classes of hazards, including physical, chemical, biological, and radiological hazards, and specific threats to women in accordance with Applicable Law, Good Industry Practice, the IFC Performance Standards and the applicable provisions of the EHS Guidelines.
- 21.6.2 The Concessionaire shall develop, implement and maintain in writing human resources (HR) policies and procedures in accordance with Applicable Law and IFC Performance Standards and shall ensure the relevant policies are available to all employees in their respective language(s). The HR policies and procedures shall clearly describe working conditions, terms of employment, management of worker relationship, grievance mechanism, and roles and the respective responsibilities of the Concessionaire, its contractors and the workers. The Concessionaire shall ensure at all times that the policies and procedures are up-to-date and integrated into the overall ESMS, to ensure consistency and ongoing monitoring.
- 21.7 **Environmental Incidents**
- Without prejudice to Clause 10, the Concessionaire shall as soon as possible but no later than [three (3)] days after its occurrence, notify the Contracting Authority of any incident or accident within the Airport Sites, which has or may reasonably be expected to have a material adverse effect on the Environment, including, without limitation, explosions, spills or workplace accidents which result in death, serious or multiple injury or major pollution, specifying, in each case, the nature of the incident or accident, the on-site and off-site impacts arising or likely to arise therefrom and the measures the Concessionaire is taking or plans to take to address those impacts; and shall keep the Contracting Authority informed of the on-going implementation of those measures.
- 21.8 **Conflicting Environmental Requirements**
- 21.8.1 If the Concessionaire becomes aware of a conflict between any environmental and social standards, guidelines or norms with which the Concessionaire must comply in accordance with the Concession Agreement (each, a “**Conflicting Environmental Standard**”, the more stringent of the Conflicting Environmental Standards shall apply.
- 21.8.2 If the Concessionaire believes that the more stringent Conflicting Environmental Standard cannot be met in full, or if the Concessionaire is not able to determine which of the Conflicting Environmental Standard is the most stringent, the Concessionaire shall notify the Contracting Authority and the Environmental Consultant as soon as possible and in any event within [seven (7)] days of becoming aware that such requirement may not be fulfilled.

- 21.8.3 Such notice shall include all details reasonably necessary for the Contracting Authority to evaluate such request, including:
- (a) an identification of the Conflicting Environmental Standard;
  - (b) a detailed explanation as to why the Concessionaire cannot comply with the relevant Conflicting Environmental Standard, and why such noncompliance could not have been expected to be mitigated by the Concessionaire acting in accordance with Good Industry Practice; and
  - (c) if applicable, the alternative standard which the Concessionaire proposes should be achieved, a full and detailed justification for the alternative, including demonstrating that the less stringent standard is protective of the human health and the environment.
- 21.8.4 The Contracting Authority shall consult with the Environmental Consultant and shall direct the way in which the conflict shall be resolved by the Concessionaire, within thirty (30) days from the receipt of the Concessionaire's notice under Clause 21.8.3.
- 21.8.5 Unless otherwise provided in the Contracting Authority's directions under Clause 21.8.4, the Concessionaire shall not be relieved to comply with its obligations under the Concession Agreement.

## **22. INSURANCE**

- 22.1 The Concessionaire shall maintain or cause to be maintained throughout the Concession Period, the Insurance Policies required by **Schedule 8** (*Insurance*).
- 22.2 The Concessionaire shall promptly after the Commencement Date become available or upon request from the Contracting Authority, provide the Contracting Authority with full copies of the policies entered into by it or, before the date on which such copies become available to the Concessionaire, a certificate from the insurers or insurance brokers that the insurances required by **Schedule 8** (*Insurance*) are in place, which policies or certificate shall comply with the provisions of **Schedule 8** (*Insurance*). If such certificates or policies do not so comply (and the Contracting Authority so notifies the Concessionaire, giving reasonable details of the failure to comply), the Concessionaire shall, at its own cost, ensure that such certificates (and, if necessary, the policies) are amended appropriately as soon as practicable (and, in any event, within [seven (7)] days).
- 22.3 The Concessionaire shall at all times comply with the requirements of **Schedule 8** (*Insurance*) and, if and to the extent required by the Funders, the Insurances shall also name the Funders as loss payees and additional insureds thereunder.
- 22.4 If the Concessionaire fails to procure or maintain any insurance required under this Clause 22.4 (*Insurance*) or **Schedule 8** (*Insurance*), then the Contracting Authority shall have the right (but shall have no obligation) to procure such insurance at the Concessionaire's expense.

## **23. SUBCONTRACTING**

### **23.1 Permitted Subcontracting**

- 23.1.1 The Concessionaire may [(and where applicable under Clauses 23.5 ([Requirements for Ramp Handling Services), 23.6 ([Requirements for Fuel Services[Requirements for ) or 23.7 ([Requirements for Cargo Handling Services), shall)] subcontract the provision of any of

the Airport Services, or any part of them, which are to be provided under this Concession Agreement, or lease part of the Airport Sites, provided that in doing so the Concessionaire shall comply with the conditions set out in this Clause 23 (*Subcontracting*). Any such subcontracting or lease shall not relieve the Concessionaire from any of its obligations in respect of the provision of the Airport Services under this Concession Agreement.

23.1.2 Notwithstanding Clause 23.1 (*Permitted Subcontracting*):

- (a) any such subcontract or lease shall provide for the termination thereof or the assignment thereof to the Contracting Authority or the Contracting Authority's designee, in each case with no liability to the Contracting Authority or its designee, upon the termination of this Concession Agreement or the expiry of the Concession Period, whichever shall first occur;
- (b) the Concessionaire shall ensure that the commercial terms of any such subcontract or lease or amendment thereto comply with the Contracting Standards;
- (c) the Concessionaire shall ensure that the other party or parties to any such subcontract or lease or amendment thereto comply with the Contracting Standards and that such contract or lease or amendment thereto shall include (a) a copy of the Contracting Standards and (b) a provision allowing for the immediate termination of such contract or lease or amendment by the Concessionaire in case of breach;
- (d) the Concessionaire shall provide the Contracting Authority with a copy of any such subcontract or lease or amendment thereto which provides for payments to or by the Concessionaire in any calendar year in excess of [•] Euros (EUR [•]) per annum, to the extent possible within forty-eight (48) hours of its execution and, in any event, within ten (10) days of its execution; and
- (e) the Concessionaire shall not enter into any such subcontract or lease or amendment thereto with a Connected Person unless the Contracting Authority has reviewed and approved in writing a copy of such subcontract or lease or amendment.

23.2 **Report on Airport Business**

23.2.1 At any reasonable time on or after the [fifteenth (15th)] anniversary of the Commencement Date (or, if later, the date which is five (5) years prior to the expiry of the Concession Period), the Contracting Authority shall have the right, upon reasonable notice to the Concessionaire at its own cost, to employ a firm of reporting accountants to undertake a full "long-form" report on the Airport Business to be used in the context of the potential handover at the expiry of the Concession Period. This report shall be of a type and content which is then customary to be provided by a company and its Shareholders prior to the admission of any security of that company to the official list of the Montenegro Stock Exchange or the then equivalent regulated investment exchange.

23.2.2 At the time of the report preparation, the Concessionaire shall consult with the Contracting Authority in relation to the manner of conducting the Airport Business having due regard to the operation of the Airports at the end of the Concession Period by the Contracting Authority or a Successor Concessionaire.

23.3 **Contracting during the last Twenty Four Months**

If any material contract with an Airline User or any material contract with an Occupier expires or comes to an end during the last twenty four (24) months of the Concession

Period, the Concessionaire shall (i) not later than the date which is twenty four (24) months before the end of the Concession Period, notify the Contracting Authority of such contracts and provide a copy thereof and (ii) consult with the Contracting Authority during any negotiations related to the renewal of such contract. The Concessionaire shall not agree to any contract's extensions beyond the end of the Concession Period without the prior written agreement of the Contracting Authority.

#### **23.4 Funding Documents and Project Agreements**

23.4.1 The Concessionaire shall not enter into, amend, vary, replace, supplement or grant a waiver in respect of any Funding Document, the Reserved Activities Service Level Agreements or the Shareholders' Agreement, in each case without the prior written consent of the Contracting Authority (such consent not to be unreasonably withheld).

23.4.2 The Concessionaire shall not enter into, amend, vary, replace, supplement or grant a waiver in respect of any Project Agreement without the prior written consent of the Contracting Authority, provided that such consent may only be withheld if it materially and adversely affects the Contracting Authority or is inconsistent with the Concessionaire's obligations under this Concession Agreement.

#### **23.5 [Requirements for Ramp Handling Services**

Without prejudice to any Applicable Law:

- (a) the Concessionaire shall sub-contract the Ramp Handling Services to at least [two (2)] independent contractors qualified to provide and capable of providing Ramp Handling Services to any and all flights arriving at and departing from the Airports. An independent contractor shall not include the Concessionaire or any of its Affiliate;
- (b) the Concessionaire shall permit Airline Users to be Self-Handlers (it being provided that in such event, such Self-Handlers shall not be considered as part of the two (2) independent contractors mentioned in Clause (a) above); and
- (c) the Concessionaire shall conduct all sub-contracting of Ramp Handling Services on the basis of open access, with transparent and non-discriminatory charging and fair competition.]

#### **23.6 [Requirements for Fuel Services**

23.6.1 Without prejudice to any Applicable Law:

- (a) the Concessionaire shall sub-contract the fuel supply services to at least [two (2)] independent contractors qualified to provide and capable of providing fuel supply services, provided that an independent contractor shall not include the Concessionaire or any of its Affiliate; and
- (b) the Concessionaire shall conduct all sub-contracting of fuel supply services on the basis of open access, with transparent and non-discriminatory charging and fair competition.

23.6.2 The provisions of Clause 23.6.1 (*[Requirements for ]*) shall not prevent fuel suppliers to jointly carry out the investment of hydrants or distribution systems throughout a single dedicated fueling company.]

## 23.7 **[Requirements for Cargo Handling Services]**

### 23.7.1 Without prejudice to any Applicable Law:

- (a) the Concessionaire shall sub-contract the Cargo Handling Services to at least [two (2)] independent contractors qualified to provide and capable of providing the Cargo Handling Services, provided that an independent contractor shall not include the Concessionaire or any of its Affiliate; and
- (b) the Concessionaire shall conduct all sub-contracting of the Cargo Handling Services on the basis of open access, with transparent and non-discriminatory charging and fair competition.]

**[Note: this provision may be amended subject to technical review ]**

## 23.8 **Management and Control**

Notwithstanding Clauses 23.1 (*Permitted Subcontracting*) to 23.7 (*[Requirements for Cargo Handling Services]*) above, the Concessionaire shall at all times retain overall management control and supervision of the Airport Business through its Senior Management Staff.

## 24. **EMPLOYEES**

### 24.1 **Personnel and Training**

24.1.1 From the Commencement Date, the Concessionaire shall accept full responsibility for and shall indemnify upon demand the Contracting Authority and/or Airports of Montenegro, their agents and employees from and against all costs claims, demands and liabilities and judgments arising out of any failure by the Concessionaire to comply with Applicable Law whether in respect of claims for breach of contract, loss of office, unfair or wrongful dismissal, redundancy, sex, race or other discrimination, loss of earnings, sickness, ill health, failure to consult employee representatives, or unlawful payments having been made to employees, or in respect of any other employment related claims in connection with the Airports or otherwise at any time during the Concession Period.

24.1.2 The Concessionaire shall provide regular, on-going training and professional programs for all employees or other personnel engaged by it in accordance with Good Industry Practice.

### 24.2 **Variation of the Terms of Employment at the End of Concession Period**

The Concessionaire shall not without the prior consent of the Contracting Authority enter into, vary, or purport or promise to vary, the terms or conditions of employment by it of any Concession Employee (including any promise to make any additional payment or provide any additional benefit) where such variation or addition:

- (a) first takes effect during the last year of the Concession Period unless:
  - (i) it is in the ordinary course of business; and
  - (ii) when aggregated with any other variation or addition to the terms and conditions of employment of such Concession Employee taking effect at any time during such period, represents an increase in the remuneration of the Concession Employee of no more than the percentage increase in the level of HICPI between the month for which such index was last published at the time

the variation or addition is made and the month falling thirty six (36) months before such month; or

- (b) in the event of an early termination, takes effect after the service of a Termination Notice; or
- (c) all (or part) of it first takes effect after the expiry by effluxion of time (as distinct from termination) of the Concession Period or is expressed to take effect on termination of the Concession Period; or
- (d) results in any such employment not being terminable by the employer within twelve (12) months of the expiry by effluxion of time (as distinct from termination) of the Concession Period; or
- (e) relates to the payment or the provision of a disproportionate benefit triggered by termination of employment upon or following termination of this Concession Agreement; or
- (f) relates to the provision of a benefit (but excluding base salary) which any such Concession Employee will or may first have a contractual right to receive after the expiry (by effluxion of time as distinct from termination) of the Concession Period; or
- (g) prevents or restricts any such Concession Employee from working for the Contracting Authority or a Successor Concessionaire or from performing the duties such employee performed for the Concessionaire after the end of the Concession Period.

#### 24.3 **Changes in Numbers and Total Cost of Employees at the End of Concession Period**

The Concessionaire shall not increase or decrease during the last year of the Concession Period or in the event of an early termination, after the service of a Termination Notice, the number of Concession Employees either such that (i) the total number of Concession Employees or the total cost per annum (as indexed according to HICPI) to the Concessionaire of employing all Concession Employees is increased or (ii) the total number of Concession Employees is decreased; in each case (i) and (ii), by more than [five percent (5%)] during such period from the number existing in the immediately preceding year to the last year of the Concession Period, without the prior consent of the Contracting Authority.

#### 24.4 **Trade Unions**

The Concessionaire shall endeavor to maintain good relations with the Trade Unions and good industrial relations with staff and contractors.

### 25. **PERFORMANCE CRITERIA - PERFORMANCE CONTRACTUAL PENALTIES**

- 25.1 Except when due to Extension Events (other than a Variation Order), if the Concessionaire does not meet the Performance Criteria set out in **Schedule 13** (*Performance Criteria*) it shall pay the corresponding Performance Contractual Penalties set out in **Schedule 13** (*Performance Criteria*). The Contracting Authority shall be entitled to draw on the Performance Security in the amount of any outstanding payment for such Performance Contractual Penalties immediately when they become due.
- 25.2 The liability of the Concessionaire in relation to Clause 25.1 (*Performance Criteria - Performance Contractual Penalties*) for each Concession Year shall be limited to the Maximum Cap.



- 25.3 The Parties agree that the Performance Contractual Penalties set out in **Schedule 13** (*Performance Criteria*) are a genuine and reasonable pre-estimate of the damages likely to be sustained by Contracting Authority as a result of Concessionaire's breach of its obligations set out in **Schedule 13** (*Performance Criteria*). If the obligation to pay Performance Contractual Penalties pursuant to Clause 25.1 (*Performance Criteria - Performance Contractual Penalties*) is found for any reason to be void, invalid or otherwise inoperative so as to disentitle the Contracting Authority from claiming the Performance Contractual Penalties, the Contracting Authority shall be entitled to claim against the Concessionaire for damages at law resulting from the Concessionaire's breach of its obligations set out in **Schedule 13** (*Performance Criteria*).

## PART IV - WORKS

### 26. WORKS

#### 26.1 General

The Concessionaire shall carry out and complete the design, construction, installation and commissioning of the Works in a good and workmanlike manner with good quality new materials in accordance with:

- (a) the Works Programme and Works Timeline;
- (b) the necessary Consents;
- (c) all Applicable Law (including in relation to health and safety);
- (d) Good Industry Practice;
- (e) Technical Specifications;
- (f) IFC Performance Standards;
- (g) the terms of this Concession Agreement
- (h) the Technical Bid; and
- (i) the terms of Insurance Policies,

provided that if the Concessionaire is aware of a conflict between any of the above requirements, it shall inform the Contracting Authority accordingly and the Parties shall discuss and agree upon the manner in which the Concessionaire should perform its obligations and failing agreement the Contracting Authority shall direct the manner in which such conflict shall be resolved.

#### 26.2 Drawings Review

26.2.1 The Concessionaire shall submit to the Contracting Authority's Representative, the Independent Engineer and the LFS Engineer for approval all material drawings and other material construction documents (each, a "**Reviewed Item**") prepared on its behalf relating to the design or development of the design of each part of the Works (including any subsequent material variations to material drawings or material documents which have previously been subject to the review and compliance procedures of this Clause 26.2 (*Drawings Review*)), and the Contracting Authority and the Independent Engineer shall review such Reviewed Item, within thirty (30) days of its submission.

26.2.2 The approval of the Contracting Authority, the Independent Engineer and the LFS Engineer to the drawings and other documents submitted by the Concessionaire pursuant to Clause 26.2 (*Drawings Review*) shall not be withheld or delayed if the drawings and documents comply with the criteria set out in Clause 26.1 (*Works*), provided that no failure to make any comments or objections, nor any approvals given, shall be treated as any acknowledgement or acceptance that the drawings or documents comply with the criteria set out in Clause 26.1 (*Works*).

26.2.3 If an objection is made by the Contracting Authority, the Independent Engineer or the LFS

Engineer and remains unresolved for more than thirty (30) days after the date on which such objection is made, any Party may refer the Dispute to the Technical Expert for determination in accordance with Clause 50.2 (*Technical Expert*).

- 26.2.4 If it is determined that the relevant drawing or document should be revised, the Concessionaire shall procure the revision of such drawing or document and re-submit the same for review under Clause 26.2 (*Drawings Review*).

### 26.3 **Scheduled Works Completion Date**

The Concessionaire shall procure the issue of Works Completion Certificate by the Scheduled Works Completion Date, as may be extended from time to time pursuant to Clause 26.4 (*Extensions of Time - Extension Event*).

### 26.4 **Extensions of Time - Extension Event**

- 26.4.1 If the Concessionaire believes that the Works will not be carried out in accordance with the Works Timeline, then without prejudice to Clause 26.7 (*Delays in Works - Contractual Penalties*):

- (a) the Concessionaire shall promptly give notice to the Contracting Authority's Representative and the Independent Engineer and describe the circumstances in reasonable detail;
- (b) the Concessionaire shall give to the Contracting Authority's Representative and the Independent Engineer particulars of the anticipated delay, including copies of all notices, particulars and estimates given by the Construction Contractor in respect of such delay; and
- (c) the Concessionaire shall specify all steps being taken to mitigate any such delay.

- 26.4.2 If an Extension Event affecting the Concessionaire is the direct cause of a delay in the achievement of the Works Timeline, the Concessionaire is entitled to apply for an extension of the Scheduled Works Completion Date. To obtain such extension, the Concessionaire shall demonstrate to the reasonable satisfaction of the Contracting Authority and the Independent Engineer that:

- (a) the Concessionaire and its Sub-Contractors could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken, without incurring material expenditure;
- (b) the Extension Event directly caused the delay to the Scheduled Works Completion Date;
- (c) the time lost claimed could not reasonably be expected to be mitigated or recovered by the Concessionaire acting in accordance with Good Industry Practice, including recourse to alternate sources of services, equipment and materials and construction equipment, without incurring material expenditure; and
- (d) the Concessionaire is otherwise endeavoring to perform its obligations under this Concession Agreement.

- 26.4.3 If the Concessionaire has complied with its obligations under Clause 26.4.2 (*Extensions of Time - Extension Event*) above, then the Scheduled Works Completion Date shall be

postponed by such time as shall be reasonable for such an Extension Event, taking into account the likely effect of delay.

- 26.4.4 If the Parties cannot agree the length of the extension to be granted to the Scheduled Works Completion Date or the Contracting Authority disagrees that an Extension Event has occurred or that the Concessionaire is entitled to any extension of the Scheduled Works Completion Date, any Party may refer the Dispute to the Technical Expert for determination in accordance with Clause 50.2 (*Technical Expert*).

## 26.5 Milestone Completion

- 26.5.1 At the completion of each stage of major construction milestone identified in the Works Programme, the Contracting Authority, the Independent Engineer and the LFS Engineer shall have the right to provide comments or suggestions regarding the compliance of such completed portion of the Works with **Schedule 12** (*Works and Technical Specifications*), Applicable Law, Consents and Good Industry Practice within fifteen (15) days from the date on which the Concessionaire has given notice to the Contracting Authority and the Independent Engineer of such completion.
- 26.5.2 If the Contracting Authority, the Independent Engineer and the LFS Engineer do not notify the Concessionaire of any comments, suggestions or modifications required within the fifteen (15) day period mentioned in paragraph above, then such completed portion of the Works shall be deemed to be approved by the Contracting Authority, the Independent Engineer and the LFS Engineer.
- 26.5.3 If the Contracting Authority, the Independent Engineer and the LFS Engineer make any comments, suggestions or modifications regarding any defects or deficiencies in the portion of the Works during the fifteen (15) day period mentioned in Clause 26.5.1 (*Milestone Completion*) above, the Concessionaire shall be bound to make such modifications to the Works as are necessary and adequate to rectify such defects or deficiencies.
- 26.5.4 Any Dispute arising from comments, suggestions or modifications suggested by the Contracting Authority, the Independent Engineer or the LFS Engineer under this Clause shall be referred to the Technical Expert for determination in accordance with Clause 50.2 (*Technical Expert*).

## 26.6 Works Completion Certificate

**[Note: depending on the technical specifications and the scope of the Works, this provision might be amended to taken into account a phasing mechanism of the Works ]**

- 26.6.1 Upon completion of the Works, the Concessionaire shall issue a notice to the Contracting Authority, the Independent Engineer and the LFS Engineer, requiring them or their representatives to be present at the Airport Sites on the date(s) specified in such notice, to carry out necessary inspections to determine whether the Works are in conformity with the provisions of Clause 26.1 (*Works*).
- 26.6.2 The Contracting Authority, the Independent Engineer and the LFS Engineer or their representatives shall either confirm their/its availability for attending the tests on the date(s) specified in the Concessionaire's notice or propose a new date at least five (5) days prior to the tests date(s) specified in the Concessionaire's notice.
- 26.6.3 Once the date is agreed, the Contracting Authority, the Independent Engineer and the LFS Engineer shall carry out the inspections in accordance with provisions of Schedule 17

(Independent Engineer / Expert / LFS Engineer /Environmental Consultant) and **Schedule 18** (Testing Procedure), and, if satisfactory, the Independent Engineer shall issue a certificate evidencing completion (the "**Works Completion Certificate**"). If there are any punch-list items to be remedied at the time when the Works Completion Certificate is issued, the Works Completion Certificate shall append a copy of such items and shall determine the time within which these should be remedied.

26.6.4 If any of the Contracting Authority, the Independent Engineer or the LFS Engineer is not satisfied due to the fact that either the Works do not conform to the provisions of this Concession Agreement, it shall notify within fourteen (14) days of the inspection, the Concessionaire in writing of his decision not to issue the Works Completion Certificate and state the reasons for such decision.

26.6.5 In the event of service of a notice by the Contracting Authority, the Independent Engineer or the LFS Engineer under Clause 26.6.4 (*Works Completion Certificate*), the Contracting Authority shall prepare a report in relation thereto setting forth the defects and deficiencies and send copies thereof to the Concessionaire. The Concessionaire shall remedy and rectify such defects or deficiencies and thereupon inspection shall be undertaken in accordance with Clause 26.5 (*Milestone Completion*). Such procedure shall be repeated as necessary until the defects or deficiencies are rectified.

26.6.6 In the event of any notified Dispute with respect to the issuance of the Works Completion Certificate, such Dispute shall be referred to the Technical Expert for determination in accordance with Clause 50.2 (*Technical Expert*).

## 26.7 **Delays in Works - Contractual Penalties**

Without prejudice to Clause 26.4 (*Extensions of Time - Extension Event*), if:

26.7.1 the Works Completion Certificate is not issued by the Scheduled Works Completion Date as may be extended in accordance with Clause 26.4 (*Extensions of Time - Extension Event*), the Concessionaire shall pay to the Contracting Authority contractual penalties of [•] (EUR [•]) per day of delay or portion thereof that Works are not timely completed, provided, however, that contractual penalties for any phase shall accrue and be paid under this Clause 26.7 (*Delays in Works - Contractual Penalties*) for a maximum of one hundred and eighty (180) days after which this Concession Agreement may be terminated pursuant to Clause 38.1(g) (*Concessionaire Events of Default*).

26.7.2 The Parties agree that the contractual penalties set out in Clause 26.7.1 (*Delays in Works - Contractual Penalties*) are a genuine and reasonable pre-estimate of the damages likely to be sustained by the Contracting Authority as a result of Concessionaire's failure to complete the Works by the Scheduled Works Completion Date. If the obligation to pay contractual penalties pursuant to this Clause 26.7.1 (*Delays in Works - Contractual Penalties*) is found for any reason to be void, invalid or otherwise inoperative so as to disentitle the Contracting Authority from claiming contractual penalties, the Contracting Authority shall be entitled to claim against the Concessionaire for damages at law resulting from the Concessionaire's breach of its obligations set out in Clause 26 (*Works*).

## 26.8 **Access Roads**

The Concessionaire shall be responsible for the cost of repairing any public highways which are damaged by any vehicles, plant or equipment used in connection with carrying out the Works or the Enhancement Works (if applicable) and shall be responsible for the regular cleaning of the public highways in accordance with the requirements of the Government

Entity to ensure that the public highways are left free of all mud, debris and other materials which arise from the activities of the Concessionaire or any Sub-Contractor and the arrival and leaving of vehicles, plant and equipment to and from the Airport Sites.

#### 26.9 **Meetings**

The Concessionaire shall:

- (a) from the commencement of Works, schedule monthly Airport Sites meetings between the Concessionaire's Representative, the relevant Sub-Contractors, the Independent Engineer and the Contracting Authority's Representative concerning the progress or technical aspects of all Works;
- (b) supply the Contracting Authority's Representative with copies of the agenda ahead of, and the minutes further to, such meetings; and
- (c) consider (but shall not be bound by) Contracting Authority's Representative's views when taking decisions during such meetings. The Contracting Authority's Representative shall not be entitled to give any instructions to the Concessionaire or any Sub-Contractor.

#### 26.10 **As-Built Drawings**

The Concessionaire shall prepare and submit to the Contracting Authority "as-built" drawings of the Works showing all Works as executed. The drawings shall be prepared as the Works proceed. As soon as reasonably practicable after the issue of the Works Completion Certificate, and in any event within thirty (30) days of such issue, the Concessionaire shall submit to the Contracting Authority one full-size original copy and one printed copy of the relevant "as-built" drawings.

## PART V - TECHNOLOGY WATCH AND VARIATION

### 27. TECHNOLOGY WATCH

- 27.1 The Concessionaire shall implement at its own cost a technology watch throughout the Concession Period so as to allow the Contracting Authority to be in a position to benefit from any material technical advancement and/or technological upgrades in connection with the Airports and the Airport Business. The Concessionaire shall present the findings of the technological watch to the Contracting Authority in the form of a written report for review at least once every year.
- 27.2 If any Party believes that the replacement and/or upgrade of any equipment or technology is likely to have a positive impact on the quality of the Airport Services or on the cost of performing the Airport Services, the Concessionaire shall proceed in accordance with the provisions of Clause 28 (*Variation*).

### 28. VARIATION

- 28.1 To the extent permitted by Applicable Law, the Contracting Authority may request and subsequently to order the Concessionaire from time to time during the Concession Period to make any change, modification, addition or deletion to, in or from the Works, the Enhancement Works (if applicable) and/or Airport Services (a "**Variation**"). The Concessionaire shall not proceed with any Variation unless and until the Contracting Authority issues a Variation Order.
- 28.2 The Concessionaire may from time to time during its performance of this Concession Agreement propose to the Contracting Authority any Variation which the Concessionaire considers necessary or desirable to improve the quality, efficiency or safety of the Works, the Enhancement Works (if applicable) and/or Airport Services. The Contracting Authority may at its discretion approve or reject any Variation proposed by the Concessionaire.
- 28.3 If a Party proposes a Variation, then the Concessionaire shall prepare and provide the Contracting Authority as soon as reasonably practicable and in any event within fifteen (15) days from the date of the proposed Variation, with a written memorandum setting out full details of any such Variation, including:
- (a) the reasons thereof (if proposed by the Concessionaire);
  - (b) the detailed description of the Variation;
  - (c) an estimate of the cost of implementing the Variation and loss of revenue caused by the Variation accompanied by a proposal for the financing and payment of such cost;
  - (d) any modifications to this Concession Agreement that would be required in connection with the Variation;
  - (e) any effect such Variation would have on Works and/or Airport Services; and
  - (f) a plan (including a schedule) for the implementation of the Variation and any viable alternatives to the proposed Variation.
- 28.4 The Concessionaire shall use its best efforts to reach an agreement with the Contracting Authority on all matters identified in the written memorandum provided by the Concessionaire, and shall provide the Contracting Authority with detailed justifications for

disagreeing with a Variation. If the Contracting Authority and the Concessionaire reach an agreement on all matters identified in the written memorandum furnished by the Concessionaire or if the Variation proposed by the Contracting Authority does not increase the Concessionaire's operating costs in excess of [•] Euros per year, then the Contracting Authority may issue a Variation order giving effect thereto (a "**Variation Order**"). Such Variation Order shall contain the description of such Variation, any adjustment of the financial conditions of this Concession Agreement in order to ensure that the Concessionaire will be in the same financial position than if the circumstances giving rise to the Variation Order had not occurred and all other modifications to this Concession Agreement and shall be signed by the Contracting Authority and the Concessionaire. Such Variation shall thereupon form part of this Concession Agreement and be implemented by the Concessionaire.

- 28.5 If the Contracting Authority and the Concessionaire cannot reach an agreement on all matters identified in the written memorandum referred to in Clause 28.3 within sixty (60) days from the date on which such memorandum is received by the Contracting Authority, the Contracting Authority may refer any outstanding points to the Technical Expert for determination in accordance with Clause 50.2 (*Technical Expert*). Once the Technical Expert has provided its determination, the Contracting Authority may, at its sole discretion (i) issue a Variation Order incorporating the determination of the Technical Expert, in which case the Concessionaire shall be bound to implement the Variation in accordance with the terms of the Variation Order or (ii) decide, in its sole discretion, not to implement the Variation. Any Variation imposed upon the Concessionaire further to this Clause 28.5 shall be funded by the Contracting Authority.
- 28.6 No instruction, comment, approval or disapproval by the Contracting Authority (whether on its own initiative or in response to a proposal from the Concessionaire) shall be regarded as a Variation unless and until a Variation Order is issued in this respect as per this Clause 28 (*Variation*).
- 28.7 Any Variation that is made necessary due to any default of the Concessionaire in the performance of this Concession Agreement shall not entitle the Concessionaire to any additional payment by the Contracting Authority.



## PART V - FINANCIAL MATTERS

### 29. AIRPORT REVENUES

#### 29.1 Aeronautical Revenues

The Concessionaire shall be entitled to collect, receive and retain Aeronautical Revenues during the Concession Period in accordance with **Schedule 21** (*Aeronautical Revenues*).

**[Note: we understand that Aeronautical Revenues may be contractually regulated under Montenegrin Laws. Therefore it should be discussed the nature and the amounts of airport charges to be set in this agreement]**

#### 29.2 Non-Aeronautical Revenues

##### 29.2.1 The Concessionaire shall be entitled to collect, receive and retain the Non-Aeronautical Revenues during the Concession Period. Concession Fee.

##### 29.2.2 The Concession Fee shall be paid by the Concessionaire to the Contracting Authority, without set-off or any other deductions whatsoever in semi annually installments.

##### 29.2.3 The semi annual installments of the Concession Fee shall be paid by the Concessionaire to the Contracting Authority on the [tenth (10th)] Business Day of July and December of each Concession Year, as applicable, during the Concession Period and shall be based on the Gross Revenue set forth in the monthly unaudited financial statements of the Concessionaire for the six (6) preceding months.

##### 29.2.4 The installment of the Concession Fee due on the [tenth (10th)] Business Day of each [July] during the Concession Period shall equal the difference between the amount of the Annual Concession Fee set forth in the Annual Concession Fee Certificate for the Concession Year and the sum of the installments of the Concession Fee paid by the Concessionaire to the Contracting Authority in the immediately preceding Concession Year. Any resulting positive difference shall be payable by the Concessionaire to the Contracting Authority on such [tenth (10th)] Business Day of July. Any resulting negative difference shall be offset by the Concessionaire against the relevant portion of or all of, as applicable, the next installment of the Concession Fee due to the Contracting Authority. If and to the extent the amount of such negative difference shall exceed such installment of the Annual Concession Fee, the Concessionaire shall continue to offset such excess amount against each next succeeding installment of the Annual Concession Fee due until the full amount of such negative difference shall be fully offset.

##### 29.2.5 Notwithstanding Clauses 29.2.2 to 29.2.4 above,

- (a) if the period between the Commencement Date and the first installment of the Annual Concession Fee is shorter than six (6) months, the first installment of the Annual Concession Fee shall be prorated from the Commencement Date to the first installment of the Annual Concession Fee; and
- (b) if the period between the last Annual Concession Fee installment date and the end of the Concession Period is shorter than six (6) months, the next installment of the Annual Concession Fee payable on the date at the end of the Concession Period shall be prorated from the last Annual Concession Fee installment date to the end of the Concession Period.

## **30. SECURITIES**

### **30.1 Closing Security**

At the Execution Date, the Concessionnaire shall issue in favor of the Contracting Authority the Closing Security. The Closing Security shall be:

- (a) in the agreed form;
- (b) an on-demand guarantee issued by a reputable financial institution having a credit rating in respect of its long-term debt from Standard & Poor's of not less than A+ or its equivalent by another rating agency of international reputation (or having been approved by the Contracting Authority and, since such approval, having not suffered a material adverse change in its financial condition);
- (c) naming the Contracting Authority as the direct beneficiary;
- (d) in an amount equivalent to [•] Euros (EUR [•]); and
- (e) permitting the Contracting Authority to draw on the Closing Security on demand (without any justification to be provided).

30.1.1 The Closing Security shall remain outstanding until the Financial Close.

### **30.2 Completion Security**

30.2.1 The Completion Security shall be:

- (a) in the agreed form;
- (b) an on-demand guarantee issued by a reputable financial institution having a credit rating in respect of its long-term debt from Standard & Poor's of not less than A+ or its equivalent by another rating agency of international reputation (or having been approved by the Contracting Authority and, since such approval, having not suffered a material adverse change in its financial condition);
- (c) naming the Contracting Authority as the direct beneficiary;
- (d) in an amount equivalent to [•] Euros (EUR [•]); and
- (e) permitting the Contracting Authority to draw on the Completion Security on demand (without any justification to be provided).

30.2.2 The Completion Security shall remain outstanding until the latest of (i) expiry of a period of thirty (30) days from the date of issuance of the Works Completion Certificate or (ii) expiry of the period determined in the Works Completion Certificate to remedy any punch-list items.

30.2.3 If the Completion Security is scheduled to expire before the aforementioned date, then the Concessionnaire shall arrange for the extension or replacement of the Completion Security by not later than the date which is thirty (30) days before the scheduled expiry of the Completion Security, failing which the Contracting Authority shall be entitled to draw on the Completion Security for its full amount. The Contracting Authority shall return the proceeds of any drawing which has not otherwise become due under this Concession

Agreement to the Concessionaire upon the delivery by the Concessionaire to the Contracting Authority of an extension or replacement of the Completion Security.

### 30.3 **Performance Security**

30.3.1 The Performance Security shall be:

- (a) in the agreed form
- (b) an on-demand guarantee issued by a reputable financial institution having a credit rating in respect of its long-term debt from Standard & Poor's of not less than A+ or its equivalent by another rating agency of international reputation (or having been approved by the Contracting Authority and since such approval not having suffered a material adverse change in its financial condition);
- (c) naming the Contracting Authority as the direct beneficiary;
- (d) in the amount equivalent to (i) [•] Euros (EUR [•]) during the Initial Operation Period and (ii) [•] Euros (EUR [•]) during the Operation Period; and
- (e) permitting the Contracting Authority to draw on the Performance Security on demand (without any justification to be provided).

30.3.2 The Performance Security shall be released upon the expiry of a period of one hundred twenty (120) days from the Termination Date or the end of the Concession Period as the case may be.

30.3.3 The Concessionaire shall ensure that the Performance Security is renewed and fully available for the amount listed above at the beginning of each Concession Year. If the Performance Security is scheduled to expire before the aforementioned date, then the Concessionaire shall arrange for the extension or replacement of the Performance Security by not later than the date which is thirty (30) days before the scheduled expiry of the Performance Security, failing which the Contracting Authority shall be entitled to draw on the Performance Security for its full amount. The Contracting Authority shall return the proceeds of any drawing which has not otherwise become due under this Concession Agreement to the Concessionaire upon the delivery by the Concessionaire to the Contracting Authority of an extension or replacement of the Performance Security.

## 31. **PROJECT DEVELOPMENT FEE**

31.1 Within five (5) days of the Execution Date, the Concessionaire shall pay to IFC, a project development fee of [•] (the "**Project Development Fee**").

**[Note: this provision may be amended ].**

31.2 The Project Development Fee shall be payable in Euros, in immediately available funds, without any deductions whatsoever for taxes, duties, charges or other withholdings (all of which shall be borne by the Concessionaire), into the following account:

[•]

**[Note: to be completed at a later stage]**

31.3 If the Concessionaire fails to pay the Project Development Fee to IFC in accordance with Clause 31 (*Project Development Fee*) above, then the Contracting Authority shall:

- (a) draw on the Closing Security for the full amount of the Project Development Fee; and
- (b) pay the Project Development Fee to IFC out of such proceeds.

## **32. TAXES, COSTS AND EXPENSES**

Throughout the Concession Period, the Concessionaire shall be responsible for, and promptly pay:

- (a) all Taxation; and
- (b) all expenses incurred by it in respect of the Airport Business, including expenses in respect of insurance and the provision of all Utilities Services to or at the Airports.

## **33. REFINANCING**

- 33.1 The Concessionaire shall provide the Contracting Authority, at any time, without delay and free of charge, all details of any Refinancing, and justification of the assumptions on which it is based and any background material available to the Concessionaire.
- 33.2 Except with the prior written consent of the Contracting Authority, the Concessionaire shall not proceed to any Refinancing with respect to the Project.
- 33.3 In the event that any amendment to a Funding Agreement is a Qualifying Refinancing, the Contracting Authority shall be entitled to fifty percent (50%) of the Refinancing Gain.
- 33.4 The Parties shall act in good faith with the aim to agree the manner of the calculation of the Refinancing Gain and payment of the Contracting Authority's share of the Refinancing Gain, provided that if there is a Distribution in relation to a Qualifying Refinancing, the Contracting Authority shall have the right to elect to receive its share of any Refinancing Gain as (i) a lump-sum payment whose amount shall not exceed the relevant Distribution and whose due date shall occur immediately after the occurrence of the relevant Distribution, (ii) an increase in the Annual Concession Fee payable over the remainder of the Concession Period, or (iii) a combination of both. If the Parties fail to agree, the matter shall be resolved in accordance with the Clause 50 (*Dispute Resolution Procedures*).
- 33.5 The Concessionaire shall pay, on behalf of the Contracting Authority, all reasonably incurred costs of advisors appointed by the Contracting Authority in relation to a review of a Refinancing and the calculation of a Refinancing Gain in the case of a Refinancing.

**PART VI - FORCE MAJEURE - MATERIAL ADVERSE GOVERNMENT ACTION -  
CHANGE IN LAW**

**34. FORCE MAJEURE EVENT**

**34.1 Definition of Force Majeure Event**

34.1.1 In this Concession Agreement, a "**Force Majeure Event**" means any event or circumstance or combination of events or circumstances:

- (a) beyond the reasonable control (direct or indirect) of the Party affected by such event, circumstance or combination of events or circumstances (the "**Affected Party**");
- (b) which was not foreseeable or, if foreseeable, could not have been prevented or avoided or overcome by the Affected Party acting in accordance with Good Industry Practice having taken all reasonable precautions, due care and reasonable alternative measures in order to avoid the effect of such event on such Affected Party's ability to perform its obligations under this Concession Agreement and to mitigate the consequences of such circumstances;
- (c) which materially and adversely affects the performance by the Affected Party of its obligations or the enjoyment by the Affected Party of its rights under this Concession Agreement or renders performance so impractical as reasonably to be considered impossible in the circumstances; and
- (d) which is not the direct result of a breach by the Affected Party of this Concession Agreement or, in respect of the Concessionaire, of any other Concession Document to which it is a party.

34.1.2 Force Majeure Events include but are not limited to the following circumstances, provided that they meet the criteria spelled out in the definition of a Force Majeure Event above:

- (a) lightning, fire, earthquake, tsunami, flood, drought, storm or other unusual or extreme adverse weather, cyclone, typhoon, volcanic eruption, marine gas explosions, meteorites or tornado;
- (b) explosion, radioactive or chemical contamination (other than a fire, explosion, radioactive or chemical contamination caused by the negligence of the Concessionaire, its Sub-Contractors, suppliers or vendors);
- (c) epidemic, famine, disease, pestilence or plague;
- (d) strikes, works to rule or go-slows that extend beyond the Airports, are widespread or nationwide;
- (e) aircraft collisions or other accidents that affect the infrastructure of the Airports in a manner that makes it impracticable for the Concessionaire to exercise its rights or comply with its obligations under this Concession Agreement; or
- (f) political events that occur outside Montenegro and do not directly involve Montenegro, provided that they affect the Project and persist during at least fourteen (14) consecutive days, including any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, or act of terrorism.

34.1.3 The following events are deemed not to be Force Majeure Events:

- (a) the (i) negligence or intentional action, errors or omissions, (ii) failure to comply with Applicable Law or (iii) breach of or default under the Concession Documents by a Party, its Sub-Contractors, vendors or suppliers of the Concessionaire and its Affiliates or agents or employees;
- (b) strikes, works to rule or go-slows that only affect the Concessionaire's or any Sub-Contractor's employees;
- (c) economic hardship of the Affected Party or changes in market conditions; or
- (d) conditions affecting the Airport Sites which might reasonably have been foreseen by the Affected Party (including weather conditions).

## 34.2 **Consequences of a Force Majeure Event**

34.2.1 If a Force Majeure Event occurs, the Concessionaire is entitled to apply for relief of its obligations under this Concession Agreement subject to and in accordance with the provisions of this Clause 34.2 (*Consequences of a Force Majeure Event*).

34.2.2 If a Force Majeure Event prevents the Concessionaire from fulfilling its obligation in relation to the Works, Enhancement Works (if applicable) or Handback Works, the Concessionaire shall be entitled to an extension of time subject to and in accordance with Clause 26.3 (*Scheduled Works Completion Date*).

34.2.3 If a Force Majeure Event prevents the Concessionaire from fulfilling its obligation in relation to the Airport Services, the Concessionaire shall, subject to Clause 37.2.7, be entitled to relief from its obligations under this Concession Agreement and any rights of the Contracting Authority arising under Clause 41.2 (*Termination by the Contracting Authority*).

34.2.4 To obtain relief under Clause 34 (*Force Majeure Event*), the Concessionaire must:

- (a) as soon as practicable, and in any event within three (3) days after it became aware that the Force Majeure Event has caused or is likely to cause breach of an obligation under this Concession Agreement, give to the Contracting Authority a notice of its claim for relief from its obligations under this Concession Agreement, including full details of the nature of the Force Majeure Event, the date of occurrence and its likely duration;
- (b) within seven (7) days of receipt by the Contracting Authority of the notice referred to in paragraph (a) above, give full details of the relief claimed; and
- (c) demonstrate to the reasonable satisfaction of the Contracting Authority that:
  - (i) the Concessionaire and its Sub-Contractors could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken without incurring material cost;
  - (ii) the Force Majeure Event directly caused the need for the relief claimed;
  - (iii) the relief claimed could not reasonably be expected to be mitigated by the Concessionaire acting in accordance with Good Industry Practice, including

recourse to alternate sources of services, equipment and materials and construction equipment without incurring material cost; and

- (iv) the Concessionaire is endeavoring to perform its obligations under this Concession Agreement.

34.2.5 If the Concessionaire has complied with its obligations under Clause 34.2.4 (*Consequences of a Force Majeure Event*) above, then the Concessionaire shall be excused from the performance of its obligations under the Concession Agreement to the extent it is prevented, hindered or delayed in such performance by reason of the Force Majeure Event and the relevant contractual time for completion shall be postponed by such time as shall be reasonable for such Force Majeure Event, taking into account the likely effect of delay.

34.2.6 If information required under Clause 34.2.4 (*Consequences of a Force Majeure Event*) above is provided after the dates referred to in that Clause, then the Concessionaire shall not be entitled to any relief during the period for which the information is delayed.

34.2.7 The Concessionaire shall notify the Contracting Authority if at any time it receives or becomes aware of any further information relating to the Force Majeure Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading.

34.2.8 The occurrence of a Force Majeure Event shall not affect the Concessionaire's obligation to pay the Annual Concession Fee.

34.2.9 If the Parties cannot agree the extent of the relief required, or a Party disagrees that a Force Majeure Event has occurred, the Parties shall resolve the matter in accordance with Clause 50 (*Dispute Resolution Procedures*).

### 34.3 **Termination for Prolonged Force Majeure**

34.3.1 If a Force Majeure Event has occurred and is continuing, the Concessionaire or the Contracting Authority may terminate this Concession Agreement in accordance with Clause 41.3 (*Termination Procedure*), if such Force Majeure Event:

- (a) has continued for a continuous period in excess of six (6) months, and is still continuing; and
- (b) during that six (6) month period either:
  - (i) has prevented and is continuing to prevent the Concessionaire from performing all or substantially all of its obligations under this Concession Agreement; or
  - (ii) has had and is continuing to have a material adverse effect on the ability of the Concessionaire to perform its material obligations under this Concession Agreement.

34.3.2 In such event, the Concessionaire shall be entitled to the compensation in accordance with **Schedule 10** (*Termination Payments*).

## **35. MATERIAL ADVERSE GOVERNMENT ACTION**

### **35.1 Definition of Material Adverse Government Action**

35.1.1 A "**Material Adverse Government Action**" shall mean the events listed under Clause 35.1.2 (*Definition of*) below (excluding any act qualifying as a Qualifying Change in Law) which occurs after the Execution Date and which has a material adverse effect on (i) the ability of the Concessionaire to observe and perform any of its material rights and obligations under this Concession Agreement, and/or (ii) the cost or the profits arising from such performance.

35.1.2 Material Adverse Government Action shall mean and be limited to the following circumstances, provided that such circumstances meet the criteria set out in Clause 35.1.1 (*Definition of*):

- (a) failure of any Government Entity to grant to the Concessionaire or renew any Consent that is required for the purposes of the Concessionaire's proper performance of its obligations and enforcement of its rights under this Concession Agreement, where:
  - (i) to the extent that Applicable Law provides for a specific timeframe within which such Consent should be granted or renewed by the relevant Government Entity, such failure persists for sixty (60) days or more starting from the date on which such Consent should have been granted or renewed in accordance with Applicable Law; or,
  - (ii) in any other cases, such failure persists for ninety (90) days or more starting from the date of Concessionaire's application for such Consent,  
  
except where such failure results from the Concessionaire's non-compliance with Applicable Law; or
- (b) the construction of a new international airport with scheduled commercial services in Montenegro (except Berane Airport and Ulcinj Airport); or
- (c) the expropriation or other compulsory seizure by the Contracting Authority of any material part of the Airport Sites; or
- (d) any instructions of any Government Entity further to the discovery of Antiquities under Clause 9 (*Antiquities*); or
- (e) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, border dispute, blockade, embargo, civil war, hostilities, revolution, riot, insurrection, act or campaign of terrorism, or sabotage in Montenegro;
- (f) any act of the Contracting Authority or any Government Entity adversely affecting the legality, validity, binding nature or enforceability of this Concession Agreement.

### **35.2 Consequences of a Material Adverse Government Action**

35.2.1 If a Material Adverse Government Action occurs, the Concessionaire is entitled to apply for relief of its obligations and/or claim compensation under this Concession Agreement subject to and in accordance with the provisions of this Clause 35.2 (*Consequences of a Material Adverse Government Action*).



35.2.2 To obtain relief and/or claim compensation the Concessionaire must:

- (a) as soon as practicable, and in any event within ten (10) days after it became aware that the Material Adverse Government Action has occurred, give to the Contracting Authority a notice of its claim for payment of compensation under this Concession Agreement;
- (b) within seven (7) days of receipt by the Contracting Authority of the notice referred to in paragraph (a) above, give full details of the Material Adverse Government Action and any Estimated Change in Project Costs and/or loss of revenue claimed and/or breach of the Concessionaire's obligation under this Concession Agreement; and
- (c) demonstrate to the reasonable satisfaction of the Contracting Authority that:
  - (i) the Material Adverse Government Action was the direct cause of the Estimated Change in Project Costs and/or loss of revenue and/or relief from the obligations under this Concession Agreement claimed; and
  - (ii) the Estimated Change in Project Costs and/or loss of revenue and/or relief from the obligations under this Concession Agreement claimed could not reasonably be expected to be mitigated or recovered by the Concessionaire acting in accordance with Good Industry Practice.

35.2.3 Following service of a notice by the Concessionaire pursuant to Clause 35.2.2(a) (*Consequences of a Material Adverse Government Action*) above, the Concessionaire shall promptly supply to the Contracting Authority any further information relating to the delay which:

- (a) is received by the Concessionaire; or
- (b) is reasonably requested by the Contracting Authority.

35.2.4 If the Concessionaire has complied with its obligations under Clause 35.2.2 (*Consequences of a Material Adverse Government Action*) above, then:

- (a) the Contracting Authority shall compensate the Concessionaire for the actual Estimated Change in Project Costs and/or lost of revenue as adjusted to reflect the actual costs reasonably incurred; and
- (b) the Contracting Authority shall give the Concessionaire such relief from its obligations under this Concession Agreement as is reasonable for such Material Adverse Government Action.

35.2.5 Any compensation payable by the Contracting Authority under this Clause shall be made by way of set off against the Concession Fee, provided that:

- (a) if the Parties agree or it is determined under Clause 50 (*Dispute Resolution Procedures*) that the Concessionaire is required to incur additional Capital Expenditure due to a Material Adverse Government Action, then the Concessionaire shall use its reasonable endeavors to obtain funding for such Capital Expenditure and the Contracting Authority shall cooperate with the Concessionaire in order to facilitate the securing by the Concessionaire of such funding; and

- (b) the Parties may also agree that the Concession Fee should be adjusted to compensate the Concessionaire further to the occurrence of a Material Adverse Government Action.
- 35.2.6 If information is provided after the dates referred to in Clause 35.2.2 (*Consequences of a Material Adverse Government Action*) above, the Concessionaire shall not be entitled to any compensation or relief from its obligations under this Concession Agreement in respect of the period for which the information is delayed.
- 35.2.7 If the Concessionaire and the Contracting Authority cannot agree the extent of any compensation or relief, or if the Contracting Authority disagrees that a Material Adverse Government Action has occurred (or as to its consequences), the Parties shall resolve the matter in accordance with Clause 50 (*Dispute Resolution Procedures*).
- 35.3 **Termination for a Material Adverse Government Action**
- 35.3.1 If a Material Adverse Government Action has occurred and is continuing, any Party may terminate this Concession Agreement in accordance with Clause 41.3 (*Termination Procedure*), if such Material Adverse Government Action prevents a Party from performing its obligations under this Concession Agreement, for a period of one hundred and eighty (180) consecutive days.
- 35.3.2 In case this Concession Agreement is terminated by a Party under Clause 35.3.1 (*Termination for a Material Adverse Government Action*) above, the Concessionaire shall be entitled to the compensation set out under **Schedule 10** (*Termination Payments*).
- 36. **QUALIFYING CHANGE IN LAW**
- 36.1 If a Qualifying Change in Law occurs or is shortly to occur, then any Party may notify the other Party to express an opinion on its likely effects, giving details of its opinion of:
  - (a) any necessary change in Airport Services;
  - (b) whether any changes are required to the terms of this Concession Agreement to deal with the Qualifying Change in Law;
  - (c) whether relief from compliance with obligations is required;
  - (d) any (positive or negative) change of revenue that will result from the relevant Qualifying Change in Law;
  - (e) any (positive or negative) Estimated Change in Project Costs that directly result from the Qualifying Change in Law; or
  - (f) any Capital Expenditure that is required or no longer required as a result of a Qualifying Change in Law taking effect during the Concession Period.
- 36.2 As soon as practicable and in any event within thirty (30) days after receipt of any notice from either Party under Clause 36.1 (*Qualifying Change in Law*) above, the Parties shall discuss and agree the issues referred to in Clause 36.1 (*Qualifying Change in Law*) above and any ways in which the Concessionaire can, if applicable, mitigate the effect of the Qualifying Change of Law, including:

- (a) providing evidence that the Concessionaire has used reasonable endeavours (including (where practicable) the use of competitive quotes) to oblige its Sub-Contractors to minimize any increase in costs and maximize any reduction in costs;
- (b) demonstrating how any Capital Expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred or would have been incurred, foreseeable Changes in Law at that time have been taken into account by the Concessionaire; and
- (c) giving evidence as to how the Qualifying Change in Law has affected prices charged by any similar businesses to the Project.

36.3 Any compensation payable by the Contracting Authority under this Clause shall be made by way of set off against the Concession Fee, provided that:

- (a) if the Parties agree or it is determined under Clause 50 (*Dispute Resolution Procedures*) that the Concessionaire is required to incur additional Capital Expenditure due to a Qualifying Change in Law, then the Concessionaire shall use its reasonable endeavors to obtain funding for such Capital Expenditure and the Contracting Authority shall cooperate with the Concessionaire in order to facilitate the securing by the Concessionaire of such funding; and
- (b) the Parties may also agree that the Concession Fee should be adjusted to compensate the Concessionaire further to the occurrence of a Qualifying Change in Law.

36.4 If the Concessionaire and the Contracting Authority cannot agree on the extent of any compensation or the Contracting Authority disagrees that a Qualifying Change in Law has occurred (or as to its consequences) within ninety (90) days of the notification referred to under Clause 36.1 (*Qualifying Change in Law*) above, the Parties shall resolve the matter in accordance with Clause 50 (*Dispute Resolution Procedures*).

## PART VII - TERM, TERMINATION AND TERMINATION PAYMENTS

### 37. CONCESSION TERM AND EXPIRY

This Concession Agreement shall terminate on the expiry of the Concession Period, but without prejudice to any obligations which remain to be performed by the Concessionaire and any accrued liabilities of the Concessionaire.

### 38. EVENTS OF DEFAULT

#### 38.1 Concessionaire Events of Default

Any of the following are "**Concessionaire Events of Default**":

- (a) Abandonment of the Project;
- (b) insolvency, dissolution and or liquidation of the Concessionaire;
- (c) the Concessionaire commits:
  - (i) any material breach or default under any Concession Document; or
  - (ii) a material breach under any Project Agreement;
- (d) a material breach of any representation or warranty by Concessionaire;
- (e) early repayment of the debt is triggered under the Funding Documents;
- (f) any part of the Insurances required by **Schedule 8** (*Insurance*) is not in full force and effect at any time in accordance with Clause 22 (*Insurance*) and **Schedule 8** (*Insurance*);
- (g) the Concessionaire fails to achieve the Scheduled Works Completion Date within the one hundred eighty (180) day period provided in Clauses 26.7.1 (*Delays in Works - Contractual Penalties*);
- (h) failure by the Concessionaire to deliver and/or maintain the Completion Security, the Performance Security or the Handback Security as and when required under Clause 30.2 (*Completion Security*) and 45 (*Handback Security*) respectively;
- (i) the cap of Performance Liquidated Damages for service failure as set out in Clause 25 (*Performance Criteria - Performance Contractual Penalties*) has been reached in any two (2) consecutive Concession Years;
- (j) the Concessionaire abandons any material part of the Works, the Enhancement Works (if applicable) or the Airport Business;
- (k) failure to pay the Concession Fee when due;
- (l) failure to remit to the Contracting Authority or the relevant Government Entity when due, the revenues collected on behalf of the Contracting Authority with respect to any navigation and communications charges, facilitation charges (if any) and passenger security charges;

- (m) breach of the provisions of Clause 3.1 (*Change in Shareholding*);
- (n) a Shareholder of the Concessionaire becomes a shareholder, directly or indirectly, in a Restricted Person;
- (o) revocation of, or any failure to renew any material Consent held by the Concessionaire for any cause attributable to the Concessionaire;
- (p) the Concessionaire, any Sponsor, any Shareholder or any Sub-Contractor (or anyone employed by or acting on behalf of any of them) offers, gives or agrees to give to the Contracting Authority or any other public body or person employed on their behalf any gift, commission or consideration of any kind as an inducement or reward for doing or not doing (or for having done or not having done) any act in relation to the acceptance of the tender, selection of preferred bidder or grant of selected bidder status, the obtaining of any Concession Document or the obtaining of any contracts; or
- (q) the Concessionaire, any Sponsor, any Shareholder or any Sub-Contractor (or anyone employed by or acting on behalf of any of them) breaches any provisions of any other Applicable Law creating offences in respect of fraudulent acts, or defrauds or attempts to defraud or conspires to defraud the Contracting Authority or any Government Entity.

## 38.2 **Contracting Authority Events of Default**

An "**Contracting Authority Event of Default**" means:

- (a) Failure by the Contracting Authority to make any payment under this Concession Agreement for a continuous period of ninety (90) days after such payment has become due and payable; or
- (b) any material breach or default by the Contracting Authority under this Concession Agreement (other than any breach or default which constitutes a Material Adverse Government Action) which substantially frustrates or renders it impossible for the Concessionaire to perform its obligations under this Concession Agreement for a continuous period of sixty (60) days following the date of the Default Notice sent by the Concessionaire.

## 39. **TERMINATION IN CONNECTION WITH AN EVENT OF DEFAULT**

### 39.1 **Notification**

- 39.1.1 If an Event of Default occurs or is about to occur, the non-defaulting Party shall give notice of said Event of Default to the defaulting Party (a "**Default Notice**") as soon as reasonably practicable on and in any event within ten (10) days of it becoming aware of the occurrence of such Concessionaire Event of Default or Contracting Authority Event of Default, as the case may be.
- 39.1.2 Without prejudice to Clause 39.1.1 (*Notification*) above, the Concessionaire must give notice to the Contracting Authority as soon as it becomes aware that a Concessionaire Event of Default has occurred.

## 39.2 Cure Period - Mitigation

39.2.1 Subject to the rights of the Funders under the Funder's Direct Agreement, in case of a Curable Event of Default, the Party in default shall remedy the event giving rise to the Default Notice within sixty (60) days (or such longer period as may be set forth in the Default Notice, or as the Parties may otherwise agree) following the Default Notice (the "**Cure Period**"). At the expiry of the Cure Period, if:

- (a) the Event of Default has not been cured; and
- (b) the Parties have not agreed to extend the Cure Period,

the non-defaulting Party shall be entitled to serve a Termination Notice to the defaulting Party.

39.2.2 For the purpose of this Clause 39.2.2 (*Cure Period - Mitigation*), a "**Curable Event of Default**" shall mean:

- (a) in case of the Concessionaire Event of Default, the events specified in Clauses 38.1(c) and 38.1(o) (*Concessionaire Events of Default*); and
- (b) any Contracting Authority Event of Default.

## 40. CONTRACTING AUTHORITY STEP-IN RIGHTS

40.1 If any of the following events or circumstances occur:

- (a) the traffic at the Airports is materially disrupted as a result of any event or circumstances directly affecting the Airports and the Concessionaire is unable or unwilling for any reason to resolve the disruption promptly; or
- (b) members of the public are unable to use the Airports or their facilities safely and the Concessionaire is unable or unwilling for any reason to resolve the problem promptly; or
- (c) because an Emergency has arisen; or
- (d) there is a material threat to national security and/or defense in Montenegro, the occurrence of a state of war or any military conflict (whether involving hostilities or not),

then the Contracting Authority shall have the right to enter the Airport Sites and take over operation of the Airports upon not less than twenty-four (24) hour advance notice to the Concessionaire (such right, the "**Contracting Authority Step-In Right**"). The Contracting Authority may continue to exercise the Contracting Authority Step-In Right until the circumstances giving rise to the Contracting Authority Step-In Right have been cured or otherwise cease to exist.

40.2 If the Contracting Authority exercises its Contracting Authority Step-In Rights:

- (a) the Contracting Authority shall account to and pay to the Concessionaire for any revenues collected by the Contracting Authority;

- (b) the Concessionaire's obligations shall be suspended for such time as the Contracting Authority exercises the Contracting Authority Step-In Right to the extent that it is thereby prevented from performing them; and
  - (c) the Concessionaire shall not be responsible for any failure to provide the Airport Services if and to the extent it is prevented from doing so by damage to the Airports or the Airport Sites caused by the exercise by the Contracting Authority of the Contracting Authority Step-In Right, provided that the Concessionaire shall (i) use all reasonable endeavours to mitigate and minimize the effects of the exercise of such rights or the performance of its obligations and to restore normal operating as soon as reasonably practicable, (ii) cooperate in all respects with the Contracting Authority and (iii) to the extent requested by the Contracting Authority, assign its rights under all Consents and Concession Documents and any other permits, contracts and relevant documents to the Contracting Authority during the period that the Contracting Authority is exercising the Contracting Authority Step-In Right.
- 40.3 The exercise by the Contracting Authority of the Contracting Authority Step-In Right shall not affect any other right or remedy the Contracting Authority may have, nor shall the existence of the Contracting Authority Step-In Right or its exercise thereof relieve the Concessionaire of any duty, obligation or liability under any Concession Document.
- 40.4 The costs, expenses, losses and liabilities (including the Contracting Authority's internal costs but not consequential losses) reasonably incurred or suffered by the Contracting Authority and/or any Government Entity in connection with the exercise of the Contracting Authority Step-In Right shall be borne:
- (a) by the Concessionaire with respect to events (i) listed in Clause 40.1(c) (*Contracting Authority Step-in Rights*) to the extent caused by the Concessionaire or (ii) listed in Clause 40.1(a) and 40.1(b) (*Contracting Authority Step-in Rights*), and the Contracting Authority may draw on the Performance Security to cover any costs listed under this paragraph (a); and
  - (b) by the Contracting Authority with respect to the event listed (i) in Clause 40.1(c) (*Contracting Authority Step-in Rights*) to the extent not caused by the Concessionaire, or (ii) in Clause 40.1(d) (*Contracting Authority Step-in Rights*).

## **41. EARLY TERMINATION**

### **41.1 Termination by the Concessionaire**

The Concessionaire shall have the right to terminate this Concession Agreement based on:

- (a) a Contracting Authority Event of Default (which has not been cured during the Cure Period), as provided under Clause 38.2 (*Contracting Authority Events of Default*); or
- (b) a Force Majeure Event as provided under Clause 34.3 (*Termination for Prolonged Force Majeure*); or
- (c) a Material Adverse Government Action as provided under Clause 35.3 (*Termination for a Material Adverse Government Action*).

### **41.2 Termination by the Contracting Authority**

The Contracting Authority shall have the right to terminate this Concession Agreement

based on:

- (a) a Concessionaire Event of Default (and when it is a Curable Event of Default, which has not been cured during the Cure Period) as provided under Clause 38.1 (*Concessionaire Events of Default*); or
- (b) a Force Majeure Event as provided under Clause 34.3 (*Termination for Prolonged Force Majeure*); or
- (c) a Material Adverse Government Action as provided under Clause 35.3 (*Termination for a Material Adverse Government Action*); or public policy reasons.

#### 41.3 **Termination Procedure**

- 41.3.1 Any Party entitled to terminate this Concession Agreement in accordance with Clauses 41 (*Early Termination*) and 41.2 (*Termination by the Contracting Authority*) and wishing to do so shall issue a notice to the other Party informing it of its intention to terminate this Concession Agreement and stating the grounds for termination (the "**Termination Notice**").
- 41.3.2 Without prejudice to the Cure Period provided under Clause 39.2 (*Cure Period - Mitigation*), this Concession Agreement shall be effectively and automatically terminated upon expiry of a period of ninety (90) days following the Termination Notice, unless the grounds for termination set out in the Termination Notice no longer exist or prevail at such date.

#### 41.4 **Termination Payments**

- 41.4.1 In the event of early termination of this Concession Agreement, and subject to the Concessionaire complying with its obligations under Clauses 42 (*Maintenance of Concession*) to 47 (*Re-Transfer of Concession Assets*) below, the Contracting Authority shall proceed in accordance with **Schedule 9** (*Retransfer of assets*) and shall be jointly and severally liable to pay to the Concessionaire the amounts as set forth in the relevant section of **Schedule 10** (*Termination Payments*) within the time period set out there in (the "**Termination Payments**").
- 41.4.2 Upon termination of this Concession Agreement for whatever reason, the Contracting Authority shall not be liable for any damages or other compensation except for the Termination Payments set forth in the relevant section of **Schedule 10** (*Termination Payments*).



## PART VIII - HANDBACK

### 42. MAINTENANCE OF CONCESSION

#### 42.1 Retendering of Concession

The Concessionaire acknowledges that the Contracting Authority may wish, at the expiry of the Concession Period or in the event of any early termination of this Concession Agreement, to invite persons (who may, except in consequence of early termination of this Concession Agreement, include the Concessionaire) to tender for the right to provide all or some of the Airport Business.

#### 42.2 Maintenance as Going Concern

42.2.1 The Concessionaire shall maintain and manage the Airport Business so that the Contracting Authority or a Successor Concessionaire will be able to take over the operation and management of the Airports at any time. The Concessionaire shall allow the Contracting Authority or such Successor Concessionaire to have access to all Concession Employees and all Concession Assets for this purpose.

42.2.2 The Concessionaire shall conduct the Airport Business on the basis that the Airport Business may be transferred, in the manner contemplated under this Concession Agreement, as a going concern at the end of the Concession Period or in the event of an early termination of this Concession Agreement to, and continued immediately thereafter by, the Contracting Authority or a Successor Concessionaire. The Concessionaire shall accordingly ensure that the Airport Business has an appropriate number of employees (having sufficient skills, qualifications and experience) at the time of transfer to the Contracting Authority or any Successor Concessionaire following the expiry or early termination of the Concession Period.

42.2.3 The Concessionaire shall ensure that all Consents, licenses and approvals, given or received, and all agreements and arrangements entered into by the Concessionaire in relation to the Airport Business and/or with any occupational lessee or sub-lessee shall be properly documented and retained.

42.2.4 Nine (9) months prior to the normal expiry of this Concession Agreement or as soon as possible in case of an early termination of the Concession Agreement, the Concessionaire shall provide complete operation and maintenance training to the Contracting Authority's personnel of managerial and operational grade so that such Contracting Authority's personnel have the necessary understanding and know-how of the operations and maintenance programmes, plans, reports and activities related to the Airport Business.

#### 42.3 Handover Packages

42.3.1 For the purposes of facilitating the transfer of Concession Assets in accordance with **Schedule 9** (*Retransfer of Assets*) to the Contracting Authority or any Successor Concessionaire on the expiry or early termination of the Concession Period, the Concessionaire shall, by not later than six (6) months after the Commencement Date, maintain and annually update two (2) handover packages, each of which shall contain the information and objects set out in **Schedule 9** (*Retransfer of Assets*) and such other information and objects as the Contracting Authority may reasonably specify from time to time as being reasonably necessary to facilitate the transfer of Concession Assets in accordance with **Schedule 9** (*Retransfer of Assets*) to the Contracting Authority or any Successor Concessionaire.

42.3.2 The Concessionaire shall ensure that the Contracting Authority or any Successor Concessionaire will have access to such packages referred to in Clause 42.3.1 (*Handover Packages*) on the expiry or early termination of the Concession Period and shall accordingly notify the Contracting Authority from time to time of the locations of such packages at the Airports.

42.3.3 If so requested by the Contracting Authority, the Contracting Authority may inspect the packages maintained by the Concessionaire pursuant to Clause 42.3.1 (*Handover Packages*) to ensure they contain the information and objects required thereunder.

#### 42.4 **Preparation for Retendering**

42.4.1 The Concessionaire shall allow the Contracting Authority to have access to the Concession Assets and the Concession Employees and the books, records and other material kept by or on behalf of the Concessionaire in connection with the Airport Business for the purpose of preparing any reports or other documents in connection with any invitation to potential Successor Concessionaires to tender for the right and obligation to provide or operate all or any part of the Airport Services.

42.4.2 The Concessionaire shall make available during the last twelve (12) months of the Concession Period to the Contracting Authority and its authorized representatives such information as the Contracting Authority shall reasonably require in connection with such preparation for tendering.

#### 42.5 **Non-frustration of Transfer**

42.5.1 The Concessionaire shall not take any action or step which is or are designed, directly or indirectly, to prejudice, frustrate, avoid or circumvent the transfer as a going concern of the Airport Business at the end of the Concession Period to the Contracting Authority or a Successor Concessionaire. Subject to such restriction and Applicable Law, the Concessionaire shall be entitled to take such action (except in consequence of termination pursuant to Clause 38.1(a)) (*Concessionaire Events of Default*) as may be necessary for the purpose of bidding to become, or becoming, a Successor Concessionaire.

### 43. **HANDBACK UPON EXPECTED EXPIRY OF THE CONCESSION PERIOD**

#### 43.1 **Initial Inspection - Handback Works**

43.1.1 Not less than twenty four (24) months prior to the expected expiry of the Concession Period, the Concessionaire and the Contracting Authority shall conduct a joint inspection (the "**Initial Inspection**") of the Airports and the Concession Assets. If no date for the Initial Inspection has been agreed between the Concessionaire and the Contracting Authority, the Contracting Authority may initiate the Initial Inspection by giving at least thirty (30) days' notice to that effect to the Concessionaire and such inspection shall be conducted on the date specified in such notice.

43.1.2 Within ninety (90) days after the completion of the Initial Inspection the Concessionaire shall provide to the Contracting Authority a report on the condition of the Airports and Concession Assets and a notice setting out:

(a) the Concessionaire's proposals as to the Handback Works (if any) that have been identified;

(b) the Concessionaire's proposals as to the Handback Programme for the Handback

Works; and

- (c) the Concessionaire's estimate of the Handback Amount for the Handback Works.
- 43.1.3 The Contracting Authority may, within two (2) months after receipt of the notice from the Concessionaire in accordance with Clause 43.1.2 (*Initial Inspection - Handback Works*), by notice to the Concessionaire, object to the proposals in respect of any or all of the Handback Works, the Handback Programme and the Handback Amount as set out in the Concessionaire's notice. The notice from the Contracting Authority shall give details of the grounds for such objection and shall give the Contracting Authority's proposals in respect of the Handback Works and Handback Programme and its estimate of the Handback Amount.
- 43.1.4 If no agreement is reached between the Concessionaire and the Contracting Authority as to any matter referred to in the notice given in accordance with Clause 43.1.3 (*Initial Inspection - Handback Works*) within two (2) months of receipt by the Concessionaire of such notice, or if notice is not given by the Concessionaire within the period specified in Clause 43.1.2 (*Initial Inspection - Handback Works*), or if the Concessionaire fails to attend the Initial Inspection, then either the Concessionaire or the Contracting Authority may refer the matter to the Technical Expert in accordance with Clause 50.2 (*Technical Expert*) for determination of:
- (a) in the case of an objection in respect of the Handback Works, whether or not the objection is justified and whether any alternative proposals by the Contracting Authority are more appropriate to ensure that the Handback Works fulfill the requirements of this Concession Agreement;
  - (b) in the case of an objection in respect of the Handback Programme, what programme would be reasonable for the implementation of the Handback Works;
  - (c) in the case of an objection in respect of the Handback Amount, what amount would represent the reasonable cost of carrying out the Handback Works, on the assumption that such Handback Works will be carried out in accordance with Good Industry Practice and the other requirements of this Concession Agreement; and
  - (d) in the case of failure by the Concessionaire, all relevant matters.
- 43.1.5 Upon agreement or determination in accordance with Clause 50.2 (*Technical Expert*) of the procedure of the Handback Works and the Handback Programme, the Concessionaire shall procure at its own cost that the Handback Works are carried out in accordance with the Handback Programme notwithstanding that the actual cost of the Handback Works may be higher than the Handback Amount.
- 43.1.6 Neither the agreement of the Contracting Authority to any Handback Works, Handback Programme or the Handback Amount, or any revision of the same pursuant to Clause 43.2.2 (*Second Inspection*), nor the participation of the Contracting Authority in any inspection under this Clause 43.1 (*Initial Inspection - Handback Works*), nor the complete or partial carrying out of the Handback Works, shall relieve or absolve the Concessionaire from its obligations under this Concession Agreement.
- 43.1.7 If required under Clause 21.2.1, the Concessionaire shall conduct an Environmental and Social Impact Assessment in accordance with Clause 21.2.2 (*Environmental and Social Impact Assessment*).

## 43.2 **Second Inspection**

- 43.2.1 Not less than twelve (12) months prior to the expected expiry of the Concession Period, the Concessionaire and the Contracting Authority shall conduct a joint inspection (the "**Second Inspection**") of the Airports and all the Concession Assets (whether or not the Handback Works have been carried out).
- 43.2.2 Within one (1) month after the completion of the Second Inspection, the Concessionaire shall provide to the Contracting Authority a report on the condition of the Airports and the Concession Assets and a notice setting out:
- (a) the Concessionaire's proposals as to any revisions or additions to the Handback Works required in order to ensure that the Handback Works fulfill the requirements of this Concession Agreement;
  - (b) the Concessionaire's proposals as to any revisions to the Handback Programme as a consequence of such revisions or additions to the Handback Works; and
  - (c) the Concessionaire's estimate of any changes in the Handback Amount as a consequence of such revisions or additions to the Handback Works.
- 43.2.3 The Contracting Authority may, within one (1) month after receipt of the notice from the Concessionaire in accordance with Clause 43.2.2 (*Second Inspection*), by notice to the Concessionaire object to any proposed revisions or additions to any or all of the Handback Works, the Handback Programme and the Handback Amount as set out in the Concessionaire's notice. The notice from the Contracting Authority shall give details of the grounds of such objection and shall give the Contracting Authority's proposals in respect of such matters.
- 43.2.4 If no agreement is reached between the Concessionaire and the Contracting Authority as to any matter referred to in the notice given in accordance with Clause 43.2.3 (*Second Inspection*) within one (1) month of receipt by the Concessionaire of such notice, or if notice is not given by the Concessionaire within the period specified in Clause 43.2.2 (*Second Inspection*), or if the Concessionaire fails to attend the Second Inspection, then either the Concessionaire or the Contracting Authority may refer the matter to the Technical Expert for determination of:
- (a) in the case of any objection in respect of any revisions or additions to the Handback Works, whether or not the objection is justified and whether any alternative proposals by the Contracting Authority are more appropriate to ensure that the Handback Works satisfy the requirements of this Concessionaire;
  - (b) in the case of an objection in respect of any revisions to the Handback Programme, what programme would be reasonable for the implementation of the Handback Works (as revised or added to in accordance with the provisions of this Clause 43.2.4 (*Second Inspection*));
  - (c) in the case of an objection in respect of any change in the Handback Amount, what amount would represent the reasonable cost of carrying out the Handback Works (as revised or added to in accordance with the provisions of this Clause 43.2.4 (*Second Inspection*)); and
  - (d) in the case of any failure by the Concessionaire, all relevant matters.

43.2.5 Upon agreement or determination in accordance with Clause 50 (*Dispute Resolution Procedures*) of any revision or addition to the Handback Works or the Handback Programme, the Concessionaire shall procure that the Handback Works (as so revised or added to) are carried out in accordance with the Handback Programme (as so revised) at its own cost notwithstanding that the actual cost of the Handback Works may be higher than the Handback Amount (as changed in accordance with Clause 43.2.4 (*Second Inspection*)).

### 43.3 **Environmental Site Assessment**

43.3.1 Not later than six (6) months prior to the expected expiry of the Concession Period, the Concessionaire shall conduct an Environmental Site Assessment in accordance with the principles set forth in section 1.8 “Contaminated Land” of the EHS Guidelines (general guidelines) and ASTM Guidelines.

43.3.2 The Environmental Site Assessment shall:

- (a) provide an understanding of the soil quality at the Airport Sites and identify any soil contamination present;
- (b) by the sampling of groundwater wells, assess the quality of groundwater beneath and downstream the Airport Sites; and
- (c) verify, as relevant, the quality of water courses and surface drainages.

43.3.3 If the Environmental Site Assessment determines that a Pollution Event has occurred, the Concessionaire shall carry out the Remediation Works for that Pollution Event in accordance with Clause 10.1 (*Obligation to Remedy*).

### 43.4 **Handback Inspection**

43.4.1 Not later than three (3) months prior to the expected expiry of the Concession Period, the Concessionaire and the Contracting Authority shall conduct a joint inspection of the Concession Assets (the "**Handback Inspection**").

43.4.2 Within one (1) month after the completion of the Handback Inspection, the Contracting Authority shall either:

- (a) issue to the Concessionaire a Handback Certificate; or
- (b) notify the Concessionaire in writing of his decision not to issue the Handback Certificate and state the reason for such decision.

43.4.3 The Contracting Authority may refuse to issue the Handback Certificate if:

- (a) the Concessionaire shall have failed to complete all of the Handback Works; or
- (b) as at the end of the Concession Period the Concession Assets for any other reason do not comply with the requirements of this Concession Agreement (including of Clause 14) in all respects.

43.4.4 Any notice given by the Contracting Authority in accordance with Clause 43.4.2(b) (*Handback Inspection*) shall set out each respect in which the Handback Works have not been completed or the Concession Assets do not comply with the requirements of this Concession Agreement and shall state the Contracting Authority's estimate of the cost of

completing such Handback Works and/or of procuring that the Concession Assets so comply in all respects.

- 43.4.5 The Concessionaire may, within fourteen (14) days after receipt of a notice given in accordance with Clause 43.4.2(b) (*Handback Inspection*), by notice to the Contracting Authority object to any matter set out in the Contracting Authority's notice. The notice from the Concessionaire shall give details of the grounds for such objection and shall give the Concessionaire's proposals in respect of such matters.
- 43.4.6 If no agreement is reached between the Concessionaire and the Contracting Authority as to any matter referred to in the notice given in accordance with Clause 43.4.5 (*Handback Inspection*) within fourteen (14) days of receipt by the Contracting Authority of such notice, then either the Concessionaire or the Contracting Authority may refer the matter to the Technical Expert in accordance with Clause 50.2 (*Technical Expert*) for determination, as the case may be:
- (a) whether the Handback Works have been completed;
  - (b) whether the Concession Assets comply in all respects with this Concession Agreement; and
  - (c) the estimated costs of procuring those Handback Works are completed and that the Concession Assets comply in all respects with this Concession Agreement.
- 43.4.7 If it is agreed or determined by the Technical Expert in accordance with Clause 50 (*Dispute Resolution Procedures*) that the Concessionaire has not completed the Handback Works or that the Concession Assets do not comply in all respects with the requirements of this Concession Agreement, then without prejudice to any other right or remedy of the Contracting Authority, the Concessionaire shall pay to the Contracting Authority an amount equal to the estimated cost of completing such Handback Works and procuring that the Concession Assets comply in all respects with the requirements of this Concession Agreement, as agreed or determined in accordance with Clause 43.4.6 (the "**Handback Payment**"). Such payment shall be made not later than thirty (30) days after such estimated cost has been agreed or determined in accordance with Clauses 43.4.4 to 43.4.6 (*Handback Inspection*).

#### **44. HANDBACK UPON EARLY TERMINATION OF THE CONCESSION AGREEMENT**

- 44.1 In the event of an early termination of this Concession Agreement, the Concessionaire shall immediately upon receipt or issuance of a Termination Notice, (i) conduct an Environmental Site Assessment in accordance with Clause 43.3.2 and (ii) notify the Technical Expert, who shall inspect the Airports and the Concession Assets as soon as practicable (and the Concessionaire shall give the Technical Expert such access to the Airports and all the operational records, data and reports as may be required).
- 44.2 No later than twenty (20) days after the date of the Termination Notice, the Technical Expert shall prepare an inspection report on the performance and condition grade of the Airports and the Concession Assets notice setting out:
- (a) the Technical Expert's proposals as to the Handback Works (if any) that have been identified (as well as an estimate of the time required for their completion); and
  - (b) the Technical Expert's estimate of the Handback Amount for the Handback Works.

44.3 Not later than five (5) days after the issuance of the inspection report, the Contracting Authority may either:

- (a) if the inspection report determines that Handback Works may be completed at least ten (10) days before the early termination of the Concession Agreement, request that the Concessionaire carries out the Handback Works at its own costs; or
- (b) request the Concessionaire to promptly pay the Handback Amount.

44.4 If the Concessionaire has been requested to carry out the Handback Works in accordance with Clause 44.3(a) above, then;

- (a) the Concessionaire shall provide the Handback Security in accordance with Clause 45 (*Handback Security*) not later than seven (7) days after receipt of the request from the Contracting Authority;
- (b) the Concessionaire shall notify to the Contracting Authority and the Technical Expert immediately upon completion of the Handback Works (which shall in any event occur not later than ten (10) days prior to the termination of the Concession Agreement;
- (c) the Contracting Authority, the Concessionaire and the Technical Expert shall conduct a joint inspection of the Airports not later than ten (10) days prior to the termination of the Concession Agreement, pursuant to which the Technical Expert shall either confirm that the Handback Works have been completed, or notify the parties of the amount required to complete the Handback Works; and
- (d) if the Technical Expert determines that an amount is required to complete the Handback Works, such amount shall be paid by the Concessionaire within five (5) Business Days, failing which the Contracting Authority may (i) draw on the Handback Security or (ii) withhold such amount from any amount due to the Concessionaire.

44.5 In the event of any Dispute arising under this Clause in relation to:

- (a) whether the Handback Works have been completed;
- (b) whether the Concession Assets comply in all respects with this Concession Agreement; and
- (c) the determination of the Handback Amount,

then either the Concessionaire or the Contracting Authority may refer the matter to the Technical Expert in accordance with Clause 50.2 (*Technical Expert*) for determination, as the case may be.

## **45. HANDBACK SECURITY**

45.1 The Concessionaire shall provide the Contracting Authority with the Handback Security (i) no later than a date fourteen (14) days after the date that the Handback Amount is agreed or determined in accordance with Clauses 43.1.3 to 43.1.4 (*Initial Inspection - Handback Works*), or (ii) in accordance with Clause 44.4 (*Handback upon early Termination of the Concession Agreement*) above.

45.2 The Handback Security shall be:

- (a) in the agreed form;
- (b) an on-demand guarantee issued by a reputable financial institution having a credit rating in respect of its long-term debt from Standard & Poor's of not less than A+ or its equivalent by another rating agency of international reputation (or having been approved by the Contracting Authority and, since such approval, has not suffered a material adverse change in its financial condition);
- (c) naming the Contracting Authority as the direct beneficiary;
- (d) in the amount of the Handback Amount;
- (e) permitting the Contracting Authority to make calls on the Handback Security on demand (without any justification to be provided); and
- (f) to be released upon the expiry of a period of one hundred twenty (120) days from the Termination Date or the end of the Concession Period, as the case may be and shall be renewed thirty (30) days prior to its expiring for a further period or periods of ninety (90) days until the Handback Certificate is issued, failing which renewal the Contracting Authority shall be entitled to draw on the Handback Security for its full amount.

45.3 If as a result of the Second Inspection the Handback Amount is increased, the Concessionaire shall procure that an additional Handback Security for the additional Handback Amount shall be issued in accordance with Paragraphs (a), (b) and (c) of Clause 45.1 (*Handback Security*) above and delivered to the Contracting Authority by no later than a date fourteen (14) days after the date that the additional Handback Amount is agreed or determined in accordance with Clause 43.1 (*Initial Inspection - Handback Works*) for a term expiring no earlier than a date six months after the expiry of the Concession Period.

45.4 If as a result of the Second Inspection the Handback Amount is reduced, the Contracting Authority shall within fourteen (14) days after the date the reduced Handback Amount is agreed or determined in accordance with Clause 43.1 (*Initial Inspection - Handback Works*) issue a notice to the issuer under the Handback Security reducing the amount of the Handback Security to the reduced Handback Amount.

45.5 The Contracting Authority shall be entitled to make a demand under the Handback Security for the Handback Payment referred to in Clause 43.4.7 (*Handback Inspection*) and all other amounts due and unpaid by the Concessionaire as at that date.

45.6 Following the issue of the Handback Certificate referred to in Clause 43.4.2 (*Handback Inspection*), the Contracting Authority shall release and return the Handback Security unless any other amounts are due and unpaid by the Concessionaire as at that date.

## **46. ASSOCIATED OBLIGATIONS**

### **46.1 Assistance in Securing Continuity**

In order to facilitate the continuity of the Airport Services on expiry or termination of the Concession Period the Concessionaire shall take such steps, both before and after the expiry or termination of the Concession Period, as the Contracting Authority may reasonably require, to assist and advise the Contracting Authority or any Successor Concessionaire (subject to payment of duly documented and reasonably incurred costs and expenses by the Concessionaire for this purpose) in providing and operating the Airport Services provided



such obligation shall not continue beyond six (6) months following Handover Completion Date (as this term is defined in **Schedule 9** (*Retransfer of Assets*)).

46.2 **Access**

The Concessionaire hereby authorizes the Contracting Authority and its representatives to have such access prior to the expiry or termination of the Concession Period as the Contracting Authority may reasonably request to such Concession Assets for the purpose of facilitating the continuity of the Airport Services.

**47. RE-TRANSFER OF CONCESSION ASSETS**

Each of the Parties shall comply with the provisions of **Schedule 9** (*Retransfer of Assets*).

## **PART IX - REPRESENTATIONS AND WARRANTIES**

### **48. WARRANTIES BY THE CONCESSIONAIRE**

#### **48.1 Concessionaire's Warranties**

The Concessionaire hereby represents and warrants to the Contracting Authority that:

- (a) the Concessionaire is duly organized, validly existing and in good standing, as a private company limited by shares incorporated under Applicable Law, for the sole purpose of developing, managing and operating the Airports;
- (b) the Concessionaire has the corporate power and authority and has taken all corporate actions necessary to execute and deliver validly and to exercise its rights and perform its obligations validly under the Concession Documents and the Shareholders Agreement;
- (c) each of the Concession Documents and the Shareholders Agreement are, or when entered into will be, legal, valid, binding and enforceable obligations of the Parties thereto;
- (d) every Consent of any Government Entity or third party required with respect to the Concessionaire in connection with its execution and delivery of, and performance of its obligations under the Concession Documents has been obtained, and will be maintained, other than those which are not required at the time this representation is made or deemed to be repeated;
- (e) the Concessionaire is not engaged in any material adverse dispute or proceedings;
- (f) no proceedings are threatened against the Concessionaire the outcome of which could have a material adverse effect on the Concessionaire or the Project and the Concessionaire is not aware of any no fact or circumstance which may give rise to such proceedings;
- (g) there is no unsatisfied judgment order, decree arbitral award or decision of court, tribunal arbitrator or in any jurisdiction against the Concessionaire;
- (h) the Concessionaire possesses financial, technical (including environmental and social) and operational resources and experience to competently operate the Airports in accordance with the Tender qualification criteria;
- (i) the Concessionaire, the Sub-Contractors, their employees, agents and independent contractors at all times are duly licensed to the extent required by Applicable Law, suitably qualified and experienced, and will exercise due skill, care and diligence in the performance of its obligations under this Concession Agreement;
- (j) the Concessionaire has relied solely on its own investigations, enquiries and calculations in respect of the Contracting Authority's requirements for this Concession Agreement;
- (k) in entering into this Concession Agreement, the Concessionaire has not relied and does not rely on any warranty or representation made by or on behalf of the Contracting Authority; and

- (l) since incorporation the Concessionaire has incurred no material liability other than those incurred for the purpose of incorporating the Concessionaire or entering into the Concession Documents, the Funding Documents and the Shareholder Agreement.

#### 48.2 **Making and Repetition of Warranties**

The warranties contained in Clause 48 (*Warranties by the Concessionaire*) shall be deemed to be repeated by the Concessionaire on the Commencement Date and thereafter as of December 31 of each year during the Concession Period, as if made as of the Commencement Date with reference to the facts and circumstances on such dates. The awareness, knowledge and belief of the Shareholders, the Sponsors, their Affiliates and their respective advisors shall be attributed to the Concessionaire for the purpose of construing compliance with those warranties in Clause 48.1 (*Concessionaire's Warranties*).

## **PART X - RELATIONS WITH THIRD PARTIES**

### **49. EXCLUSION OF LIABILITY AND INDEMNITY**

#### **49.1 Liability with respect to Third Parties**

49.1.1 From the Commencement Date, the Concessionaire will provide the Airport Services and operate the Airports at its own cost and risk without recourse to the Contracting Authority. The Concessionaire will accordingly hold the Contracting Authority fully protected and indemnified in respect of all losses, liabilities, costs, charges, expenses, actions, proceedings, claims or demands incurred by or made upon the Contracting Authority in connection with any death or personal injury (except to the extent that the Contracting Authority causes or contributes to any death or personal injury), loss or damage suffered by the Concessionaire or any third party in consequence (directly or indirectly) of the operation and development of the Airports by the Concessionaire, the carrying out of the Works, the provision of the Airport Services or the conduct of the Airport Business in each case from the Execution Date and during the Concession Period (including the infringement, disturbance or destruction of any right, easement or privilege, nuisance and every other liability arising, directly or indirectly, out of any defect in or the condition or use of the Airport Sites (or any buildings or structures thereon or thereunder) or anything done or omitted to be done thereon).

49.1.2 The Contracting Authority shall conduct livelihood restoration and compensate the impact of the Works on local communities in accordance with IFC Performance Standards. The Contracting Authority shall accordingly indemnify and hold harmless the Concessionaire against claims or from damages and expenses resulting from claims of local communities adversely affected by the Works, to the extent that such claims or damage does not result from (i) a breach of the Concessionaire to comply with Applicable Law, IFC Performance Standards and Good Industry Practice or (ii) gross negligence or willful misconduct of the Concessionaire.

#### **49.2 Indemnity**

The Concessionaire shall indemnify and keep indemnified the Contracting Authority in respect of all losses, liabilities, costs and expenses suffered or incurred by the Contracting Authority (other than the Contracting Authority's own consequential losses) arising out of or in connection with:

- (a) the occurrence of any Concessionaire Event of Default and/or any resulting termination of this Concession Agreement; and/or
- (b) any breach by the Concessionaire of any obligation on its part under this Concession Agreement or any other Concession Document.

#### **49.3 Conduct of Claims**

49.3.1 To the extent that a Party (the "**Indemnifier**") makes payment to another Party (the "**Indemnatee**") of an indemnified amount arising out of the actions of a third party, the Indemnifier shall be subrogated to the rights of the Indemnatee against such third parties and the Indemnifier shall then be entitled to pursue the Indemnatee's claim against the relevant third party.

49.3.2 If an Indemnatee receives any notice, demand, letter or other document concerning any claim from which it appears that the Indemnatee is or may become entitled to

indemnification under this Clause 49.3.2 (*Conduct of Claims*) the Indemnatee must give notice in writing to the Indemnifier as soon as reasonably practicable. Any additional liability of the Indemnifier which arises as a result of any unreasonable delay by the Indemnatee in giving such notice to the Indemnifier is hereby excluded from the scope of the Indemnifier's indemnity in favor of the Indemnatee.

- 49.3.3 Where it appears that the Indemnatee is or may become entitled to indemnification from the Indemnifier in respect of any or all of the liability arising out of the act or omission which is the subject of the claim, the Indemnifier may resist the claim in the name of the Indemnatee, in which event the Indemnifier shall have the conduct of any defense, dispute, settlement, compromise or appeal of the claim and of any incidental negotiations, and the Indemnatee shall give the Indemnifier all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim.

## PART XI - LAW AND DISPUTE RESOLUTION

### 50. DISPUTE RESOLUTION PROCEDURES

#### 50.1 Amicable Settlement

- 50.1.1 If any dispute or difference or claims of any kind arises between the Contracting Authority, the Concessionaire or the Sponsors in connection with the construction, interpretation or application of any terms or conditions or any matter or thing in any way connected with or in connection with or arising out of this Concession Agreement, or the rights, duties or liabilities of any Party under this Concession Agreement, whether during the Concession Period or on expiry thereof, whether before or after the termination of this Concession Agreement (a "**Dispute**"), then the Parties and the Sponsors shall meet together promptly, at the request of any Party, in an effort to resolve such Dispute amicably.
- 50.1.2 The representatives of the Parties and the Sponsors shall meet to resolve such Dispute. To this end, each Party and the Sponsors shall designate in writing to the other Parties and the Sponsors from time to time a representative who shall be authorized to resolve any Dispute and, unless otherwise expressly provided herein, to exercise the authority of such Party and the Sponsors to reach such resolution. The representatives shall meet if and when necessary from time to time and attempt in good faith and use their best endeavors at all times to resolve the Dispute and produce written terms of settlement which will be notarized before the notary public as a notarial deed in order to have the effect of an enforceable title. The meetings of the representatives shall be conducted in English.
- 50.1.3 If the Dispute is not amicably resolved, as evidenced by the signing of the written terms, within thirty (30) days of raising such Dispute, any Party or Sponsor may decide to submit the Dispute either to a Technical Expert or to arbitration (as the case may be) in accordance with either Clauses 50.2 (*Technical Expert*) and 50.3 (*Arbitration*).

#### 50.2 Technical Expert

- 50.2.1 Where the Parties and the Sponsors are unable to reach an agreement on any Dispute that relates to any matters of fact of a financial, technical, engineering, operational or environmental aspect of this Concession Agreement, including factual determination of a matter of fact of technical, engineering, operational or environmental nature relating to the existence, nature and consequences of a Force Majeure Event, of an Event of Default (but excluding any legal aspects of the same) or the remedy of defaults and termination procedures (a "**Technical Dispute**") within thirty (30) days of raising such Dispute, any Party may ask for the matter to be referred to a Technical Expert.
- 50.2.2 Except for Disputes arising out in accordance with Clause 19.5 (*Disputes*), the costs of the Technical Expert and associated expenses shall be borne equally by the Parties and the Sponsors.
- 50.2.3 If the Technical Dispute is not resolved by the Technical Expert within ninety (90) days or any longer period as agreed by the Parties and the Sponsors, or if any Party or Sponsor are not satisfied with the decision of the Technical Expert, any Party or Sponsor may decide to submit the Dispute to arbitration in accordance with Clause 50.3 (*Arbitration*).

### 50.3 Arbitration

**[Note: Seat and applicable law of arbitration proceedings to be completed at a later stage]**

- 50.3.1 Any Dispute not resolved between the Parties and the Sponsors through an amicable settlement, not submitted to the Technical Expert or challenging a decision of the Technical Expert in accordance with Clause 50.2 (*Technical Expert*) above may be submitted to international arbitration as provided below.
- 50.3.2 This Concession Agreement, and the rights and obligations of the Parties and the Sponsors hereunder shall remain in full force and effect pending the award in such arbitration proceeding, which award, if appropriate, shall determine whether and when any termination shall become effective.
- 50.3.3 The arbitration shall be conducted pursuant to the Rules of Arbitration of the International Chamber of Commerce (ICC) (the “**Rules**”) which Rules are deemed incorporated by reference into this Clause 50.3 (*Arbitration*).
- 50.3.4 The appointing authority shall be the [•].
- 50.3.5 The number of arbitrators shall be three (3) being appointed in accordance with the Rules.
- 50.3.6 The seat of the arbitration shall be [•]. Where the Rules are silent, the law governing the arbitration proceedings shall be [•].
- 50.3.7 The arbitration shall be conducted in English and all documents submitted in connection with such proceedings shall be in English or accompanied by a certified English translation.
- 50.3.8 The decision of arbitrators shall be final and binding upon the Parties and the Sponsors.

### 50.4 Continuing Obligations

Despite the provisions of this Clause 50 (*Dispute Resolution Procedures*), the Parties and the Sponsors must (subject to what may otherwise be provided for in this Concession Agreement) continue performing their obligations under this Concession Agreement.

## 51. GOVERNING LAW AND JURISDICTION

This Concession Agreement shall be governed by and construed in accordance with the Applicable Law.

## **PART XII - GENERAL PROVISIONS**

### **52. NOTICES**

52.1 Any notice or other communication from one Party or Sponsor to another Party or Sponsor which is required or permitted to be made under the provisions of this Concession Agreement shall be:

- (a) made in the English and Montenegrin language;
- (b) made in writing;
- (c) delivered personally (by hand delivery) or sent by pre-paid registered mail or by courier to the address of that other Party or Sponsor which is shown below or to such other address as that other Party or Sponsor shall by notice require; and
- (d) marked for the attention of the person(s) designated below or to such other person(s) as that other Party or Sponsor shall by notice require.

52.2 Any notice or other communication made by one Party or Sponsor to another Party or Sponsor in accordance with the foregoing provisions of this Clause 52.2 (*Notices*) shall be deemed to be received by that other Party or Sponsor, if delivered personally (hand delivered) or delivered by and or sent by pre-paid registered mail or by courier, on the day on which it is handed to the mail or courier.

If to the Concessionaire, to:

[ ● ]

If to the Contracting Authority, to:

[ ● ]

If to the Sponsors, to:

[ ● ]

Any Party or Sponsor from time to time may change its address or other information for the purpose of notices to such Party or Sponsor by giving notice specifying such change to the other Parties and Sponsors.

### **53. ENTIRE AGREEMENT – CONFLICTS**

This Concession Agreement constitutes the entire agreement and understanding between the Parties and the Sponsors with respect to the subject matter herein and the transactions contemplated herein, and any and all previous understandings, proposals, negotiations, agreements, commitments and representations, whether oral or written, are superseded by this Concession Agreement.

### **54. WAIVER**

Any term or condition of this Concession Agreement may be waived at any time by the Party and Sponsors that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by all Parties and the



Sponsors. The failure or delay of any Party to require performance by another Party or Sponsor of any provision of this Concession Agreement shall not affect its right to require performance of such provision unless and until such performance has been waived by such Party or Sponsor in writing in accordance with the terms hereof. No waiver by any Party or Sponsor of any terms or condition of this Concession Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Concession Agreement on any future occasion. All remedies, either under this Concession Agreement or by Applicable Law or otherwise afforded, shall be cumulative and not alternative.

## **55. AMENDMENT**

No modification or amendment of any provisions of this Concession Agreement shall be valid unless it is in writing and signed by the Parties and the Sponsors.

## **56. ASSIGNMENT**

No Party or Sponsor may sell, assign or otherwise transfer its rights or obligations under or pursuant to this Concession Agreement without the prior written consent of the other Parties and the Sponsors, except that for the purpose of financing the Project, the Concessionaire may assign or create a security interest over its rights, title and interests under or pursuant to any Concession Document, the Project (but not the Airport Sites, the Immoveable Property, the Moveable Property and intellectual property of the Concessionaire, or the revenues of any of the rights or assets of the Concessionaire, as may be required by the Funding Documents in accordance with Applicable Law. Any actual, attempted or purported sale, assignment or other transfer by a Party or Sponsor of any of its rights or obligations or interests in, under or pursuant to this Concession Agreement that does not comply with the terms of this Clause 56 (*Assignment*) shall be null, void and of no force or effect.

## **57. CONFIDENTIALITY**

57.1 Each Party and Sponsor shall hold, and shall use its best efforts to cause its shareholders and Affiliates (as applicable) to hold, in strict confidence from any other person (other than any such Affiliate or Funders) all documents and information concerning the other Parties and Sponsors or any of its Affiliates furnished to it or its advisors, consultants, contractors or agents by any other Party or Sponsor in connection with this Concession Agreement or the transaction contemplated hereby ("**Confidential Information**"), unless:

- (a) required to disclose any such information by judicial or administrative process (including in connection with obtaining from Government Entities the necessary approvals of this Concession Agreement and the transactions contemplated hereby) or by other requirements of Applicable Law;
- (b) disclosed in or pursuant to the offering statement provided to potential investors in the Concessionaire, as the case may be, it being provided that in such event the Concessionaire shall make these investors sign a non-disclosure agreement which content shall reflect Concessionaire's confidentiality undertakings as set out in this Concession Agreement; or
- (c) disclosed in an action or proceeding brought by any Party or Sponsor in pursuit of its rights or in the exercise of its remedies hereunder.

57.2 Notwithstanding Clause 57.1 (*Confidentiality*), this Clause 57 (*Confidentiality*) shall not apply to such documents or information that were:

- (a) previously known by the Party or Sponsor receiving such documents or information;
- (b) in the public domain (either prior to or after the furnishing of such documents or information hereunder) through no fault of such receiving Party or Sponsor;
- (c) later acquired by such receiving Party or Sponsor from another source if such receiving Party or Sponsor is not aware that such source is under an obligation to any other Party or Sponsor to keep such documents and information confidential;
- (d) disclosed by the Contracting Authority to any Government Entity;
- (e) required to be disclosed to a Funder for the purpose of negotiating and/or entering into the Funding Documents; or
- (f) required to be disclosed to insurance provides for the purposes of obtaining and/or maintaining insurance cover.

57.3 This Concession Agreement shall not constitute Confidential Information and may be made public by the Contracting Authority including by a publication on its website, in such manner as the Contracting Authority may decide.

## **58. LANGUAGE**

This Concession Agreement is executed in the Montenegrin and English language. Any notice in relation to the Concession Agreement shall be provided in both English and Montenegrin. In case of discrepancies between the English and Montenegrin versions, the English version of the Concession Agreement shall prevail.

## **59. FURTHER ASSURANCES**

The Parties and the Sponsors shall at all times do all such further acts and execute and deliver such further deeds and documents as shall be reasonably required in order to perform and carry out the obligations under this Concession Agreement.

## **60. INVALIDITY**

If any provision of this Concession Agreement shall be held to be void, illegal, invalid or unenforceable, in whole or in part, under any Applicable Law, such provision or part shall to that extent be deemed not to form part of this Concession Agreement but the legality, validity and enforceability of the remainder of this Concession Agreement shall not be affected.

## **61. COUNTERPARTS**

The Parties and the Sponsors may execute this Concession Agreement in counterparts, which shall, in the aggregate, when signed by both Parties and the Sponsors constitute one and the same instrument; and, thereafter, each counterpart shall be deemed to be an original instrument as against any Party and Sponsor who has signed it.

## **62. DEFAULT INTEREST**

Without prejudice to each party's right to receive payment in accordance with this Concession Agreement and save as otherwise expressly provided, interest shall accrue on any sum due and owing to any Party or Sponsor under this Concession Agreement at seven (7) % above the Reference Interest Rate (the "**Default Interest Rate**") calculated on a daily basis if and to the extent that payment is not received in accordance with this Concession Agreement.

**63. VALUE ADDED TAX**

The Concessionaire shall pay in addition to any sum payable hereunder any VAT payable in respect of any supply made by the Contracting Authority to the Concessionaire under any Concession Document. VAT shall be paid at the same time as the due date for any consideration payable for any such supply, or otherwise upon demand when properly invoiced by the Contracting Authority. In the case of any VAT which may become payable to the Contracting Authority in relation to the Annual Concession Fee, shall be treated as inclusive of that VAT except to the extent that the Concessionaire is entitled to recover that VAT (or set it off against VAT it is liable to account for) whether as an input tax or otherwise.

**64. SET OFF**

Where any compensation is payable by the Contracting Authority under this Concession Agreement, the Contracting Authority shall be entitled (but not obliged) to settle that compensation by way of authorizing the Concessionaire to make deductions from the Concession Fee or any other amount payable by the Concessionaire under the Concession Documents which will preserve the economic equivalent of that compensation.

Unless expressly provided for under this Concession Agreement, the Concessionaire may not set off any obligations owed to it by the Contracting Authority under this Concession Agreement.

**65. NO PARTNERSHIP OR JOINT VENTURE**

Neither this Concession Agreement nor any other Project Agreement creates a partnership, joint venture or other fiduciary relationship (except as may subsist when one party holds funds or other property in trust for the other) between the parties.

**66. SURVIVAL**

The covenants and agreements of the Parties contained in Clauses 41 (*Early Termination*), 51 (*Dispute Resolution Procedure*) and Part XII (*General Provisions*) shall survive any termination of this Concession Agreement that occurs prior to the expiration of the Concession Period, for a period of two (2) years after such termination or expiration of this Concession Agreement; provided, however, that with respect to the confidentiality provisions of Clause 57 (*Confidentiality*):

- (a) each Party and Sponsor shall be entitled to use such information as may be reasonably required in connection with the ownership and operation of the Project by such Party, Sponsor, such Party's assignee or transferee or such Sponsor's assignee or transferee; and
- (b) each Party and Sponsor shall continue to be bound by such confidentiality provisions to the extent only that disclosure of any confidential information might have a material adverse effect on the other Parties' or Sponsors' interests in the Project.

**IN WITNESS** whereof the parties hereto have executed this Concession Agreement on the day and year first before written.

## SCHEDULE 1. Conditions Precedent

### Part 1

#### 1. CONDITIONS PRECEDENT UNDER CONCESSIONAIRE'S RESPONSIBILITY

**[Note: to be completed as the case may be based on the due diligence findings]**

It shall be a condition precedent to the Commencement Date that each of the following is provided by the Concessionaire in form and substance satisfactory to the Contracting Authority:

- 1.1 a copy of each duly executed Project Agreement and the Shareholders Agreement, in each case in the form approved by the Contracting Authority;
- 1.2 a copy of the Funding Documents;
- 1.3 a copy of all Consents which are required to have been obtained in the name of the Concessionaire (i) in connection with the execution, delivery and commencement of performance of the Concession Documents and (ii) in connection with performance of the Works (including, without limitation, any planning permission and environmental permits), including Consents referred to in **Schedule 15** (*List of Consents*);
- 1.4 a copy of the certificate (or equivalent) from the Funders confirming that Financial Close has occurred (or is conditional only upon confirmation that the Commencement Date has occurred);
- 1.5 a copy of all Insurance Policies as required in **Schedule 8** (*Insurance*);
- 1.6 a certificate signed by a legal representatives of each party to the Project Agreements and Shareholders Agreements certifying that each Project Agreements and the Shareholders Agreement is in full force and effect (or are subject only to the occurrence of the Commencement Date);
- 1.7 a duly issued Completion Security;
- 1.8 a duly issued Performance Security;
- 1.9 evidence that the Environmental and Social Management System has been approved by the Environmental Consultant (and, as needed, amended to address his recommendations) and any relevant Government Entities;
- 1.10 a legal opinion covering capacity, authorization and validity of the execution by the Concessionaire and the Sponsors (as applicable) and the enforceability against the Concessionaire or (as applicable) the Sponsors of the Concession Documents;
- 1.11 a copy of:
  - (i) the initial draft Operational and Strategic Plan;
  - (i) the initial Airport Safety Management System;
  - (ii) the initial Maintenance Programme; and

- (iii) the Environmental and Social Impact Assessment for the Works as approved by the Environmental Consultant (and, as needed, amended to address his recommendations) and any relevant Government Entities; and

**1.12** payment to the Contracting Authority of the Upfront Concession Fee.

## **Part 2**

### **2. CONDITIONS PRECEDENT UNDER CONTRACTING AUTHORITY'S RESPONSIBILITY**

It shall be a condition precedent to the Commencement Date that the following is provided by the Contracting Authority in form and substance satisfactory to the Concessionaire:

- (i) [to be completed].

### **Part 3**

#### **3. CONDITIONS PRECEDENT UNDER JOINT RESPONSIBILITY**

- 3.1** Copy of the Initial Environmental Site Assessment, as updated and approved by the Environmental Consultant (and, as needed, amended to address his recommendations);
- 3.2** Signing of the Reserved Activities Service Level Agreements;
- 3.3** Agreement between the Parties on the Initial Transfer Plan in accordance with Clause 2.2 (*Initial Transfer Plan and Employee Transfer Plan*);
- 3.4** Agreement between the Parties on the Employee Transfer Plan in accordance with Clause 2.2 (*Initial Transfer Plan and Employee Transfer Plan*); and
- 3.5** Signing of the Funders' Direct Agreement.



## **SCHEDULE 2. Initial Transfer of Assets and Liabilities**

### **Part 1 - Material Transferred Contracts**

*[Note to bidders: Please refer to the list in the data room]*

### **Part 2 - Material Assets**

*[Note to bidders: Please refer to the list in the data room]*

### **SCHEDULE 3. Initial Environmental Site Assessment Terms of Reference**

***[Note : TOR to be inserted at a later stage]***

#### **SCHEDULE 4. Airport Services**

**[Note: this schedule may be amended subject to technical review ]**

The Airport Services shall include the following activities:

- (a) the provision of apron space for parking of aircraft;
- (b) the handling of parked aircraft (including the supply of fuel, in-flight catering, servicing the aircraft between flights and other provisions as determined by the aircraft operator;
- (c) the access for aircraft and equipment for hangarage (based on availability) and facilitation for the provision of aircraft maintenance, repair and overhaul services;
- (d) the handling of cargo at all stages while on land including the transfer of cargo to and from the aircraft and pavement for parking for surface transportation related thereto;
- (e) the handling of Passengers and their baggage at all stages within the terminal and to the aircraft, including the transfer of Passengers and their baggage (including transfer and transit passengers) to, from and between aircraft and the provision of information services to Passengers, according to ICAO's Annex 9 (Facilitation) as amended from time to time;
- (f) the provision of car parking facilities;
- (g) the offering of food and beverage to passengers, general public and employees at the Airports and other persons visiting the Airports;
- (h) the offering of consumer goods (whether duty paid or, to the extent permitted by Applicable Law, duty free) and essential services (including bureau de change, tourist information, ground transportation, hotel reservation);
- (i) the offering of motor vehicle and equipment fuel services as necessary to operate the Airports and a service station (and related services) for vehicles accessing the Airport Sites;
- (j) the provision, operation and maintenance of visual aids and airfield accessories such as approach and runway lights, taxiways lights, directional signage, runway and taxiway markings, apron lighting, security lighting and other lighting fixed to the Airport Sites relating to the landing, take-off and movement of aircraft over, around or on the Airport Sites and for general safety and security purposes;
- (k) the access and provision of space for the movement of passengers and staff to connect with ground transportation within the Airport Sites;
- (l) the maintenance, enhancements and expansion, when and where necessary, of the airport and security system, (including offices, personnel, equipment (cameras, data storage and retrieval, screening, monitoring, etc.) and the fiber-optic electronic network connecting the component parts;
- (m) operation and maintenance of a Flight Information Display System (FIDS) with adequate number of display units strategically located to provide Passengers and staff with up-to-date information on flights;
- (n) operation and maintenance of a Baggage Information Display System (BIDS) strategically

located to provide passengers with information on the carousel conveying incoming baggage from their flights;

- (o) upkeep, and maintenance of a Common User Passenger Processing System (CUPPS) with adequate counter equipment, display screens, self-service kiosks and related equipment to ensure efficient processing of passengers and flights;
- (p) the provision of adequate directional signage in Montenegrin and English throughout the terminal and in exterior landside areas for the convenience and safety of passengers, staff and other users of the Airports;
- (q) the provision of facilities for the physically disabled to be incorporated in any Works and maintenance projects, including retrofitting projects;
- (r) the provision of up-to-date technological advances in relation to the efficient operation of the Airports; and
- (s) the provision of facilities and services ordinarily provided at the Airports prior to Execution Date and facilities and such other services reasonably incidental to the operation of an international airport.

## **SCHEDULE 5. Airport Forum**

### **1. Introduction**

Regular Airport Forums (each a "**Forum**") will be conducted between the Contracting Authority and the Concessionaire.

### **2. Purpose**

The purpose of the Forum is to provide a formal venue to allow communication between the Contracting Authority and the Concessionaire on general and specific matters related to the Airport. Topics would include the review of overall airport operations, traffic and other publicly available information, marketing initiatives, community concerns, etc.

### **3. Meeting Participants**

The Forum will include senior representatives of the Concessionaire and the Contracting Authority and others nominated by the Contracting Authority. The Concessionaire will chair the Forum.

### **4. Frequency and Location**

**4.1** The Forum will be conducted on a semi-annual basis. Additional meetings may be required by the Contracting Authority on an ad hoc basis.

**4.2** Meetings are usually held at the Airport, although may, from time to time, be held elsewhere if the Contracting Authority and the Concessionaire agree. In addition, the Contracting Authority will be invited to attend special functions and events, which might occur during the year.

### **5. Agenda and Minutes**

**5.1** The Concessionaire will develop the agenda for each Forum meeting. Under normal circumstances, the agenda and the material will be distributed to the Contracting Authority not less than twenty (20) days before the meeting. All Contracting Authority representatives are free to suggest additions to the agenda. Proposed agenda items must be sent two (2) weeks prior to the meeting in order that the final agenda may be sent to all participants one (1) week prior to the Forum meeting.

**5.2** The Concessionaire will give the Contracting Authority not less than six (6) weeks prior notice of each Forum meeting and the Parties shall co-operate to agree mutually convenient times.

**5.3** The Concessionaire will record the meeting and distribute minutes, no later than thirty (30) days following the Forum, to all members in attendance at the Forum.

**5.4** Material distributed to the Contracting Authority in advance of the Forum should be concise, yet complete, and prepared in a way that focuses attention on critical issues to be considered. Reports may be presented during the Forum by the Contracting Authority or Concessionaire, or by invited outside advisors. Presentations on specific subjects at the Forum should briefly summarize the material sent to either Party, so as to maximize the time available for discussions on questions regarding the material.

## **SCHEDULE 6. Concession Records**

### **1. Works Monthly Report**

The Concessionaire shall, during the period which starts at the commencement of the Works and until the date on which a Works Completion Certificate is issued, provide the Contracting Authority with a monthly report in relation to the Works (each, a "**Works Monthly Report**"), which shall include at least the following information and comply with the following structure:

[•]

### **2. Operational and Strategic Plan ("OSP")**

The OSP must demonstrate to the Contracting Authority and other stakeholders in the Airports that the Concessionaire has established an adequate level of planning, and will implement the corresponding actions, to meet the required level of service and otherwise meet its obligations under the Concession Agreement in order to ensure the quality of service, according to forecasted traffic within the OSP period.

Accordingly, the purpose of the OSP is to set out continuous improvement of the Airports facilities and systems, assessing their conditions and planning their maintenance and update. It should identify and prioritize the required actions to improve the infrastructure considering the forecasted traffic.

The OSP should:

[•]

### **3. Operational Performance Report**

The Concessionaire shall, throughout the Concession Period, provide the Contracting Authority with a quarterly report related to the operation of the Airport (the "**Operational Performance Report**"). This report shall include at least the following information:

[•]

### **4. Financial Reports**

[•]

### **5. Environmental and Social Sustainability Report**

The Environmental and Social Sustainability Report to be prepared by the Concessionaire, has the following objectives:

- (a) report on key progress/activities/incidents/accidents (e.g. non-compliances, significant incidents, community concerns, significant improvements/initiatives, implementation status of the actions defined in the ESMMP) etc. regarding environment, health and safety, labor and social aspects for current year; and
- (b) present objectives, targets and planned actions for subsequent year.

The Environmental and Social Sustainability Report shall include the following:

## **5.1 Project Status**

Key site activities and developments (operation and/or construction) during the period.

## **5.2 Assessment and Management of Environmental and Social Risks and Impacts**

- (a) Status of environmental permits;
- (a) status of voluntary environmental and social (E&S) management systems certification schemes ISO 14001 - Environment OHSAS 18001 - OHS ISO 9001 - Quality;
- (b) updates of the ESMS reviewed by the Environmental Consultant (Policy, organization, E&S personnel, ESMMP);
- (c) training provided to staff in environmental, social and health and safety;
- (d) incidents (e.g. chemical and/or hydrocarbon materials spills; fire, explosion or unplanned releases, including during transportation; ecological damage/destruction; local population impact, complaint or protest; failure of emissions or effluent treatment; legal/administrative notice of violation; penalties, fines, or increase in pollution charges; negative media attention; chance cultural finds; labor unrest or disputes; local community concerns);
- (e) public consultation or disclosure, community relations including management of comments and/or grievances received in relation to environmental and social issues; and
- (f) new initiatives implemented or additional managerial efforts on E&S aspects (e.g. energy/water savings, sustainability report, waste minimization, etc.).

## **5.3 Labour and Working Conditions, Occupational Health and Safety**

- (a) numbers of direct employees, of female direct employees, of employees terminated, of employees hired, of core contractor employees;
- (b) main changes implemented in terms of Occupational Health and Safety (OHS), e.g. identification of hazards, substitution of chemicals, new controls, etc.
- (c) occupational health and safety indicators (direct and contracted employees): Total number of workers, total man-hours worked in the year, annual number of fatalities, total number of (non-fatal) lost time occupational injuries, total number of lost workdays due to injuries, number of new occupational disease cases and number of vehicle collisions resulting in injuries; and
- (d) details for the injuries including corrective measures.

## **5.4 Resource Efficiency and Pollution Prevention**

- (a) a scaled facility map showing the precise locations of all monitoring points;
- (b) result of year monitoring and previous years compared with regulatory levels and EHS guidelines levels as relevant for:

- (i) ambient noise;
  - (ii) liquid effluent discharges;
  - (iii) soil contamination monitoring;
  - (iv) waste and hazardous waste management: quantities and management per type; and
  - (v) others, as appropriate (e.g. air emissions, sediment and erosion control and construction management).
- (c) explanation of causes and, if appropriate, planned corrective actions to prevent re-occurrence;
  - (d) hazardous material management, spill response; and
  - (e) energy and water management: annual consumption of grid electricity, natural gas diesel other fuel (specify) and water.

## **5.5 Community health, safety and security**

Reporting on emergency drills, mitigation measures for impacts on affected communities and any new initiative implemented in relation to community health and safety during the reporting period, including risk assessments, new infrastructure and equipment; hazardous materials and safety management, transportation and exposure to disease.

## **6. Passenger Satisfaction Surveys**

The Concessionaire shall provide to the Contracting Authority on a quarterly basis the results of the Passenger Satisfaction Surveys as set out in **Schedule 13** (*Performance Criteria*).



## **SCHEDULE 7. Contracting Standards**

Contracts and leases entered into between the Concessionaire and a third party pursuant to Clause 23 (*Subcontracting*) of this Concession Agreement shall comply with the principles set forth below.

1. All such contracts and leases shall be entered into on an arm's-length basis (meaning, in the ordinary course of business and upon fair and reasonable terms no less favorable to the Concessionaire than it would obtain in a comparable transaction with a Person which is not an Affiliate) and shall contain market based terms and conditions.
2. The procurement, negotiation, execution and performance of all such contracts and leases shall not involve any dishonest or fraudulent conduct, including, but not limited to, any bribes, kick-backs, unlawful payments or promises of payment or other unlawful gifts or similar actions by any of the parties thereto or their employees, representatives, agents or similar Persons.
3. Subject to appropriate confidentiality provisions to ensure the protection of proprietary or commercially sensitive information, the procurement, negotiation, execution and performance of all such contracts and leases shall be transparent. The Concessionaire shall use commercially reasonable efforts to harmonize the contract terms offered to similarly situated counterparties.
4. The Concessionaire shall treat all similarly situated counterparties to such contracts and leases in a consistent and even-handed manner. Similarly situated parties may only be treated differently by the Concessionaire for good cause or where objectively justifiable circumstances exist, including compliance with Clause 23.1.2 of this Concession Agreement.

## **SCHEDULE 8. Insurance**

**[Note: to be completed at a later stage]**

## **SCHEDULE 9. Retransfer of Assets**

### **Part 1**

#### **Handover Completion**

#### **1. INTERPRETATION**

- 1.1** For the purpose of this Schedule, words and terms beginning with a capital letter herein shall have the meaning ascribed to them below. Capitalized terms used and not defined herein shall have the meaning set out in the Concession Agreement.

**"Concessionaire's Accountants"** means the auditors of the Concessionaire;

**"Concession Expiry"** means the last day of the expiry of the Concession Period by effluxion of time without a Termination Date;

**"Depreciation"** means, in respect of the Works Programme, the rate of depreciation determined by the Contracting Authority in respect of its inclusion in the regulatory asset base for regulatory purposes or, if none is to be so determined by the Contracting Authority the rate agreed between the Parties;

**"Disputed Amount"** has the meaning given to it in paragraph 4.2 of this Part 1;

**"Employees"** means all those employees of the Concessionaire or any Affiliate of the Concessionaire exclusively or principally employed in the Airport Business prior to Handover Completion;

**"Engaged Employees"** has the meaning given to it in paragraph 11.1 of this Part 1;

**"Excluded Assets"** means the assets referred to in Part 2 of this Schedule 9;

**"Excluded Contracts"** means the contracts referred to in Part 3 of this Schedule 9;

**"Expert"** has the meaning given to it in paragraph (a) of this Part 1;

**"Financial Debt"** means debt owed by the Concessionaire to financial institutions for borrowed money;

**"Goodwill"** means the goodwill of the Retransferred Business and the Contracting Authority's right to use the names "Podgorica Airport" and "Tivat Airport" and to represent itself as operating the Retransferred Business from the Handover Effective Time;

**"Handover Completion"** means completion of handover and retransfer in accordance with paragraph 2 of Part 1;

**"Handover Completion Balance Sheet"** means a balance sheet showing a true and fair view of the state of affairs of the Concessionaire as at the Handover Completion, prepared by the Concessionaire's Accountants on a basis consistent with the Concessionaire's Accounts using the same principles and practices;

**"Handover Completion Date"** means the date on which Handover Completion is scheduled to occur being the earlier of:

(a) Concession Expiry; and

(b) the Termination Date.

**"Handover Completion Statement"** means the "Handover Completion Statement" agreed or determined pursuant to paragraph 4.3 or 4.4 of Part 1 of this Schedule 9;

**"Handover Effective Time"** means 11.59 pm on the day upon which the time that Handover Completion actually occurs;

**"Initial Handover Statement"** has the meaning given to it in paragraph 4.1 of this Part 1;

**"Intellectual Property Rights"** means all Intellectual Property used in connection with the Retransferred Business at the Handover Effective Time;

**"Motor Vehicles"** means the motor vehicles owned by the Concessionaire and used in connection with the Retransferred Business at the Handover Effective Time;

**"Moveable Equipment"** means the loose or moveable plant, machinery, equipment and other similar loose or moveable articles owned by the Concessionaire and used in connection with the Retransferred Business at the Handover Effective Time which are not fixed assets;

**"Office Equipment"** means the office equipment and furnishings and other similar loose or moveable articles owned by the Concessionaire and used in connection with the Retransferred Business at the Handover Effective Time which are not fixed assets;

**"Contracting Authority's Accountants"** mean the auditors of the Contracting Authority;

**"Policies"** means the insurance policies of the Concessionaire held in respect of the Retransferred Business at the Handover Effective Time;

**"Records"** means the Concessionaire's books and records relating to the Retransferred Business;

**"Retransferred Assets"** means all the property and assets agreed to be transferred under this Schedule 9;

**"Retransferred Business"** means the business of managing and operating the Airport, as carried on by the Concessionaire before the Handover Effective Time;

**"Retransferred Contracts"** means all the contracts to which the Contracting Authority is a party and which relate to the Retransferred Business and are unperformed (wholly or partly) at the Handover Effective Time including contracts with Airline Users and Ramp Handling Services' operators, leases, and hire and hire purchase agreements, but excluding employment contracts with the Employees and any Excluded Contracts;

**"Retransferred Contract"** means any one of the Retransferred Contracts;

**"Specified Claim"** means any loss, liability or cost in respect of which one party has provided to the other party an indemnity under this Schedule 9;

**"Trade Credits"** means all amounts owing to trade creditors by the Concessionaire in connection with the Retransferred Business as at the Handover Effective Time in respect of

goods or services supplied to the Concessionaire before the Handover Effective Time (whether or not invoiced and whether or not due and payable at that time) and **"Trade Credit"** means any of those amounts; and

**"Trade Debts"** means all amounts owing to the Concessionaire by trade debtors in connection with the Retransferred Business as at the Handover Effective Time in respect of goods or services supplied by the Concessionaire before the Handover Effective Time (whether or not invoiced and whether or not due and payable at that time) and **"Trade Debt"** means any of those amounts.

## **2. TRANSFER OF BUSINESS**

**2.1** The Concessionaire agrees to transfer and handover to the Contracting Authority and the Contracting Authority agrees to accept such retransfer to it, in each case with effect from the Handover Effective Time, the following assets:

- (a) the Immoveable Property;
- (b) the benefit (subject to the burden) of the Retransferred Contracts;
- (c) the Goodwill;
- (d) the Intellectual Property Rights;
- (e) the Moveable Equipment;
- (f) the Motor Vehicles;
- (g) the Office Equipment;
- (h) the Records;
- (i) the Stock;
- (j) the benefit, to the extent the same is assignable or transferable, of any amount to which the Concessionaire is entitled from an insurer under any of the Policies in respect of damage or injury to any of the Retransferred Assets other than an amount spent before the Handover Effective Time in repairing the damage or injury provided that the Concessionaire shall not be responsible for any amount not actually received under the Policies; and
- (k) all other Moveable Property owned by the Concessionaire, located at the Airport and used in connection with the Retransferred Business at the Handover Effective Time.

**2.2** The Retransferred Assets are transferred subject to the terms and conditions of this Schedule 9.

**2.3** The Excluded Assets are not included in the transfer of the Retransferred Assets.

## **3. COMPLETION**

**3.1** Handover Completion shall take place at the Airports (or as may otherwise be agreed) on the Handover Completion Date.

**3.2** At Handover Completion, the Concessionaire shall:

- (a) give the Contracting Authority possession of those Retransferred Assets which are transferable by delivery;
- (b) subject to paragraph 6, give the Contracting Authority an executed assignment in the agreed form of, or otherwise vest in the Contracting Authority, those Retransferred Assets which are not transferable by delivery;
- (c) give the Contracting Authority a release in the agreed form in respect of any Encumbrance affecting any of the Retransferred Assets, this Concession Agreement ;
- (d) give the Contracting Authority the Records; and
- (e) all other documents required to be delivered to the Contracting Authority under this Concession Agreement.

**3.3** At Handover Completion, subject to paragraph 6, the Contracting Authority and the Concessionaire shall ensure that the novation agreements in the form agreed pursuant to paragraph 6 are entered into by the parties to the agreements.

**4. HANDOVER COMPLETION STATEMENT**

**4.1** After Handover Completion the Concessionaire's Accountants shall prepare a statement (the "**Initial Handover Statement**") specifying the value as at the Handover Effective Time of the assets referred to in this **Schedule 9** following the principles therein.

**4.2** The Concessionaire shall ensure that within sixty (60) days starting on the day after Handover Completion the Concessionaire's Accountants give the Initial Handover Statement, the Handover Completion Balance Sheet and their working papers to the Contracting Authority's Accountants. The Contracting Authority shall ensure that within thirty (30) days starting on the day of receipt of the Initial Handover Statement and working papers the Contracting Authority's Accountants specify in writing to the Concessionaire whether or not they agree with the Initial Handover Statement and if they do not agree with the Initial Handover Statement each amount with which they disagree (each a "**Disputed Amount**"). Any failure to specify within this period shall be treated as disagreement with the Initial Handover Statement.

**4.3** If the Contracting Authority's Accountants:

- (a) specify that they agree with the Initial Handover Statement, it constitutes the Handover Completion Statement;
- (b) specify that they disagree with the Initial Handover Statement;
  - (i) each amount in the Initial Handover Statement which is not a Disputed Amount constitutes the corresponding amount in the Handover Completion Statement; and
  - (ii) if the Concessionaire's Accountants and the Contracting Authority's Accountants agree on any Disputed Amount before receipt by the parties of the Expert's statement pursuant to paragraph 4.4, the amount agreed

constitutes the corresponding amount in the Handover Completion Statement.

**4.4** If within fourteen (14) days starting on the day after receipt of the notice of disagreement or the date disagreement is deemed as referred to in paragraph 4.2 or (b), the Concessionaire's Accountants and the Contracting Authority's Accountants have not agreed on each Disputed Amount:

- (a) either Party may refer the Dispute to an independent firm of chartered accountants agreed by the parties, or in default of agreement within twenty eight (28) days starting on the day after the notice of, or the date of deemed, disagreement, an independent firm of chartered accountants nominated by the President for the time being of the Institute of Chartered Accountants in Montenegro (the "**Expert**"), which shall prepare a statement specifying his determination in respect of each Disputed Amount and shall give a copy of it to each Party within twenty eight (28) days starting on the day after receiving the reference;
- (b) the Expert acts as an expert and not as an arbitrator;
- (c) each amount specified in the Expert's statement, in the absence of fraud or manifest error, constitutes the corresponding amount in the Handover Completion Statement and is final and binding on each Party; and
- (d) each Party shall pay one half of the Expert's costs.

**4.5** The Handover Completion Statement, in the absence of fraud or manifest error, is final and binding on each Party.

## **5. THIRD PARTY CONSENTS AND NOVATIONS**

**5.1** If any of the Retransferred Contracts requires the consent of any third party prior to its assignment to the Contracting Authority, each Party shall use reasonable endeavours to obtain such consent prior to the Handover Completion Date and, if such consent has not been obtained, the assignment shall not be completed until the consent is obtained but the Concessionaire shall use its reasonable efforts to ensure that the benefits of the said Retransferred Contracts are enjoyed by the Contracting Authority from the Handover Effective Time.

**5.2** Each Party shall use all reasonable endeavours to procure a novation of each Retransferred Contract to the Contracting Authority. If novations are agreed prior to Handover Completion the parties shall endeavour to complete those novations at Handover Completion. To the extent novations are, for any reason, not achieved at Handover Completion the parties shall continue to use reasonable endeavours to complete the novations following Handover Completion.

## **6. LIABILITIES AND APPORTIONMENTS**

**6.1** The Concessionaire:

- (a) remains responsible for all liabilities incurred by it before the Effective Time (including, the Trade Credits and all outgoings and expenses owed in connection with the Retransferred Business or the Retransferred Assets before the Handover Effective Time (including, wages, accrued holiday pay, bonuses and other

outgoings in respect of the Employees and rents, rates and service charges (if applicable) in respect of the Airport Sites); and

- (b) remains responsible for all claims by any person outstanding against it as at the Handover Effective Time or arising by reason of any act or omission by it before the Handover Effective Time (including any claims relating to the state or condition of the Airport Sites or any buildings or structures thereon).

## 6.2 The Contracting Authority:

- (a) is responsible for all liabilities incurred by it in connection with the Retransferred Business and the Retransferred Assets after the Handover Effective Time (including all outgoings and expenses owed in connection with the Retransferred Business or the Retransferred Assets after the Handover Effective Time (including wages, bonuses and other outgoings in respect of the Engaged Employees and rents, rates and service charges in respect of the Airport Sites);
- (b) shall indemnify the Concessionaire against each loss, liability and cost which the Concessionaire may incur:
  - (i) in connection with the ownership or operation of the Retransferred Business or the Retransferred Assets after the Handover Effective Time; or
  - (ii) as a result of the Contracting Authority's failure to comply with its obligations under Paragraph 6.2.1,
  - (iii) including, each loss, liability, or cost incurred as a result of defending or settling a claim alleging such a liability.

## 6.3 If a party (the "**Indemnified Party**") becomes aware of a matter which might give rise to a Specified Claim:

- (a) the Indemnified Party shall notify the other Party (the "**Indemnifier**") immediately of the matter (stating in reasonable detail the nature of the matter and, if practicable, the amount claimed) and consult with the Indemnifier with respect to the matter and if the matter has become the subject of proceedings the Indemnified Party shall notify the Indemnifier within sufficient time to enable time to contest the proceedings before the final judgment;
- (b) the Indemnified Party shall:
  - (iv) take any action and institute any proceedings, and give any information and assistance, as the Indemnifier or its insurers may reasonably request to:
    - A. dispute, resist, appeal, compromise, defend, remedy or mitigate the matter; or
    - B. enforce against a person (other than the Indemnifier) the Indemnified Party's or its insurer's rights in relation to the matter; and
    - C. in connection with proceedings related to the matter (other than against the Indemnifier) use advisers chosen by the Indemnifier or its



insurers and, if the Indemnifier requests, allow the Indemnifier or its insurers the exclusive conduct of the proceedings; and

D. in each case if the Indemnifier indemnifies the Indemnified Party for all reasonable costs incurred as a result of a request or choice by the Indemnifier or its insurers; and

(v) the Indemnified Party may only admit liability in respect of or settle the matter if it has first obtained the Indemnifier's written consent (not to be unreasonably withheld).

**6.4** If a payment of outgoings or expenses in respect of the Retransferred Business or the Retransferred Assets for a period covering both before and after the Handover Effective Time has been made by:

(a) the Concessionaire, the Contracting Authority shall pay the Concessionaire an amount equal to that proportion of the payment that relates to the period after the Handover Effective Time; or

(b) the Contracting Authority, the Concessionaire shall pay the Contracting Authority an amount equal to that proportion of the payment that relates to the period before the Handover Effective Time.

**6.5** If a payment in respect of the Retransferred Business or the Retransferred Assets for a period covering both before and after the Handover Effective Time has been received by:

(a) the Concessionaire, it is entitled to retain the proportion of the payment that relates to the period before the Handover Effective Time and shall pay to the Contracting Authority an amount equal to the remainder; or

(b) the Contracting Authority, it is entitled to retain the proportion of the payment that relates to the period after the Handover Effective Time and shall pay to the Concessionaire an amount equal to the remainder.

**6.6** The amounts to be paid by the parties under Paragraphs 6.4 and 6.5 shall be stated in the Handover Completion Statement. A Party owing an amount under Paragraphs 6.4 or 6.5 shall pay the other Party that amount within thirty (30) days starting on the day after agreement or determination of the Handover Completion Statement hereunder.

## **7. INDEMNITY**

The Concessionaire shall indemnify the Contracting Authority against each loss, liability and cost which the Contracting Authority may incur as a result of the Concessionaire's performance of its obligations under each Retransferred Contract to the extent that the loss, liability or cost is attributable to the Concessionaire's breach prior to the Handover Effective Time (including, each loss, liability and cost incurred as a result of defending or settling a claim alleging such a liability).

## **8. RISK OF LOSS OR DAMAGE**

All risk of loss or damage shall pass to the Contracting Authority upon the handover of the Retransferred Assets pursuant to paragraph 2 being effected.

**9. POST-HANDOVER COMPLETION INFORMATION**

Each Party shall give to the other all payments, notices, correspondence, information or enquiries in relation to the Retransferred Business or the Retransferred Assets which it receives after the Handover Completion and which belong to the other.

**10. SUCCESSOR CONCESSIONAIRE**

The Contracting Authority may replace itself with the Successor Concessionaire, under this Schedule 9.

**11. [EMPLOYEES AND PENSIONS]**

- 11.1** The Contracting Authority shall make offers of employment to all the Employees on no less favourable terms and conditions to those existing prior to the Handover Completion Date, such employment to commence on the day following the Handover Completion Date. Any Employees who accept such offers of employment are referred to in this Schedule 9 as the "**Engaged Employees**". The Contracting Authority shall honour all seniority rights and accrued benefits (e.g. accrued annual leave) under previous employment contracts.
- 11.2** The Concessionaire shall ensure that the accrued benefits of the Engaged Employees in the Concessionaire's retirement scheme shall be transferred to any pension scheme made available by the Contracting Authority in accordance with the wishes of the Engaged Employees and Applicable Law.
- 11.3** If the Applicable Law relating to the transfer and/or rights of employees pursuant to a business transfer has changed from that applying at the date of this Concession Agreement, the parties shall agree to such alternative arrangements as may be fair and reasonable for the purpose of effecting the transfer of Employees from the Concessionaire to the Contracting Authority upon Handover Completion reflecting the intentions in Paragraphs 11.1 and 11.2.]

## **Part 2**

### **Excluded Assets**

1. Any cash in hand or at bank.
2. Trade Debts.
3. Amounts due to the Concessionaire by any third party in connection with or related to any activity or services provided by the Concessionaire.
4. Financial Debt.
5. Any other assets as may be agreed.

### **Part 3**

#### **Excluded Contracts**

1. Contracts unperformed (either wholly or in part) or undertaken by the Concessionaire in breach of the terms of the Concession Agreement (unless the Contracting Authority otherwise specifies).
2. The Funding Documents and any other financing arrangements entered into by the Concessionaire.
3. Any Construction Contract (unless the Contracting Authority otherwise specifies).
4. Any contract with a Connected Person to the Concessionaire (unless the Contracting Authority otherwise specifies).

## SCHEDULE 10. Termination Payments

**[Note: this schedule may be amended subject to financial review]**

For the purpose of this Schedule, words and terms beginning with a capital letter herein shall have the meaning ascribed to them below. Capitalized terms used and not defined herein shall have the meaning set out in the Concession Agreement.

**"Adjusted Net Equity"** means, on and as of the Termination Date, an amount equal to the sum of:

- (a) an amount equal to the sum of the Adjusted Value of all Equity less the sum of the Adjusted Value of all Distributions, in each case in Euros and in each case within a period of [•] years prior to the Termination Date (or such lesser period as may then exist between the Commencement Date and the Termination Date); and
- (b) an amount equal to the sum of all Equity less the sum of the Adjusted Value of all Distributions, in each case in Euros and in each case made outside a period, if any, of [•] years prior to the Termination Date,

provided that, if any such difference in subclause (a) or (b) shall result in an amount that is less than zero (0), such amount shall be deemed to be zero (0).

**"Adjusted Value"** means, on and as of the Termination Date, the value of any Equity or Distribution, as the case may be, which value shall be determined by taking the amount of such Equity or Distributions (in each case in Euros) adjusting such value for each completed Concession Year during the period from the date of such Equity or Distributions to the Termination Date, using as an upward adjustment factor for each such completed calendar year of [[•] per cent. ([•%)]].

**"Base Case Financial Model"** means the financial model provided by the Concessionaire as part of its bid.

**"Compensation Payment Date"** has the meaning given to it in Clauses 1.2.2, 2.2 and 3.2 of this Schedule (as applicable).

**"Concessionaire Default Deduction Amount"** meant the amount equal to the aggregate of the following:

- (c) the New Tender Costs; and
- (d) any delay contractual penalties accrued and unpaid as at the Termination Date.

**"Deferred Equity Amounts"** means, on the Compensation Payment Date, any amount of unfunded Equity that has been committed to the Concessionaire as of the Financial Close.

**"Initial Equity"** means, as of the date of termination of the Concession Agreement, the initial equity investment disbursed by the Shareholders plus any such other equity contributions approved by the Contracting Authority expressed in EUR.

**"Insurance Proceeds"** means all proceeds from Insurances paid or payable to the Concessionaire or the Funders (or that should have been payable to the Concessionaire or the Funders except in the event of a failure of the Concessionaire to take out or maintain such Insurance in accordance with the terms of this Concession Agreement).

**"New Tender Costs"** means the reasonable and proper costs incurred/to be incurred and/or reasonably expected to be incurred by the Contracting Authority in carrying out a new award procedure.

**"Outstanding Senior Debt"** means the sum of:

- (a) the total amount outstanding, if any, to the Funders under any Funding Documents and interest (including default interest); plus
- (b) any winding-up costs, prepayment charges, costs of terminating any hedging arrangements or similar charges or costs passed through by the Funders in accordance with the loan documents;

less:

- (c) all credit balances held on any bank accounts held by or on behalf of the Concessionaire on the termination date of the Concession Agreement which are available for application in or towards discharge of the amounts referred to in (a) and (b) above on the termination date of the Concession Agreement;
- (d) all amounts payable by the Funders or the hedging counterparty to the Concessionaire as a result of a repayment of amounts outstanding under the Funding Documents; and
- (e) without double counting, all other amount received by the Funders on or after the Termination Date and before the date on which compensation is payable by the Contracting Authority to the Concessionaire as a result of enforcing any other rights that they may have.

**"Redundancy Payments"** means the payment of all wages earned, accrued unused vacation time and any other payments required by Applicable Law.

**"Transfer Costs"** means any stamp duties, transfer taxes and registration fees payable by the Concessionaire as a result of the transfer of the Airports to the Contracting Authority.

## **1. CONTRACTING AUTHORITY TERMINATION**

### **1.1 Concessionaire Default**

**1.1.1** If the Contracting Authority terminates this Concession Agreement in the event of a Concessionaire Event of Default, the Contracting Authority shall, to the extent permitted under Applicable Law, pay to the Concessionaire a compensation amount equal to the aggregate sum of:

- (a) [•] percent ([•]%) of the Outstanding Senior Debt;

less

- (b) the Concessionaire Default Deduction Amount;
- (c) the Deferred Equity Amounts; and
- (d) Insurance Proceeds (excluding proceeds of personal injury, property damage or other third party liability insurance payable to or for the account of a third party).

**1.1.2** The Compensation Payment Date for the Termination Payment referred to in Clause 1.1 above shall be a date twelve (12) months after the Termination Date (or earlier if the Contracting Authority so chooses).

**1.1.3** Interest shall be payable on the unpaid Termination Payment from the Termination Date to the due date for payment, in accordance with the Default Interest Rate.

**1.2 Material Adverse Government Action or termination for public policy reasons**

**1.2.1** If the Contracting Authority terminates this Concession Agreement in the event of a Material Adverse Government Action or for public policy reasons, the Contracting Authority shall, to the extent permitted under Applicable Law, pay the Concessionaire the amount equal to the aggregate sum of:

- (a) one hundred percent (100%) of the Outstanding Senior Debt, if any;
- (b) one hundred percent (100%) of the Adjusted Net Equity;
- (c) Redundancy Payments for employees of the Concessionaire that have been incurred as a direct result of the termination of this Concession Agreement; and
- (d) any Transfer Costs.

less

- (e) the Deferred Equity Amounts; and
- (f) Insurance Proceeds (excluding proceeds of personal injury, property damage or other third party liability insurance payable to or for the account of a third party).

**1.2.2** The Compensation Payment Date for the Termination Payment referred to in Clause 1.2.1 above shall be the later of:

- (a) a date three (3) months after the Termination Date; and
- (b) if the Contracting Authority notifies the Concessionaire prior to the date referred in Clause 1.2.2(a) that it elects to defer payment of the Termination Payment, the date (being not later than a date twelve (12) months after the Termination Date) that the Contracting Authority so specifies as the Compensation Payment Date by written notice to the Concessionaire.

**1.2.3** Interest shall be payable on the unpaid Termination Payment from the Termination Date to the due date for payment, in accordance with the Default Interest Rate.

**2. CONCESSIONAIRE TERMINATION**

**2.1** If the Concessionaire terminates this Concession Agreement in the event of a Contracting Authority Event of Default or a Material Adverse Government Action, the Contracting Authority shall, to the extent permitted under Applicable Law, pay the Concessionaire the amount equal to the aggregate sum of:

- (a) one hundred percent (100%) of Outstanding Senior Debt, if any;
- (b) one hundred percent (100%) of the Adjusted Net Equity;

(c) Redundancy Payments for employees of the Concessionaire that have been incurred as a direct result of the termination of this Concession Agreement; and

(d) any Transfer Costs

less

(e) the Deferred Equity Amounts; and

(f) Insurance Proceeds (excluding proceeds of personal injury, property damage or other third party liability insurance payable to or for the account of a third party).

**2.2** The Compensation Payment Date for the Termination Payment referred to in Clause 2.1 above shall be the later of:

(a) a date three (3) months after the Termination Date; and

(b) if the Contracting Authority notifies the Concessionaire prior to the date referred in Clause (a) that it elects to defer payment of the Termination Payment, the date (being not later than a date twelve (12) months after the Termination Date) that the Contracting Authority so specifies as the Compensation Payment Date by written notice to the Concessionaire.

**2.3** Interest shall be payable on the unpaid Termination Payment from the Termination Date to the due date for payment, in accordance with the Default Interest Rate.

### **3. TERMINATION FOR FORCE MAJEURE EVENT**

**3.1** If this Concession Agreement is terminated by any Party as a result of a Force Majeure Event, the Contracting Authority shall pay the Concessionaire the amount equal to the aggregate of:

(a) one hundred percent (100%) of Outstanding Senior Debt, if any;

(b) [the Initial Equity less the sum of all Distributions to Shareholders from the Commencement Date to and including the Termination Date]; and

(c) Redundancy Payments for employees of the Concessionaire that have been incurred as a direct result of the termination of this Concession Agreement;

less

(d) Insurance Proceeds (excluding proceeds of personal injury, property damage or other third party liability insurance payable to or for the account of a third party).

**3.2** The Compensation Payment Date for the Termination Payment referred to in Clause 3.1 shall be a date twelve (12) months after the Termination Date, or earlier if the Contracting Authority so chooses.

**3.3** Interest shall be payable on the unpaid Termination Payment from the Termination Date to the due date for payment, in accordance with the Default Interest Rate.

### **4. TAX GROSS-UP PROVISIONS**



- 4.1** If any Termination Payment payable by the Contracting Authority to the Concessionaire in accordance with Clauses 1, 2 and 3 of this Schedule 10 is subject to Tax payable by the Concessionaire to a Government Entity in Montenegro, then the Contracting Authority shall, subject to paragraph 3, be jointly and severally liable and shall pay to the Concessionaire such additional amount as will put the Concessionaire in the same after Tax position as it would have been had the Termination Payment not been subject to Tax, such Tax liability to be determined for this purpose in accordance with Clause 4.2.
- 4.2** For the purpose of determining the additional amount referred to in paragraph 4.1 above, the liability of the Concessionaire for Tax in Montenegro with respect to a Termination Payment for the purpose of Clause 4.1 shall be deemed to be reduced to take full account of any relief, allowance, deduction, setting-off or credit in respect of Tax which may be available to the Concessionaire or any Shareholder, or any Affiliate of the Concessionaire, to reduce the Tax. For the purpose of this Clause 4.2 a reduction in Tax shall be treated as including obtaining any refund of Tax paid or any credit in respect of any Tax payable.
- 4.3** If the Concessionaire wishes to claim the additional amount referred to in paragraph 4.1 above in accordance with paragraph 4.1, the Concessionaire must make that claim prior to the Compensation Payment Date. The Contracting Authority may dispute any such claim, in which case (if not agreed between the Parties) the claim will be determined in accordance with Clause 50 (*Dispute Resolution Procedures*). The Contracting Authority shall be entitled to withhold from payment to the Concessionaire any additional amounts agreed or determined to be payable by the Contracting Authority pursuant to paragraph 4.1 and pay those amounts directly to the Government Entity upon the date the relevant Tax becomes due and payable by the Concessionaire, in which case such payment shall discharge any liability to the Concessionaire in respect thereof.

**5. CLAWBACK AFTER TERMINATION DATE**

Any amounts paid by the Funders to the Concessionaire after the date on which the Contracting Authority pays termination compensation to the Concessionaire in accordance with this Schedule 10 as a result of repayment of the amounts outstanding under the Funding Documents shall be repaid by the Concessionaire to the Contracting Authority within thirty (30) days from the date on which it is paid to the Concessionaire.

## **SCHEDULE 11. Airport Sites Plan**

***[Note to bidders: please refer to the plan provided in the data room]***

## **SCHEDULE 12. Works and Technical Specifications**

***[Note: to be completed at a later stage]***

### **SCHEDULE 13. Performance Criteria**

***[Note: to be completed at a later stage]***

## **SCHEDULE 14. Maintenance Programme**

### **1. Introduction**

This Schedule contains the guidelines for maintenance tasks during the entire Concession Period. They are defined in a set of standards which the Concessionaire must comply with.

The maintenance tasks during the Concession Period are principally aimed at guaranteeing that the Airports, the Airport Services and the airport assistance services provided by the Concessionaire maintain the quality levels required for airport operations.

[•]

### **SCHEDULE 15. List of Consents**

The list of Consents hereunder is a non-exhaustive list as of the date of the Execution Date and the Contracting Authority shall incur no liability with respect to the accuracy or completeness of this list.

- (i) Approval of the Aeronautical Revenues by the Ministry of Traffic and Maritime Affairs.

[•]

**SCHEDULE 16. Reserved Activities Assets, Facilities and Minimum Space Requirements**

*[Note to bidders: this schedule will be completed during the bid process]*

## **SCHEDULE 17. Independent Engineer / Expert / LFS Engineer /Environmental Consultant**

### **PART 1: INDEPENDENT ENGINEER**

For the purpose of this Schedule, words and terms beginning with a capital letter herein shall have the meaning ascribed to them below. Capitalized terms used and not defined herein shall have the meaning set out in the Concession Agreement.

**"Eligible Independent Engineers"** means firm that shall fulfill the following minimum qualification criteria:

- (a) experience of serving as independent engineer for a minimum of [•] airport infrastructure projects, each of which had a contract value that is more than [•]; and
- (b) experience of having performed design and construction supervision for the expansion of an international airport of similar size and scope as the Project;

This Part 1 of this **Schedule 17** sets out the appointment procedure and duties and responsibilities of the Independent Engineer.

#### **1. GENERAL**

- 1.1 The independent engineer shall be a consortium composed of an international engineering consulting firm, supported by a domestic engineering consulting company, each specializing in the business of design, engineering, construction and operation of airports and able to deploy suitably qualified and experienced personnel (the **"Independent Engineer"**).
- 1.2 The Independent Engineer shall be appointed in accordance with this Part 1 of this **Schedule 17** to carry out the duties and responsibilities set out in this Part 1 of this **Schedule 17** as well as any other duties and responsibilities that are set out in or that can reasonably be inferred from the Concession Agreement.
- 1.3 The Independent Engineer shall liaise with the Contracting Authority and the Concessionaire on a weekly basis.
- 1.4 The Independent Engineer shall always act fairly, independently and expeditiously in the overall interest of the Project.
- 1.5 The Independent Engineer shall always fulfill its duties and responsibilities in accordance with Applicable Law, Good Industry Practice and the Consents.

#### **2. APPOINTMENT OF INDEPENDENT ENGINEER**

- 2.1 The Contracting Authority and the Concessionaire shall jointly appoint the Independent Engineer as soon as possible in accordance with the provisions of this Section 2 of Part 1 of this **Schedule 17**.
- 2.2 The Independent Engineer shall be appointed further to a tender process to be implemented as follows:
  - 2.2.1 no later than 30 (thirty) days after the Execution Date, the Concessionaire shall give notice of such tender process to the Eligible Independent Engineers (the **"Tender Notice"**). Such Tender Notice must:



- (i) include a draft agreement for the appointment of the Independent Engineer to be agreed between the Concessionaire and the Contracting Authority (the "**IE Contract**");
  - (ii) include such information about the Concessionaire, the Project and the duties and responsibilities of the Independent Engineer under this Concession Agreement as is reasonably necessary in the opinion of the Concessionaire to enable the Eligible Independent Engineers to provide fee quotes; and
  - (iii) invite the Eligible Independent Engineers to, within thirty (30) Days:
    - a. submit a fee quote for their services as Independent Engineer;
    - b. confirm their acceptance of the terms and conditions of the IE Contract;
    - c. demonstrate that they comply with the criteria set out under paragraph 1.1;
- 2.2.2 for the purposes of evaluation of the Eligible Independent Engineers' bids and the final selection of the winning bidders, an evaluation committee shall be established with an equal number of representatives from the Contracting Authority and the Concessionaire. Each Party shall bear and pay its own costs of conducting the procurement process for the selection and appointment of the Independent Engineer and the Contracting Authority shall bear and pay all and any administrative costs resulting from the application of the procurement methods available under the Applicable Law.
- 2.2.3 Once the thirty (30) day time period prescribed by paragraph 2.2.1 (iii) has elapsed, the Concessionaire shall, as soon as reasonably practicable, inform the Eligible Independent Engineer who has offered the lowest fee quote that complies with Good Industry Practice that they have been successful and shall seek, in good faith, to agree a contract with such Eligible Independent Engineers substantially in the form of the IE Contract (with such reasonable modifications as are required by the successful Eligible Independent Engineer).
- 2.3 In case the Contracting Authority and the Concessionaire fail to agree on the appointment of the Independent Engineer on the Scheduled CP Satisfaction Date, the Parties the Independent Engineer shall be nominated by or on behalf of the Institute of Civil Engineers in England and Wales.
- 2.4 The Independent Engineer will be appointed and shall be responsible for fulfilling its duties and responsibilities between the day of its appointment and the Works Completion Date, unless its appointment is terminated earlier.
- 2.5 The Parties will agree on a mechanism for the review of the performance of the Independent Engineer within ninety (90) days of its appointment. If, based on such agreed review mechanism, the Parties agree that the Independent Engineer has failed to perform its duties and responsibilities in accordance with this Schedule and the terms of its contract, then any Party may request the termination of the Independent Engineer, by giving at least thirty (30) days' notice. During such thirty (30) day period, the Contracting Authority and the Concessionaire shall follow the procedure agreed under this paragraph 2 of Part 1 of this **Schedule 17** to appoint a replacement Independent Engineer.
- 2.6 In the event that the Independent Engineer resigns from its duties under the Concession Agreement, the Contracting Authority and the Concessionaire shall follow the procedure agreed this paragraph 2 of Part 1 of t his **Schedule 17** to appoint a replacement Independent Engineer.

### **3. DUTIES AND RESPONSIBILITIES OF THE INDEPENDENT ENGINEER**

#### **3.1 General**

The Independent Engineer shall in relation to the Works:

- (i) visit the Airport Sites on a regular basis, and in any case not less frequently than twice per calendar month;
- (ii) review and verify all Reviewed Items within the time periods set out in Clause 26.2 of the Concession Agreement to confirm compliance with the Technical Specifications, Applicable Law, Consents and Good Industry Practice;
- (iii) from its Airport Sites visits and review of the Construction Contractor monthly construction progress, report to the Parties on technical and financial aspects, including progress on monthly basis during the Construction Period; and
- (iv) if required, assist the Parties in reaching an amicable settlement of any dispute during the Construction Period.

#### **3.2 Design**

In respect of the Reviewed Items prepared by the Concessionaire for the Works, the Independent Engineer will be responsible for:

- (i) reviewing and verifying the Works Programme and the Reviewed Items prepared by the Concessionaire with respect to the requirements for Project implementation as specified in the Concession Agreement;
- (ii) reviewing the adequacy of engineering investigations including geophysical investigations or testing, grubbing, leveling or excavation at the Airport Sites, reporting monthly on findings in this respect;
- (iii) reviewing and commenting on the proposed quality assurance and quality control procedures being adopted by the Concessionaire for the Works being undertaken on the Airport Sites and the application of the same;
- (iv) reviewing and commenting on the health and safety measures proposed for the construction of the Airports and their compliance with the health and safety standards expected of a prudent and diligence professional carrying out such works.

#### **3.3 Construction**

In respect of the construction of the Airports, the Independent Engineer will be responsible for:

- (i) monitoring the Works (at least twice monthly) and reviewing and verifying (by audit) the materials used and workmanship of the Works during the Construction Period;
- (ii) verifying the quality assurance and quality control measures to be adopted by the Concessionaire during the Works. The quality testing program shall be carried out by an independent laboratory and results forwarded to the Independent Engineer for review and comments.

- (i) reviewing and verifying the material test results, mix designs and requesting special tests of materials and/or completed Works and/or requesting removal and substitution of substandard materials and/or Works as required;
- (ii) through audit, confirming that the construction, procurement and installation and commissioning work is carried out in accordance with the Technical Specifications, Applicable Law, Consents and Good Industry Practice;
- (iii) monitoring the progress with respect to the Works Programme and reporting to the Contracting Authority on a monthly basis or earlier as considered necessary by the Independent Engineer;
- (iv) identifying potential or actual delays in completion and recommending to the Contracting Authority remedial measures to expedite the progress of the Works and assessing the amount of delay contractual penalties (if any) payable by the Concessionaire to the Contracting Authority;
- (v) determining and recommending changes to the Works Programme and Scheduled Works Completion Date, if required;
- (vi) by audit, reviewing and verifying "as built" drawings with respect to the Works prepared by the Concessionaire;
- (vii) familiarizing itself with, all Concession Documents, notably contracts entered into by the Concessionaire with the Construction Contractors, if any, and the relevant detailed technical specifications;
- (viii) verifying (through review of the Constructions formal report) the occurrence and effect of any Force Majeure Event caused by technical issues, if any;
- (ix) issuing the Works Completion Certificate, in accordance with the provisions of the Concession Agreement;
- (x) submitting a copy of all documents received from the Concessionaire for review and approval along with the Independent Engineer's review note;
- (xi) submitting other reports/documents as required by the Concession Agreement; and
- (xii) if required, mediating and assisting the Parties in amicably settling disputes arising during the Construction Period.

## PART 2: TECHNICAL EXPERT

The appointment and duties of the Technical Expert and the procedure governing the expert determination are set out below.

### 1. APPOINTMENT

- 1.1 During the Construction Period, the Parties shall appoint the Independent Engineer as the Technical Expert for the purpose of the Concession Agreement.
- 1.2 For the purpose of any Dispute, other than Dispute related to the Works, to be submitted to the Technical Expert under Clause 50 (*Dispute Resolution Procedures*), the Parties shall select a Technical Expert from the list of engineering consultants set forth below, in case of a Dispute, not later than the seventh business day following the expiration of the thirty (30)-day period stipulated in Clause 50.2.1, failing which, or if the Technical Expert is unable or unwilling to meet the requirements set out herein, the Technical Expert shall be appointed by the ICC International Centre for Expertise (the "**ICC Centre**").

- 1.3 The list of Technical Experts as of the Commencement Date is as follows:

*[List of experts to be proposed]*

- 1.4 The Technical Expert shall always fulfill its duties and responsibilities in accordance with Applicable Law and Good Industry Practice.

### 2. PROCEDURE FOR DISPUTE RESOLUTION

- 2.1 Within fifteen (15) days of the selection or appointment of the Technical Expert (as the case may be), each Party shall submit to the Technical Expert a notice (each referred to as a "**Brief**") setting forth in detail such Party's position in respect of the issues in Dispute. Such Brief shall include supporting documentation, if appropriate.
- 2.2 The Technical Expert shall complete all proceedings and issue his determination with reasons with regard to the Dispute as promptly as reasonably possible, but in any event within fifteen (15) days of the date on which both Briefs are submitted unless the Technical Expert reasonably determines that additional time is required in order to give adequate consideration to the issues raised and the Parties agree such additional time.
- 2.3 In resolving a Dispute, the Technical Expert shall consider all facts and circumstances he deems reasonable given the nature of the Dispute and shall proceed in any manner he or she thinks fit.
- 2.4 If the Technical Expert fails to notify the Parties of his determination with respect to any Dispute referred to him within the time-limit specified in paragraph 2.1, or if either Party is not satisfied with the decision of the Technical Expert, any Party may give notice within thirty (30) days after expiration of such time-limit that the Dispute is to be referred to arbitration pursuant to Clause 50.3 (*Arbitration*) whereupon the Technical Expert shall give no further consideration to the Dispute and shall not issue a determination.

## **PART 3: ENVIRONMENTAL CONSULTANT**

This Part 3 of this **Schedule 17** sets out the appointment procedure and duties and responsibilities of the Environmental Consultant.

### **1. GENERAL**

- 1.1 The Environmental Consultant shall be an international engineering consulting firm specializing in providing services such as the services set out in Paragraph 3 below, in the context of the construction and operation of airports, and shall be able to deploy suitably qualified and experienced personnel.
- 1.2 The Environmental Consultant shall be appointed for the Concession Period in accordance with Paragraph 2 of this Part 3 of this **Schedule 17** to carry out the duties and responsibilities set out in this Part 3 of this **Schedule 17** as well as any other duties and responsibilities that are set out in or that can reasonably be inferred from the Concession Agreement.

### **2. APPOINTMENT OF THE ENVIRONMENTAL CONSULTANT**

- 2.1 Not later than thirty (30) days after the Execution Date, the Concessionaire shall provide the Contracting Authority with a list of not less than five (5) entities complying with the conditions set out in paragraph 1.1 above.
- 2.2 Within thirty (30) days from receiving the list set out in paragraph 2.1 above, the Contracting Authority shall notify the Concessionaire if it objects to the appointment of any of the proposed entities as the Environmental Consultant. Failure by the Contracting Authority to notify any objection within that thirty (30) days period shall be construed as an approval of each entity set out in the proposed list.
- 2.3 The Concessionaire shall hire any entity in relation to which the Contracting Authority has not objected, as the Environmental Consultant, not later than ninety (90) days after the Execution Date, and ensure that the terms of engagement of the Environmental Consultant include the duties and responsibilities set out in Paragraph 3 below.

### **3. DUTIES AND RESPONSIBILITIES OF THE ENVIRONMENTAL CONSULTANT**

- 3.1 During the Concession Period, the Environmental Consultant have the following duties:
  - (c) before the beginning of the Works, review and update the environmental site assessment undertaken by the Contracting Authority to identify the existence of any Pre-Existing Environmental Condition;
  - (a) before the beginning of the Works, the Enhancement Works (if applicable) and if relevant any other works to be developed by the Concessionaire in accordance with the Operational and Strategic Plan and prior to their submission to the relevant Contracting Authority and the Government Entity for environmental licensing, the Environmental Consultant shall review and evaluate the Environmental and Social Impact Assessment and any modifications and integration to the ESMS and the necessary to account for the activities to be undertaken during Works, the Enhancement Works and any other works to be developed by the Concessionaire in accordance with the Operational and Strategic Plans (as applicable), and shall verify

that they are in compliance with Applicable Law, IFC Performance Standards and the principles set out in the EHS Guidelines;

- (b) during the time when Works, Enhancement Works and any other works to be developed by the Concessionaire in accordance with the Operational and Strategic Plans are being undertaken by the Concessionaire (as applicable), the Environmental Consultant shall, on a semi-annual basis:
  - (i) review all monitoring and reporting undertaken by the Concessionaire, including the Environmental and Social Sustainability Report, and its tenants and licensees as applicable, with respect to environmental and social aspects of the Airport Business, including monitoring and reporting the implementation of the mitigation measures identified in the ESMMP and in the Environmental and Social Impact Assessment;
  - (ii) undertake independent verification field monitoring, including of the areas occupied by its tenants and licensees;
  - (iii) review grievances log; and
  - (iv) meet with relevant affected stakeholders representatives,

in each case to verify compliance with Applicable Law and IFC Performance standards and evaluate whether applicable provisions of the EHS Guidelines are met.

- (c) before the beginning of the Handback Works, review the Environmental Site Assessment prepared by the Concessionaire;
- (d) monitoring the Remediation Works, if any, (at least twice monthly) to verify that they are in compliance with Applicable Law, IFC Performance Standards and the principles set out in the EHS Guidelines; and
- (e) on a yearly basis after the Works Completion Date, the Environmental Consultant shall:
  - (i) review all monitoring and reporting undertaken by the Concessionaire, and its tenants and licensees as applicable, with respect to environmental and social aspects;
  - (ii) undertake independent verification field monitoring as needed, including of the areas occupied by its tenants and licensees; and
  - (iii) review grievances log and minutes of meeting with affected stakeholders,

in each case to verify compliance with Applicable Law and IFC Performance standards and evaluate whether applicable provisions of the EHS Guidelines are met.

**3.2** At the end of each review, the Environmental Consultant shall prepare a report presenting all areas of compliance and non-compliance with the environmental requirements of this Concession Agreement and, where applicable, indicate corrective measures to be undertaken by the Concessionaire and a timeline for their completion.

**3.3** The Environmental Consultant shall promptly provide a copy of the report to the Parties, and, in case the report indicates the need of corrective measures, the Concessionaire shall

promptly implement such correction measures and report back to the Contracting Authority and the Environmental Consultant when the corrective measures are completed. The completion of such measures shall then be verified by the Environmental Consultant.

## **SCHEDULE 18. Testing Procedure**

- 1.1 The complete Works, including materials, design, components, manufacture, assembly, testing, service, conditions, performance and operating and personal safety shall comply with the terms of this Concession Agreement, as well as with the latest version of the standards and regulation issued by the regulatory bodies indicated below (and any other regulatory bodies as may be required in accordance with Good Industry Practice):
  - (i) ASTM – American Society for Testing and Materials;
  - (ii) ISO – International Organisation for Standardisation; and
  - (iii) AWS – American Welding Society.
- 1.2 The Works performed by the Concessionaire shall always comply with these standards and Applicable Law, provided that, in the event that it is impossible for the Concessionaire to comply simultaneously with those standards and Applicable Law, Applicable Law shall prevail.
- 1.3 The inspection and testing procedure will be designed by the Concessionaire and the Independent Engineer to demonstrate the quality of the materials and the labor employed and to check that they are in strict accordance with the terms of the Concession Agreement (including the specifications and standards listed in this schedule). A detailed plan of verifications, testing and adjustments for all stages will be presented for analysis and approval as part of the Reviewed Items in accordance with the Concession Agreement.
- 1.4 During the Works, inspection and test reports shall be issued by the Concessionaire as part of the Works Monthly Reports setting out (among others) the identification of the test, the implementation procedure, limits of acceptance according to the established criteria, the results and the date they were performed.



## **SCHEDULE 19. MNE Employees**

***[Note to bidders: please refer to the list provided in the data room]***

## **SCHEDULE 20. Key Principles of the Funders' Direct Agreement**

The Funders' Direct Agreement shall be drafted on terms that are customarily provided in such agreements in use in the international project finance market and shall include, among others, the following provisions in terms satisfactory to the Funders:

### **1. Consent to Security**

The Contracting Authority acknowledge and consent to the security to be listed in the Funders' Direct Agreement over the Concession Agreement granted to Funders.

### **2. Cure rights**

A suspension period of sixty (60) days starting on the date on which the Funders receive a default notice (the "**Default Notice**") from the Contracting Authority notifying that a default has occurred under the Concession Agreement (the "**Suspension Period**") shall apply during which the Funders and the Concessionaire may cure any such default.

### **3. Step in rights**

During a Suspension Period, the Funders may appoint an additional obligor to step-in and act with the Concessionaire to cure the default as applicable and, if applicable, step out again. The identity of the additional obligor will be subject to criteria to be agreed. Where step-in rights have been exercised, an extended cure period of one hundred and twenty (120) days shall apply starting on the date on which the Funders receive a Default Notice (and other than in relation to default for outstanding amounts due and payable to the Contracting Authority at the appointment date which shall be paid within thirty (30) days after such date).

### **4. Substitution rights**

During a Suspension Period, the Funders may appoint a substitute concessionaire, possessing or having available to it under contract the technical and financial capacity required to build and/or operate (as applicable) the Project, and subject to Contracting Authority's consent (acting in its reasonable discretion), who may assume (by novation or otherwise) the rights and obligations of the Concessionaire under the Concession Agreement. Where substitution rights have been exercised, an extended cure period of one hundred and twenty (120) days starting on the date on which the Funders receive a Default Notice (and other than in relation to default for outstanding amounts due and payable to the Contracting Authority at the Transfer Date which shall be paid within thirty (30) days after such date).

### **5. Information notices**

The Funders shall be entitled to (i) certain information relating to be detailed in the Funders' Direct Agreement and (ii) copies of various notices given to the Concessionaire and details of related unperformed liabilities, in particular, the right to be informed of any default by the Concessionaire.

**6. Payments and other rights**

The Contracting Authority agrees to make payments owing to the Concessionaire to specified accounts or, in the event of a default under the Funding Documents, in the manner specified by the Funders.

**7. Security and related matters**

The Contracting Authority undertakes not to terminate the Concession Agreement or the Concessionaire's rights thereunder by reason of Funders' enforcement of security over such documents and rights.

**8. Governing Law and Dispute Resolution**

The Funders' Direct Agreement shall be governed by Montenegrin Law and provide for international arbitration as dispute resolution forum.

**9. Waiver of immunity**

The Contracting Authority shall waive any present or future immunity or sovereign right in connection with the Funders' Direct Agreement to the fullest extent permitted by Applicable Law.

**10. Beneficiaries, term and miscellaneous**

The Funders' Direct Agreement shall contain miscellaneous customary provisions satisfactory to the Funders, including in relation to the beneficiaries, language, notices, and liability of, or in connection with, the Funders' Direct Agreement.

## **SCHEDULE 21. Aeronautical Revenues**

***[Note: to be completed at a later stage]***

## **SCHEDULE 22. Scope of Prefeasibility Studies**

***[Note: to be completed]***