

No. K-14011/54/2014-UT-I
Government of India
Ministry of Urban Development
(Urban Transport Wing)

Nirman Bhawan, New Delhi
Dated the 17th April, 2014

To,

21

The Chief Secretaries of all the States/Union Territories.

ADVISORY

Subject: Model Bus Operator Agreement for operation and Maintenance of urban Bus Service through Private Sector Participation on Gross Cost Contract (GCC) -regarding

Sir/Madam.

As you are aware, rapid urbanization in our country is constantly creating unforeseen demands for infrastructure provision, especially for transportation systems. The provision of these basic amenities remains critical for true realisation of the benefits of the upcoming urban economy. Provision of affordable, easy and comfortable public transport systems in this regard is central to making the socio-economic opportunities equitably accessible to all sections of society.

2. In order to provide impetus to safe & affordable mobility in urban areas, Ministry of Urban Development (MoUD), Government of India provided financial assistance to cities for purchase of buses for their urban transport systems under the Jawaharlal Nehru National Urban Renewal Mission (JnNURM) as part of the 2nd economic stimulus package in 2009. More than 14000 buses have so far been procured by the mission cities under this funding.

3. Looking at the response of the 2009 scheme, Govt. of India, in August, 2013 came out with a new scheme for funding of 10,000 buses covering all notified municipalities/Urban agglomerations. More than 121 cities/cluster of cities have been sanctioned buses as well as ancillary infrastructure under this scheme during 2013-14.

4. Based on the learning from earlier scheme, MoUD also took initiative to standardize the large scale of procurement process and build capacity of the cities by publishing "Urban Bus Specifications-II", "Model Detailed Project Report for availing of fund under JnNURM" and "Model Request for Proposal for Procurement of Buses".

5. In urban bus operations, a major challenge till date remains the operation & maintenance (O&M) in a sustainable manner. For sustainable O&M of the buses, involvement of private sector through Gross Cost Contract (GCC) has been envisaged under the Guidelines published in August, 2013. GCC has also been recommended as the most appropriate model for urban bus operation, by the Working Group on Urban Transport for 12th Five Year Plan.

Contd...2/-


6. Hence, MoUD has prepared a "Model Bus Operators Agreement (MBOA) on GCC" for O&M of the buses procured under JnNURM through private sector participation. This MBOA has been drafted after extensive consultations with various stakeholders, national as well as international and efforts have been made towards balancing risks between public and private entities for an efficient city bus system. A copy of the "Model Bus Operators Agreement (MBOA) on GCC" has also been uploaded on the Ministry's website <http://moud.gov.in> under the Urban Transport Division.

7. I am also to inform you that Ministry has also started working on preparing guidelines for the other modes of contracting for city bus private operation under JnNURM under the World Bank-GEF-UNDP assisted Sustainable Urban Transport Project (SUTP). Thereafter, the cities will be in a comfortable position to choose the model best suited to their cities.

8. It is presumed that the MBOA would be a useful reference to those cities which choose to adopt the GCC model. Hence, it is advised that the States/UTs/ULBs may take advantage of this document while finalizing the Bus Operator Agreement for operation and maintenance of urban bus service through private sector participation. The cities may suitably modify the document, if required, to bring it in conformity with their local procurement rules or acts.

Encl: As above,

Yours faithfully,


21/4/2014
(C. K. Khaitan)

Joint Secretary (Urban Transport)

Tel: 011- 23061558

Copy to:

1. The Principal Secretary (Urban Development) of all the States / UTs.
2. The Principal Secretary (Transport) of all the States / UTs.
3. JS, MoRTH.
4. Adviser, Planning Commission.
5. MD, Urban Mass Transit Company Ltd, Nehru Place, New Delhi.
6. DG, Institute of Urban Transport, Anand Vihar, Delhi.

Copy also to:

1. PSO to Secy (UD).
2. PS to JS (UT).
3. PS to OSD (UT) & EO. JS.
4. PS to Director (MRTS-I)/PS to Director (UT-I)/PS to Director(MRTS-II)
5. All USs in UT Wing/SO (UT-IV)
6. Director (NIC), MoUD.



शहरी विकास मंत्रालय

**Ministry of Urban
Development**

**Model Bus Operator Agreement
For
Operation and Maintenance of Urban Bus Service through
Private sector participation on Gross Cost Contract (GCC)**

[<http://moud.gov.in>]

April, 2014

डॉ. सुधीर कृष्ण
Dr. Sudhir Krishna



सचिव, भारत सरकार
**Secretary to the
Government of India**

FOREWORD

Urban India contributes more than 60% to the GDP of India and this contribution is estimated to grow to 70% by 2030. For the continued growth of Indian cities, it is imperative to address the urban mobility issues. Provision of urban services requires huge investments. According to recent studies of the total projected investment for urban services, nearly 50% will be required for mass transit services and urban roads alone.

The changed the face of Ministry of Urban Development, Government of India had in 2009 announced a scheme for funding of buses under JnNURM in order to boost the public transport share in mission cities. As an integral part of this scheme, cities were asked to implement various reforms so that operation of these buses could be sustained through enhanced institutional and financial capacities in the cities. The scheme was a major success and more than 14000 buses were sanctioned to the mission cities. In terms of scale and coverage, the scheme was one of the largest reform based federal funding schemes globally for promoting urban transport. The scheme bus based public transport in India.

To take the momentum forward and consolidate the gains of the 2009 scheme, MOUD, in August 2013, initiated another scheme to fund an additional 10,000 buses under JnNURM. This time the coverage of the scheme was increased by making all notified urban areas in the country eligible for funding under the scheme. However, to make the 2013 scheme even more effective and successful, the MoUD based on feedback received from various stakeholders took several initiatives to prepare documents to complement the scheme.

Some of these documents are:

1. Revised Urban Bus Specifications-II
2. Model DPR for seeking financial assistance for procurement of buses
3. Model RFP for procurement of buses

शहरी विकास मंत्रालय
निर्माण भवन, नई
दिल्ली-110008

**Ministry of Urban
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New Delhi - 110008**

Model Bus Operator Agreement on Gross Cost Contract

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In continuation of the efforts of the MoUD to make available to the cities model documents, the MoUD through Urban Mass Transit Company (UMTC) has now drafted a Model Operator Agreement for Operations & Maintenance of Buses in Urban Areas with Private Sector Participation on a Gross Cost Contract. The Agreement has been prepared specifically for O&M of buses procured under JnNURM and is in consonance with the scheme of 2013 that recommends Gross Cost Contract as the preferred model for O&M of bus services. The document has been prepared in consultation with all the key stakeholders i.e. public transit authorities, private transit operators, urban transport experts, bus manufacturers etc.

The need for structured and formal contracts for O&M of bus services is globally accepted. Across the world, bus services are operated and maintained by private companies based on transparent contracts with clearly defined service standards, payment terms and sharing of risks. There is a growing recognition that the role of the public transit authority should be limited to regulatory and contract management functions and outsourcing of the O&M of the bus services to private players can contribute to enhancement of O&M capabilities and efficiencies.

It has been observed that till recently, O&M of bus services in India had not attracted interest of the major private sector players. It is hoped that with the availability of model operator agreement the corporate sector will take greater interest in participating in O&M of bus services.

I hope that the Model Operator Agreement will give impetus to urban bus services and more and more cities will opt for private sector participation in O&M of urban bus services.

April, 2014

(Sudhir Krishna)

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सी. के. खेतान

C.K. Khaitan

Joint Secretary, Urban Transport
MoUD



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Ministry of Urban
Development
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PREFACE

In 2009, the Ministry of Urban Development, Government of India (MoUD) funded around 14000 ITS enabled modern buses across 61 cities in India; thereby changing the landscape of bus based public transport in the country.

Looking at the unprecedented response of the 2009 scheme, Union Finance Minister, in the budget speech of 2013-14 announced sanctioning of further 10,000 buses with special focus on Hilly States under JnNURM. MoUD again took the initiative to standardize this large-scale procurement of buses and has already published recommendatory 'Urban Bus Specifications-II' and 'Model Request for Proposal for Procurement of Buses'.

In continuation of this effort, the MoUD has now prepared this 'Model Bus Operator Agreement (MOA)' for Operation and Maintenance of Buses' procured under JnNURM-II for Urban Bus Services. It is envisaged that this MOA shall aid in operation and maintenance of buses under a balanced PPP arrangement wherein both private and public entities work to their strengths for enabling efficient city bus service. The key features of the MOA are:

Buses to be operated and maintained by operator

- Operators to get paid based on Km charge, escalated periodically through fuel and inflation indexation
- Damages & penalties payable in terms of km for various deficiencies in O&M of buses and staff behavioural aspects
- Provision of Depot with infrastructure by Authority as condition precedent
- Option for transfer of buses to operator at the end of contract period
- Grant of advertisement rights on buses to operator
- Monitoring of the Operator performance through Intelligent Transport Systems
- Provision of Escrow account to ensure timely payment

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Before 2009 a large number of cities in India did not have an organized bus service. One of the major constraints was constraint in funding of the rolling stock and the physical infrastructure such as depots terminals and control rooms. This has been over come through the financial assistance provided under JnNURM. However, the challenge of operating and maintaining the buses remains. The scheme stipulates as a reform condition that the cities set up Special Purpose Vehicles (SPVs) for managing the urban bus services. It is hoped that the SPVs will focus on regulatory and management functions and tap the expertise of the private sector through for efficient operation and maintenance of the bus services. Outsourcing of the bus service through structured contracts is a globally accepted practice. The role of the public authority is limited to regulating the services and managing the contracts. To make the O&M of bus services attractive to the private sector, it is necessary to evolve different contracting models on a Public Private Partnership (PPP) framework. Essentially, PPP in O&M of urban bus services involve the Public Authority contracting the Private Operator to operate and maintain the buses either through the (i) Gross Cost Contract (GCC) or the (ii) Net Cost Contract (NCC). The two contracting models are differentiated by who bears the major risks i.e. Cost and Revenue risks. Broadly speaking, in case of GCC contracts the cost risk is borne by the private operator and the revenue risk by the public authority whereas in case of NCC both the revenue and cost risk is borne by the private operator. There are many variations of the GCC contracts that involve linking revenues to ridership and performance. Similarly, NCC contracts may involve payment of subsidy to the operator to mitigate revenue risk

Globally, both the GCC and NCC models are prevalent. The choice of the appropriate model is dependent on a large number of factors such as capacity of the public authority, capacity and strength of the private operators, the public transport profile of the city etc. On balance, for Indian cities, a GCC model is perhaps more appropriate. This is also a recommendation of Working Group on Urban Transport for 12th Five Year Plan. However, it is for the cities to choose a model best suited to them depending upon their capacities and risk appetite.

I, hope that the MOA would be useful reference to those cities which choose to adopt the GCC model. The cities may suitably modify the document, if required, to bring it in conformity with their local procurement rules or Acts.

This Model Operator Agreement has been prepared after extensive consultation with various stakeholders, such as State Governments, State Transport Undertakings, Municipal Corporations, Private Bus Operators etc. Substantial inputs were also received from various national and international experts, the World Bank, ITDP and Embarq to name a few.

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This Model Operator Agreement has been prepared after extensive consultation with various stakeholders, such as State Governments, State Transport Undertakings, Municipal Corporations, Private Bus Operators etc. Substantial inputs were also received from various national and international experts, the World Bank, ITDP and Embarq to name a few. The Draft Model Operator Agreement was discussed at round table on 4th December 2013 during the Urban Mobility Conference and subsequently at the national level workshop held at India Habitat Centre on 7th January, 2014.

I sincerely thank Urban Mass Transit Company (UMTC) for supporting MOUD in drafting of the Model Operator Agreement. I am also thankful to all stakeholders including officials from various states for giving their valuable input during the workshops. I am grateful for the guidance of Dr. Sudhir Krishna, Secretary, Ministry of Urban Development, Government of India for his constant support during this process of drafting this Model Operator Agreement.

April , 2014

(C.K. Khaitan)

Model Bus Operator Agreement on Gross Cost Contract

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MODEL BUS OPERATOR AGREEMENT

THE [STATE TRANSPORT AUTHORITY]/[AUTHORITY] / [Special Purpose Company for Operation of Urban Bus Services¹] []² and having its principal office at [_____],³ (hereinafter referred to as the “**Authority**”, which expression shall include its successors and permitted assigns);

AND

[XYZ LTD.], a company incorporated under the [Companies Act, 1956]/[Companies Act, 2013]⁴ acting through [_____] having its registered office at [_____]
(hereinafter referred to as the “**Operator**”, which expression shall include its successors and permitted assigns);⁵

The Authority and the Operator are hereinafter individually referred to as “Party” and collectively as “Parties”

WHEREAS

- A. The Authority [has the power/function] to ensure the provision of public bus transport services within [*the area under its jurisdiction*].
- B. In order to improve/augment the bus services being presently provided in the Urban Area (as defined in Clause 1.1 below), the Authority has notified a scheme,⁶vide []⁷ whereby the stage carriage services in the Urban Area will be undertaken by a private sector partner selected through a transparent competitive bidding process (“**Scheme**”). After evaluating the bids received in response to its

¹ **Drafting Note:** In the event this is an SPV then the description shall be modified accordingly.

² **Drafting Note:** The description of the relevant Authority to be inserted.

³ **Drafting Note:** Authority to specify the address of its principal office.

⁴ **Drafting Note:** It is advisable that the Operator be a SPV company incorporated under the Companies Act, 1956 in light of better reporting and regulatory requirements, as opposed to a partnership, or society, or an individual directly. The Companies Act, 2013 has been passed by the Indian Parliament. There are certain provisions of the Companies Act, 2013 that have been notified. Therefore, the RFP should provide that the Bidder/Operator shall be a company incorporated under the Companies Act, 1956 including any other statutory amendment or re-enactment or restatement thereof and the rules and/or regulations and/or other guidelines or notifications having the effect of law, made there under, and including the Companies Act, 2013 to the extent notified from time to time.

⁵ **Drafting Note:** The requirement of forming a mandatory SPV, shall be reflected as per the provisions of the RFP.

⁶ **Drafting Note:** In order to minimize the legal risks associated with operating city bus projects, it is recommended that the relevant authority notify a scheme under the Motor Vehicles Act, 1988 pursuant to which the agreement is entered into. This, of course, will depend upon the specific facts of the relevant project.

⁷ **Drafting Note:** Authority to insert details of notification of the Scheme.

Request for Proposal dated __/__/20__ (“RFP”), the Authority accepted the bid submitted by the Selected Bidder and communicated the acceptance of the Selected Bidder’s bid vide letter of award dated __/__/20__ (“**Letter of Award**”). As required by the RFP,⁸ the Selected Bidder has incorporated the Operator as a special purpose company that will implement the Project.⁹

- C. The Authority and the Operator are hereby entering into this Operator Agreement to implement the Project of operation and maintenance of the Bus Services Area (as defined in Clause 1.1 below).

NOW, THEREFORE, the Parties hereto hereby agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1. In the Agreement, unless the context otherwise requires, the following terms and expressions, whenever used, shall have the following meanings hereinafter respectively ascribed to them:

1.1.1 “**Aggregate Fines**” shall have the meaning as ascribed thereto in Clause 24.4 of the Agreement.

1.1.2 “**Agreement**” means this agreement executed between the Authority and the Operator together with its annexures and any further correspondence, notices and conditions, in the RFP or otherwise, that the Parties signatory to this Agreement have expressly agreed to include as part of this Agreement.

1.1.3 “**Half Yearly Assured Bus Km**” shall have the meaning as ascribed thereto in Clause 16.5 (d) of the Agreement.

1.1.4 “**Half Yearly Assured Payment Amount**” shall have the meaning as ascribed thereto in Clause 16.5 (e) of the Agreement.

1.1.5 “**Applicable Clearances**” means all clearances, permits, no-objection certifications, exemptions, authorisations, consents and approvals required to be obtained or maintained under Applicable Law, in connection with the Project, during the subsistence of the

⁸ **Drafting Note:** The provisions of the RFP shall specify the requirement of the formation of the SPV for a bidder, which is either: (a) single bidder; and (b) a consortium.

⁹ **Drafting Note:** The Recitals will have to reflect the specific background to the relevant project.

this Agreement.

- 1.1.6 “**Applicable Law**” means all the laws, acts, ordinances, rules, regulations, notifications, guidelines or bye-laws, in force and effect, as of the date hereof and which may be promulgated or brought into force and effect hereinafter in India, including judgments, decrees, injunctions, writs or orders of any court of record, as may be in force and effect during the subsistence of this Agreement, and applicable to the Project.
- 1.1.7 “**Assured Fleet Availability**” shall have the meaning as ascribed thereto in Clause 5.1(j) of the Agreement.
- 1.1.8 “**Authority**” means the [Name of the Implementing Agency] or its authorized representatives.
- 1.1.9 “**Authority Clearances**” means the clearances, which are required to be procured by the Authority in accordance with Applicable Law, and which have been provided in detail in **Annexure 7** to this Agreement.
- 1.1.10 “**Authority’s Event of Default**” shall have the meaning as ascribed thereto in the Clause 27.2 of the Agreement.
- 1.1.11 “**Bus Depot/ Maintenance Depot**” means the space, which shall have certain minimum facilities commensurate with the requirement for parking and maintaining the Buses, subject to the execution of the Depot License Agreement.
- 1.1.12 “**Bus Kilometre**” means a kilometre travelled by a Contracted Bus as per this Agreement or as directed by the Authority.
- 1.1.13 “**Base Kilometre Charge**” or “**Kilometre Charge**” means the rate of the Kilometre Charge payable by the Authority to the Operator for travel by a Bus up to the Half Yearly Assured Bus Kilometres.¹⁰
- 1.1.14 “**Bus Permit**” means the permit for operating the Contracted Buses as required under the Motor Vehicles Act, 1988 or any other Applicable Law from time to time.
- 1.1.15 “**Bus Services**” means the passenger city bus services in the Bus Service Area being implemented by the Authority in one or more

¹⁰**Drafting Note:** In case of different types of buses are to be operated by the Operator, such Kilometre Charge shall be different for each type of Bus based on the outcome of the competitive proposal process.

phases in accordance with the terms of this Agreement.

- 1.1.16 **“Bus Service Area”** means services of operation and maintenance of Contracted Buses for transporting passengers in the Urban Area as per **Annexure 1** as specified by the Authority under the terms of this Agreement.
- 1.1.17 **“Bus Specification/Technical Specifications”** shall mean the specifications of the Contracted Buses including but not limited to design, power, GRPS, GPS and PIS and other IT equipment and other details stipulated by the Authority during the purchase of such buses.
- 1.1.18 **“Bus Stop”** means designated points as determined by the Authority, from time to time and notified to the Operator in writing, and such Bus Stops are where the Buses may stop for a short duration for passengers to embark onto the Bus or disembark from the Bus.
- 1.1.19 **“Bus Transfer Cost”** shall have the meaning as ascribed thereto in Clause 31.2.2 of this Agreement.¹¹
- 1.1.20 **“Central Control Centre”** means computerised central monitoring unit setup, audited and supervised by the Authority for supervision, monitoring and control of the Bus Service.
- 1.1.21 **“Commercial Operations Date”/“COD”** shall for each Lot of Contracted Buses, be the date of deployment¹² on the roads for operations of each such Lot of Contracted Buses by the Operator after submission of the requisite Performance Security.
- 1.1.22 **“Commercial Operations Date for Bus Lot” or “COD for Bus Lot”** shall have the meaning specified in Clause 8.2 of this Agreement.
- 1.1.23 **“Conditions Precedent”** shall have the meaning specified in Clause 4 of this Agreement.
- 1.1.24 **“Contracted Bus(es)”** means one or more of the passenger bus units handed over to the Operator by the Authority from time to time for the purposes of operation and maintenance in the Bus Service

¹¹ **Drafting Note:** This definition shall only be provided in the Definition Clause if Option 2 of letting the Operator buy the Buses is chosen by the Authority.

¹² **Drafting Note:** As the delivery of buses shall be made in different lots by the Bus manufacturers, the COD for different lot of buses shall be achieved on different dates.

Area in accordance with the terms of this Agreement, and which shall include but not be limited to including GRPS, GSPS and PIS and other IT equipment, and the details of such Buses such as the type, category registration number is provided in detail in Annexure to this Agreement at later stage.

1.1.25 “**Contract Period**” means [_____] years for each Lot of Buses from the COD of that relevant Lot of Contracted Buses.

1.1.26 “**Depot License Agreement**” means the agreement under which the Operator shall be given a limited right to use the Depot (as described in detail in the Depot License Agreement) as provided in **Annexure 4** to this Agreement.

1.1.27 “**Dispute**” shall have the meaning ascribed to it in Clause 32.1.1 of this Agreement.

1.1.28 “**Encumbrances**” means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest or other obligations and shall also include physical encumbrances, including utilities both under and above the ground and encroachments.

1.1.29 “**Execution Date**” shall mean and refer to the date of execution of this Agreement.

1.1.30 “**Escrow Agreement**” shall have the meaning specified in Clause 18 of the Agreement and the in accordance with the format provided in **Annexure 10** of this Agreement.

1.1.31 “**Escrow Bank**” shall have the meaning as ascribed thereto in the Clause 18 of this Agreement.

1.1.32 “**Existing Lot of Contracted Buses**” means the various categories of Contracted Buses already in possession of the Authority and the details of the type and number of such buses and the lots in which they are divided are provided in detail in **Annexure 3** to this Agreement.

1.1.33 “**Fines**” shall have the meaning as ascribed thereto in the Clause 24.1 of this Agreement.

1.1.34 “**Fleet**” shall refer to the total number of Contracted Buses having achieved COD pursuant to this Agreement.

- 1.1.35 **“Fleet Deployment Plan”** means the detailed plan as developed and finalized by the Authority from time to time in accordance with Clause 12.1 read with **Annexure 8** of this Agreement.
- 1.1.36 **“Fleet of Each Type of Buses”** shall mean a reference to all Contracted Buses of a particular type and make. For clarification, if there are four different types of buses, and thus this term may refer to any one of them.
- 1.1.37 **“Global Positioning System (GPS)”** means the equipment installed on the bus to monitor its movement on the specified route during the Contract Period.
- 1.1.38 **“Government”** means the **“Government of [Respective State of India]”** or **“Government of India (GOI)”** as is relevant in the context;
- 1.1.39 **“Good Industry Practice”** shall mean the exercise of that degree of skill, diligence, prudence and foresight in compliance with the undertakings and obligations under this Agreement which would reasonably and ordinarily be expected of a skilled and an experienced person engaged in the implementation, operation and maintenance or supervision or monitoring thereof of any of them of a project similar to that of the Project.
- 1.1.40 **“Invoice Amount”** shall have the meaning specified in Clause 16.5 of this Agreement.
- 1.1.41 **“LED Display”** shall mean the light emitting diode display installed on the bus which would show the name and number of the designated Route of the respective Contracted Buses and which shall be used for the public information system.
- 1.1.42 **“Letter of Award”**¹³ means the letter of award dated ___/___/20___ issued by the Authority to the Selected Bidder to
- 1.1.43 **“Lock-in Period”** shall have the meaning as ascribed thereto in Clause 20.1 of the Agreement.

¹³ **Drafting Note:** As a matter of general practice, after selection of L1/preferred bidder pursuant to the bidding process, a Letter of Award is issued by the Authority to the Selected Bidder, and the Selected Bidder within a certain stipulated period signs and returns the duplicate copy of the LOA in acknowledgement thereof. A Letter of Acceptance, on the other hand is a formal letter of acceptance, which is submitted by the Selected Bidder to the Authority in response. Therefore both the terms cannot be used interchangeably.

- 1.1.44 **“Lot of Contracted Buses” or “Lot”** means Existing Lot of Contracted Buses and New Lot of Contracted Buses and details of which have been provided in the **Annexure 3** to this Agreement.
- 1.1.45 **“Manufacturer”** means the bus manufacturer supplier of the Contracted Buses to the Authority.
- 1.1.46 **“Material Breach”** means a breach of the terms and conditions of this Agreement, which has a material adverse effect on any act or event, or on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement, which include but are not limited to an act or event which causes a material financial burden or loss to either Party.
- 1.1.47 **“New Lot of Contracted Buses”** means the new Contracted Buses of each category purchased by the Authority and the details of the type and numbers of such buses and the lots in which they are divided are provided in detail in **Annexure 3** to this Agreement.
- 1.1.48 **“Operation and Maintenance Standards”** means the operation and maintenance requirements which are required to be undertaken by the Operator throughout the Contract Period and have been provided at different places in the agreement.
- 1.1.49 **“Operations Manager”** shall have the meaning ascribed to it in Clause 21.1.9.
- 1.1.50 **“Operating Plan” or “Operations Plan”** means the detailed Route plan and trip schedule for the Bus Service, which is developed and finalised by the Authority and has been provided as a part of the Fleet Deployment Plan.
- 1.1.51 **“Operator”** shall have the meaning as ascribed thereto in the array of Parties in the Recitals above.
- 1.1.52 **“Operator Clearances”** means the clearances which are required to be procured by the Operator in accordance with Applicable Law and which have been provided in detail in **Annexure 7** to this Agreement.
- 1.1.53 **“Operator’s Event of Default”** shall have the meaning as ascribed thereto in Clause 27.1 of the Agreement.

- 1.1.54 “**Operator’s Payment**” means payment given to the Operator for providing operating and maintenance services in accordance with Clause 16 of this Agreement.
- 1.1.55 “**Passenger Fare**” shall have the meaning ascribed to it in Clause 14.1 of this Agreement.
- 1.1.56 “**Parking Spaces**” shall mean the spaces provided by the Authority for parking and have been described in detail in **Annexure 9** of this Agreement.
- 1.1.57 “**Payment Period**” shall have the meaning as ascribed thereto in Clause 16.5 of this Agreement.
- 1.1.58 “**Performance Security**” shall have the meaning as ascribed thereto in Clause 6.1 of this Agreement.
- 1.1.59 “**Project**” means the operation, maintenance of the Contracted Buses, and Bus Services being provided in the Bus Service Area by the Operator in accordance with the terms of this Agreement.
- 1.1.60 “**RFP**” means this RFP document along with Annexure attached issued for the purpose of selecting an Operator for the Project;
- 1.1.61 “**RTA**” or “**RTO**” means the Regional Transport Authority/ Regional Transport Office of [the respective Urban Area].
- 1.1.62 “**Remedial Period**” shall have the meaning specified in Clause 28.1 and 28.2 of this Agreement.
- 1.1.63 “**Routes**” means the routes within the Bus Service Area determined exclusively and notified by the Authority from time to time, and the Contracted Buses under this Agreement shall operate only on such Routes.
- 1.1.64 “**Scheme**” means [___]¹⁴ as notified by the competent authority in relation to the Bus Service to be implemented as per this Agreement.
- 1.1.65 “**Selected Bidder**” means the Bidder to whom the Authority issues the Letter of Award for undertaking the Project.
- 1.1.66 “**Terminal**” means the interchange terminals/stops (under the control of Authority) from where the Contracted Bus(es) start or end

¹⁴ **Drafting Note:** Authority to insert details of the notification of the Scheme.

their trip(s), and/or are parked for a short duration, besides which it may provide other Passenger related amenities/facilities and facilitate transfers of Passengers amongst modes/services etc; and the details of which have been provided in **Annexure 9** to this Agreement.

1.1.67 **“Third Party”** means any person other than the Authority and the Operator.

1.1.68 **“Total Contract Period”** means, in reference to each lot of Contracted Buses, a period of ____ years¹⁵ beginning from COD of the particular Lot of Contracted Buses.

1.1.69 **“Upfront Contribution”** means the one time lump sum payment to be made by the Operator to the Authority in accordance with Clause 7.1 of this Agreement.

1.1.70 **“Urban Area”** means all areas notified as: (i) “Metropolitan Areas” under Article 243P of the Constitution of India, (ii) “Urban Areas” under the Census of India, or (iii) “Urban Area” by the Central Government or the State Government from time to time.

1.1.71 **“Validity Period”** means the period for which the Performance Security has to be maintained in accordance with Clause 6.2 of this Agreement.

1.1.72 **“Vandalism”** shall have meaning specified in Clause 23.2 of this Agreement.

1.1.73 **“Vehicle Tracking System”** is the satellite and or other communication system or any other procedure or device which allows locate/track the position of the vehicles at all/any times.

1.2. Interpretation

1.2.1 In this Agreement, unless the context otherwise requires:

¹⁵ Authority to Specify in the RFP.

- a. words denoting the singular shall include the plural and vice versa;
 - b. words denoting a person shall include an individual, corporation, company, partnership, trust or other entity;
 - c. heading and bold type face are only for convenience and shall be ignored for the purposes of interpretation;
 - d. reference to any legislation or law or to any provision thereof shall include references to any such law as it may, after the date of this Agreement, from time to time be amended, supplemented or re-enacted;
 - e. references to the word “include” or “including” shall be construed without limitation;
 - f. references to this Agreement or to any other agreement or deed or other instrument shall be construed as a reference to such agreement, deed, or other instrument as the same may from time to time be amended, varied, supplemented or innovated; and
 - g. the Annexure to this Agreement form part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement.
 - h. terms and expression not herein defined shall have the meanings assigned to them in the Indian Sale of Goods Act, 1930 (as amended) or the Indian Contract Act, 1872 (as amended) or the General Clauses Act, 1897 (as amended) as the case may be.
- 1.2.2 The following documents attached hereto shall be deemed to form an integral part of this Agreement:
- a. This Agreement along with all Annexure hereto.
 - b. Request for Proposal (RFP) in its entirety including all its Volumes, Sections, Annexure, Corrigendum and Addendums thereto.
 - c. Letter of Acceptance (LOA) no. _____ issued on

___/___/20__.

- d. Any relevant correspondence between the two Parties that the signatories have agreed to include as a part of the Agreement for validating and clarifying any points in the contract or by way of revised or improved understanding of any terms of the Agreement as appended herein.

2. APPOINTMENT OF THE OPERATOR

2.1 Appointment of the Operator

Subject to and in accordance with the provisions of this Agreement, the Authority hereby appoints, on a non-exclusive and non transferable basis, the Operator, and the Operator hereby accepts its appointment to operate and maintain the Bus Services within the Bus Service Area in accordance with the terms of this Agreement and subject to the Applicable Laws and Applicable Clearances.

2.2 Undertaking

In consideration of the rights, privileges and benefits conferred upon the Operator, and other good and valuable consideration expressed herein, the Operator hereby accepts this Agreement and agrees and undertakes to perform/discharge all of its obligations in accordance with the provisions hereof, and bear and pay all costs, expenses and charges in connection with, or incidental to the performance of its obligations in accordance with the terms contained herein.

3. TERM OF THE AGREEMENT

3.1 The term of the Agreement for all Contracted Buses shall be the Total Contract Period.

3.2 In the event of termination, the Total Contract Period shall be limited to the period commencing from the Execution Date and ending on the date on which this Agreement is terminated in accordance with the provisions contained herein.

4. CONDITIONS PRECEDENT

The respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4 (“Conditions Precedent”).

4.1 The Authority’s Conditions Precedent

4.1.1 The Authority shall fulfil the following conditions precedents before the COD of the first Lot of Contracted Buses. The Authority shall:

- a. issue the Scheme¹⁶ required to enable the implementation of this Project by the Operator in accordance with the Motor Vehicles Act, 1988 and Applicable Law;
- b. handover a Bus Depot subject to the execution of the Depot License Agreement in accordance with the terms contained herein;
- c. execute the Depot License Agreement with the Operator as per the format provided in this Agreement; and
- d. execute the Escrow Agreement as per Clause 18 of this Agreement in accordance with the format provided by the Authority.

4.1.2 The Authority shall fulfil the following conditions precedent before [_____] days¹⁷ of handover of each Lot of Contracted Bus. The Authority shall:

- a. ensure that registration is procured from the relevant RTO;
- b. procure and maintain all requisite insurances under Applicable Law in accordance with Clause 22 of this Agreement; and
- c. obtain and maintain all Authority Clearances in accordance with the Applicable Law and the terms contained herein.

4.2 Operator’s Conditions Precedent

4.2.1 The Operator shall provide the Performance Security on the Execution Date in accordance with Clause 6 of this Agreement¹⁸.

¹⁶ **Drafting Note:** Name and details of the scheme will need to be inserted.

¹⁷ **Drafting Note:** Authority to specify.

¹⁸ **Drafting Note:** Please note that the Performance Security shall be paid as a % of the total cost of the Contracted Buses which shall be maintained for the entire period as specified in this Agreement.

4.2.2 The Operator shall fulfil the following conditions precedents before the COD for the respective Lot of Contracted Buses. The Operator shall:

- a. pay the Upfront Contribution in accordance with Clause 7.1 of this Agreement;
- b. appoint duly licensed and trained bus-drivers, supervising staff and other personnel as provided in the RFP required for the purpose of operation and maintenance of the Contracted Buses in accordance with this Agreement and in accordance with Applicable Law;
- c. provide and install any necessary moveable infrastructure such as equipments and machinery in Bus Depot, Terminals, and/or Parking Space as provided in **Annexure 11** to this Agreement;
- d. execute the Depot License Agreement with the Authority as per format provided in of this Agreement; and
- b. obtain and maintain all Operator Clearances in accordance with the terms contained herein.

4.3 The Parties shall make all reasonable endeavours to satisfy the Conditions Precedent as provided in Clause 4.1 and Clause 4.2 within the stipulated time period.

4.4 The Parties shall notify each other in writing at least once every [15 (fifteen)]days on the progress made in satisfying the respective conditions precedent. Each Party shall promptly inform the other Party when any Conditions Precedents for which it is responsible has been satisfied.

4.5 Non-fulfilment of Conditions Precedent

4.5.1 In the event of non-fulfilment of any of the conditions precedent specified in Clause 4.1 and 4.2 above for reasons other than for as a result of breach of this Agreement by any Party or due to Force Majeure, any such conditions precedent may be waived or the time period for satisfaction of such Conditions Precedent may be extended, though only through the mutual consent of both Parties in writing.

4.5.2 Delay by the Authority

4.5.2.1 In the event of non fulfilment in full by the Authority of any of the Conditions Precedent contemplated in Clause 4.1 within the stipulated time period or within such extended time that the Parties have agreed upon, and provided such Conditions Precedent has not been waived through mutual agreement of the Parties, then:

- a. the Operator shall have the right to: (A) refuse taking possession of the Contracted Buses, in respect of which the conditions precedent have not been satisfied; or (B) refuse to operate and maintain the Contracted Buses or carry out the Bus Service in relation to such Contracted Buses which have been accepted by the Operator but in respect of which the conditions precedent have not been satisfied; until the fulfilment of the Conditions Precedent by the Authority to its satisfaction; and
- b. the Authority shall pay to the Operator damages that shall be calculated at the rate of [0.2%]¹⁹ of the Performance Security for each day of delay until the fulfilment of the Conditions Precedent, subject to a maximum of [20%]²⁰ of the Performance Security.

4.5.2.2 In the event the Conditions Precedent are not fulfilled by the Authority and the Authority has paid damages to the Operator to the maximum of [20%]²¹ of the Performance Security as provided in Clause 4.2.1, then the Operator may terminate the Agreement in accordance with the terms contained herein.

4.5.3 Delay by the Operator

4.5.3.1 In the event of non fulfilment in full by the Operator of any of the Conditions Precedent contemplated in Clause 4.2 within the stipulated time period or within such extended time that the Parties have agreed upon, and provided such

¹⁹ **Drafting Note:** Authority to specify.

²⁰ **Drafting Note:** Authority to specify.

²¹ **Drafting Note:** Authority to specify.

Conditions Precedent has not been waived through mutual agreement of the Parties, then:

- a. the Authority shall have the right to: (A) refuse handing over of Contracted Buses, in respect of which the Conditions Precedents have not been satisfied; or (B) take over the possession of Contracted Buses in relation to such Contracted Buses which have already been handed by the Operator but in respect of which the conditions precedent have not been satisfied; until the fulfilment of the Conditions Precedent by the Authority to its satisfaction; and
- b. the Operator shall pay to the Authority damages that shall be calculated at the rate of [0.2%]²² of the Performance Security for each day of delay until the fulfilment of the Conditions Precedent, subject to a maximum of [20%]²³ of the Performance Security.

4.5.3.2 In the event the Conditions Precedent are not fulfilled by the Operator and the Operator has paid damages to the Authority to the maximum of [20%]²⁴ of the Performance Security as provided in Clause 4.2.1 damages to the maximum of [20%]²⁵, then the Authority may terminate the Agreement in accordance with the terms contained herein.

5. SCOPE OF WORK

5.1 The Operator shall throughout the Total Contract Period:

- a. operate the Contracted Buses in compliance with terms contained herein including but not limited to the routes, frequency and schedules as may be specified by the Authority from time to time;
- b. provide duly licensed drivers to ensure the continued and uninterrupted Bus Service in accordance with the terms contained herein and as per Applicable Law;
- c. ensure that all drivers, staff and personnel (whether

²² **Drafting Note:** Authority to specify.

²³ **Drafting Note:** Authority to specify.

²⁴ **Drafting Note:** Authority to specify.

²⁵ **Drafting Note:** Authority to specify.

- appointed/employed on a permanent or temporary basis) are provided the required training on driving, safety, behaviour and hygiene aspects;
- d. at his own cost and expenses procure and maintain all Operator Clearances in accordance with **Annexure 7** for the purposes of providing Bus Services as per the terms of this Agreement;
 - e. maintain the Contracted Buses in good operable conditions in accordance with Good Industry Practices and Operation and Maintenance Requirements set forth in the agreement.
 - f. ensure that safety and security of passengers and any third person on the Contracted Buses is maintained at all times;
 - g. bear all taxes as may be levied under Applicable Law in relation to the Bus Services, save and except those taxes which are the responsibility of the Authority as per the terms of this Agreement and Applicable Law;
 - h. subject to prior written approval of the Authority, develop and establish a facility for the purposes of maintenance of the Contracted Buses at its own cost and expense, and staff it with trained professionals for the purposes of maintenance of Contracted Buses;
 - i. ensure any equipment installed on the Contracted Buses or within the Bus Depot including any monitoring device or equipment that is installed by the Authority is not tampered with in any manner; and that the Authority and its authorised personnel, are allowed to inspect the equipment installed on the Contracted Buses and the Bus Depots at any time without any notice in this regard;
 - j. make available to the Authority a fixed proportion of the Contracted Buses upon the COD of any Lot of the Contracted Buses, for maintaining continued and uninterrupted operations of Bus Services as per the terms of this Agreement. This proportion shall be 93%, 92%, 91% of each Lot of Contracted Buses on a shift basis in the 1st, 2nd and 3rd year of the Contract Period for each Lot of Contracted Buses respectively, and 90% thereafter up-to the end of the Contract Period for each Lot of Contracted Buses. ("**Assured Fleet Availability**")²⁶; provided that the Authority in its sole discretion may allow the Operator to change the requirement of the Assured Fleet Availability for a particular Lot of Contracted Buses required for the first three months

²⁶ Calculation of fleet availability is provided as follows for further clarity:

Fleet availability (in percent) = (Fleet made available for operation / Total Fleet of Contracted Buses) x 100

A Bus to be considered as being available should complete at least 90% of its planned schedule. Further the Authority, at its discretion, may relax this clause for first few months after COD to provide for a ramp up and sort out teething issues for new buses.

- following COD for that Lot of Contracted Buses in writing;
Provided however, in determining compliance with the Assured Fleet Availability:
- i. services during Sundays shall not be considered;
 - ii. seizure of the Contracted Buses by police authorities shall not be considered; and
 - iii. unavailability of Contracted Buses due to repair or servicing under the warranty terms shall not be considered.
- k. Adverse operating conditions shall not affect Contractual obligations and parameters of performance under the Agreement. Wear and tear of the bus due to bad road conditions, rains, flooding of roads, heavy traffic etc. shall not be considered an adequate defence on the part of the Operator for not fulfilling his Contractual obligations as per the Agreement.
- l. subject to Applicable Law in relation to display of advertisements in public, the Operator shall have the right to display advertisements on the Contracted Buses and collect and appropriate revenue from the same.²⁷ The Operator shall ensure that such advertisements are aesthetically placed with proper considerations with regard to passenger signage, cleanliness, lack of clutter, and consistency with bus design, in accordance with Applicable Law and any instructions issued by the Authority from time to time. The Authority shall have the right to instruct the Operator to re-organize/re-design the advertisement displays or to remove them altogether at any time throughout the Total Contract Period;
- m. ensure that all Applicable Laws including but not limited to the Minimum Wages Act, 1948 are complied with in relation to appointment, hire, recruitment, of any personnel (whether on temporary, contractual or permanent basis) required in relation to the operation and maintenance of Bus Service;
- n. Regular monthly reports to the Authority as per the format of reports stipulated in the RFP and as may be instructed by Authority from time to time; and
- o. carry out all activities necessary for the effective implementation of the

²⁷ **Drafting Note:** This is indicative. This shall be as per the RFP and shall be revised as per the Applicable Law and Applicable Clearances.

provisions of this Agreement.

6. PERFORMANCE SECURITY

- 6.1 For securing the due and faithful performance of the obligations of the Operator under this Agreement, the Operator, shall submit to the Authority, on the Execution Date an unconditional and irrevocable bank guarantee for amount equivalent to [_____] ²⁸ in favour of the [_____] Name of the Authority], from a nationalized bank, in India as per format provided in respect thereof in the RFP (“**Performance Security**”).
- 6.2 The Operator shall maintain a valid and binding Performance Security for a period of three months after the expiry of the Total Contract Period (“**Validity Period**”) ²⁹.
- 6.3 The Authority shall be entitled to forfeit and appropriate the amount of the Performance Security in whole or in part:
- a. in the event the Authority requires to recover any sum due and payable to it by the Operator including but not limited to Damages; and which the Operator has failed to pay in relation thereof; and
 - b. in relation to Operator’s Event of Default in accordance with the terms contained herein.
- 6.4 At any time during the Validity Period, the Performance Security has either been partially or completely been encashed by the Authority in accordance with the provisions of this Agreement. The Operator shall within [15 (fifteen) days] of such encashment either replenish, or provide a fresh performance security, as the case may be, failing which the Authority shall be entitled to terminate this Agreement.
- 6.5 On termination of this Agreement, the Performance Security shall be returned to the Operator without any interest, subject to any deductions which may be made by the Authority in respect of any outstanding dues

²⁸ **Drafting Note:** The Performance Security can be lump-sum amount on per bus basis or 5% of the total cost of Buses including taxes. In the event any buses are being handed over at the time of execution of the Agreement, Performance Security will have to be collected simultaneous to the signing of the Agreement for the corresponding number of Buses.

²⁹ **Drafting Note:** In case, the availability of Bank Guarantee from the banks for the length of the Contract is difficult to obtain, the initial Guarantee may be submitted valid for a period of 2 (two) years, and which shall have to be renewed 45 (forty five) days before its expiry.

under the terms of this Agreement.

7. OPERATOR'S CONTRIBUTION IN THE BUS PURCHASE COST³⁰

7.1 Within a period of [____]³¹ days of Execution Date, the Operator shall provide an aggregate contribution to the Authority as follows:

S. No.	Bus Category [Please insert the description of the Type/Category of Contracted Buses]	Amount

(hereinafter referred to as “**Upfront Contribution**”).

7.2 The Operator shall submit an upfront contribution as per clause 7.1 above for each lot of buses delivered to the Authority. The Authority shall inform the Operator about final acceptance of buses which are delivered by the Bus Manufacturers/Suppliers within [7 (seven) days] of issue of the Final Acceptance Certificate by the Authority.

7.3 In the event the Operator fails to provide the Upfront Contribution, the Authority may provide additional [____]³² days to the Operator to comply with the same.

7.4 In the event of the Operator failing to submit the Upfront Contribution to the Authority within the additional period as provided in Clause 7.2 above, it shall be considered an Operator Event of Default, and the Authority may terminate this Agreement in accordance with the terms contained herein.

7.5 Subject to Clause 27.3, the Upfront Contribution is a non refundable lump sum payment made by the Operator to the Authority as provided herein.

8. HANDOVER AND DEPLOYMENT OF CONTRACTED BUSES

8.1 The Authority shall:

a. hand over possession of such Lot of Contracted Buses which already

³⁰**Drafting Note:** In case of the Operator is selected during the manufacturing stage of buses or thereafter, the Authority could provide for the Operator to contribute up-to 15% of the Bus purchase cost, provided such stipulation is made clearly in the RFP.

³¹**Drafting Note:** Authority to specify.

³²**Drafting Note:** Authority to specify.

are in possession of the Authority within [30 (thirty) days] of Execution Date and as provided in detail in **Annexure 3** to this Agreement (“**Existing Lot of Contracted Buses**”),³³ and

- b. hand over possession of such Lot of Contracted Buses which shall be purchased by the Authority, within [30 (thirty) days] of delivery and acceptance thereof. The indicative delivery schedule of the Contracted Buses is provided in **Annexure 3** to this Agreement (“**New Lot of Contracted Buses**”).

8.2 Subject to the fulfilment of the Conditions Precedent (as provided in Clause 4 to this Agreement), the Operator shall commence Bus Service for each Lot of Contracted Buses handed over in Clause 8.1 above, no later than [30 (thirty) days] from the date of handover of such Lot of Contracted Buses, or any extended period as may be agreed upon the Parties in writing (“**Commercial Operations Date for Bus Lot**” or “**COD for Bus Lot**”)

8.3 In the event the Operator is not able to start operations of particular Lot of Contracted Buses as per Clause 8.2, for reasons not attributable to the Authority or to a Force Majeure Event, and which in the opinion of the Authority can be attributable to the Operator, the Operator shall pay liquidated damages of Rs.500³⁴/each bus comprising the Lot for every day of delay till COD for that Lot is achieved.

It is hereby clarified that non compliance of any bus specifications and design shall not be acceptable as a reason for delayed or non-deployment of the Contracted Buses by the Operator.

9. OWNERSHIP OF CONTRACTED BUSES

9.1 Subject to the terms of Clause 31, the ownership of the Contracted Buses shall at all times remain solely vested with the Authority during the Total

³³ **Drafting Note:** Any buses already in possession of the Authority can be deployed upon signing of the Agreement, provided however the same has been indicated in the RFP and the condition of such Buses have been left open to inspection of the potential proposers at the Proposal stage itself. The buses in procurement stage can be handed over to the Operator after their acceptance by the Authority.

³⁴ **Drafting Note:** The damages are indicative in nature. The Authority may specify such damages at its sole discretion.

Contract Period.³⁵

- 9.2 All the Contracted Buses shall be registered in the name of Authority, and at no time during the Total Contract Period shall any right, title, or interest over any of the Contracted Buses vest in the Operator.

It is hereby clarified that the Operator only has the limited right to operate and maintain the Contracted Buses for the sole purpose of implementation of this Agreement and the Operator will have no other right whatsoever in relation to such Contracted Buses, without the prior written permission of the Authority.

10. HANDOVER OF PARKING SPACE AND BUS DEPOT³⁶

- 10.1 For the purposes of maintenance, cleaning and parking of Contracted Buses, subject to the execution of a Depot License Agreement as provided in **Annexure 4** to this Agreement, the Authority shall provide a Bus Depot.³⁷

It is hereby clarified that the Operator shall only have a limited right to way and right to use the Bus Depot subject to the terms of the Bus Depot License Agreement and the terms contained herein.

- 10.2 In addition to the Bus Depot the Authority may also provide: (i) Terminals and (ii) Parking Spaces to enable the Operator to park the Contracted Buses for short duration and carry out maintenance activities in accordance with the terms contained herein. The Authority shall require separate

³⁵ **Drafting Note:** This Clause may be revised in the event the option to the Operator of buying the Buses at the end of the Agreement Period is provided.

³⁶ **Drafting Note:** In case of the Authority is inclined to Appoint more than one Bus Operator and the Authority is purchasing buses of different types, the allocation of buses to each operator based on bus type would be more appropriate. Allotment of buses across the types to operator may create issues like management of different maintenance practices and inventories to the Operator. The Authority may also face issues in award of contract to the operator at the time of bidding, if the buses are not to be segregated based on type and make.

It has been observed during various Bid Process for selection of Urban Bus Operators on Gross Cost Contract where the Authority wanted to appoint more than One operator by assuring minimum Buses that there are high chances of creation of cartel or Authority receiving high quotes for per km charges as the quantity of buses to be allotted is not fixed.

In case of single bus type, it is advisable to either appoint a single bus operator or provide specific indication about number of Operators to be appointed at the time of the Bidding Process.

The issue of multiple Operators (or sometimes even a single operator) leads to another critical and cotemporary subject of sharing of parking and maintenance facilities among the Bus Operators. Ideally, the Authority should provide separate land area for bus depot to each operator. Authorities however often face paucity of Govt. land area to create Depot facility (Acquisition of private land or taking it on lease may not be a viable option). The issue, to the extent possible, may be resolved through design interventions. One possibility could be separation of single patch of land in to two adequate parts and construction of Depot building in a manner that it can also be used for repair and maintenance of buses by two Operators. The bus operator would be liable for operation and maintenance of the part of the Land and Depot building assigned to him through a lease agreement.

The issue of non availability of Government Land can also be addressed through long term measures such as reservation of land for Depot and parking of Urban Buses through statutory provisions of relevant Town Planning Act of the respective States.

Clause 10 of the Agreement has been drafted considering the situation of Single Operator. The Clause can be modified further with additional provisions for sharing of Parking and Depot facilities by Multiple Operators once the discussion is over.

³⁷ **Drafting Note:** Land area of the Depot / Parking space to be specified by the Authority.

license agreements to be executed in respect of Terminal and/or Parking Spaces as and when provided to the Operator.

- 10.3 The Bus Depot shall be equipped with basic civil infrastructure including but not limited to the minimum facilities as specified in **Annexure 5** with area commensurate with requirement for parking and maintaining the Contracted Buses.
- 10.4 The Operator shall at his own cost and expenses bring any such moveable equipment and/or machinery and appoint skilled personnel and supervisor for regular upkeep, maintenance, cleaning and safekeeping of the Contracted Buses in accordance with the terms contained herein.
- 10.5 Notwithstanding the foregoing, the Operator shall be obligated to allow the buses of other bus operators, as may be identified by the Authority from time to time, to share infrastructure provided by the Authority to the Operator such as the Bus Depot or Parking Spaces.
- 10.6 It is hereby clarified that the ownership of the Bus Depot, Parking Spaces and/or Terminals shall remain vested solely with the Authority at all times. The Operator shall only be provided the limited right of way and right to use the Bus Depot, Parking Spaces and/or Terminals, and on Termination, the Operator shall vacate and hand back such Bus Depot, Parking Spaces and/or Terminals as per the terms contained herein. Upon termination, the Operator shall not remove any permanent structure created by him to fulfil the obligations as per the terms of this Agreement.
- 10.7 The Operator shall not have any right to display advertisement in the Bus Depot, Parking Spaces and/or Terminals or any part thereof.
- 10.8 The Operator shall:
 - a. at his own cost and expense maintain the area of the Bus Depot, Parking Space and Terminal provided to it under the terms of the license agreement and the terms contained herein in good working condition;
 - b. not cause any damage in the area of the Bus Depot, Parking Space and Terminal provided to it under the terms of the license agreement and

the terms contained herein or do any act which will in any way be prejudicial to the rights of Authority or other users/occupants of the same.

only be responsible to maintain the area of the Bus Depot, Terminal and Parking Spaces which has been specifically allocated and handed over to him by the Authority under the relevant license agreement.

- 10.9 The Operator shall also be liable to pay bills for utilities such as electricity, water, gas etc. on actual basis. Provided, however, the Operator shall be liable to pay bills for the actual consumption of utilities only on a pro-rata basis in relation to the area of the Bus Depot, Terminal and Parking Space allotted to the Operator.

11. CONSULTATION BY THE AUTHORITY

- 11.1 The Authority may before accepting each Lot of Contracting Buses, request the Operator to assist the Authority in the process of inspection, delivery, and testing of the Lot of Contracted Buses as specified in such request including but not limited to sharing its expertise, and knowhow of buses, assisting the Authority to evaluate the buses as per the specifications and terms of the bus purchase contract executed between the Authority and the bus manufacturer/supplier.
- 11.2 It is hereby clarified that any assistance or recommendation and/or suggestions provided by the Operator shall be non binding on the Authority and cannot be used to refute or object to the eventual acceptance of these Contracted Buses by the Operator under the provisions of this Agreement.
- 11.3 The Operator shall not be entitled to any payment for providing assistance as provided in this Clause 11.

12. FLEET DEPLOYMENT PLAN

- 12.1 The Authority shall develop a plan which shall contain details including but not limited to number and type of Contracted Buses, details of the Assured Fleet Availability, Operating Plan, Routes, frequency, stoppage plan and table of schedule providing bus headways based on peak and off peak hour

requirements³⁸ ("**Fleet Deployment Plan**")³⁹.

- 12.2 The Authority may develop the Fleet Deployment Plan in consultation with the Operator.

Provided however, the suggestions made by the Operator shall not be binding on the Authority.

- 12.3 The Authority reserves the right at its own sole discretion to make changes to the Fleet Deployment Plan from time to time and shall notify the same to the Operator.

13. ROUTES AND SCHEDULES

- 13.1 The Authority shall have the exclusive authority to determine Routes, frequency and schedules of the Contracted Buses as a part of the Fleet Deployment Plan throughout the Total Contract Period.

- 13.2 The Operator shall ensure that the Contracted Buses are operated on the said Routes, frequency and schedules and other requirements as specified in the Fleet Deployment Plan and as specified by the Authority from time to time in accordance with the operation and maintenance standards specified herein.

- 13.3 The Authority may at any time make changes to the Routes, frequency, schedules of Contracted Buses due to any reason whatsoever including but not limited to special circumstances, festivals, and seasonal requirements.

- 13.4 In the event the Authority makes changes as specified in Clause 13.3 above, it shall notify the Operator in writing [seven (7) days] prior to the date of implementation of such change.

- 13.5 In the event the Operator makes any unscheduled or unauthorized trip outside operation hours and beyond the Routes or in violation of any requirement of the Fleet Deployment Plan or specific instructions notified by the Authority in relation thereof, it shall be liable for the penalty set forth in this Agreement.

³⁸ **Drafting Note:** Indicative operation period shall be between ____ am and ____ during daytime as may be specified by the Authority from time to time. However this is indicative and actual hours shall be decided as per the Fleet Deployment Plan

³⁹ **Drafting Note:** This Fleet Deployment Plan shall be based on the route plan, map and other details that may have been provided as a guidance and indicative details in the RFP by the Authority.

14. FARE AND FARE COLLECTION

14.1 Passenger Fare Determination

The Authority shall determine the quantum of passenger fare that will be charged from the users/passengers of the Contracted Buses or persons who avail of the Bus Service (“**Passenger Fare**”).

14.2 Passenger Fare Collection

- a. The Authority retains the right to collect Passenger Fare either by itself or through a third party using any technology or methodology it deems appropriate.
- b. The Operator shall not directly or indirectly collect Passenger Fare or any portion thereof.
- c. The Operator shall not in any way cause any interference in the process of collection of Passenger Fare and shall fully co-operate and facilitate the process of Passenger Fare collection undertaken by the Authority through itself or a third party including allowing any personnel such as a conductor to collect such Passenger Fares on the Contracted Buses.

15. ADVERTISEMENT ON THE BUSES⁴⁰

15.1 Subject to Applicable Law, the Authority may permit the Operator to display advertisements on the Contracted Buses.

15.2 In the event the Operator is permitted to display advertisements on the Contracted Buses, it shall submit a proposal in relation thereof including but not limited to details such as the content of the advertisements, dimensions and material used for advertisement posters and the places on/in buses where advertisements are proposed to be displayed for the approval of the Authority.

15.3 The Operator shall display advertisements on the Contracted Buses in

⁴⁰ **Drafting Note:** The Clause is optional and Authority may retain or remove the clause and relevant references to the Clause from the Agreement as per requirements. In case the advertisement rights are to be granted to the Operator, the Authority shall have to provide size and locations for advertisement on the buses in the Request for Proposal document. It is required to ensure common assumptions for the estimations made by the Proposers for the advertisement revenue which intern will be deducted from the Per Kilometre Charge to be quoted by them.

accordance with:(i) the approved proposal as provided in sub-clause 15.2 above, (ii) any instructions issued by the Authority in regard thereof, and (iii) provisions of Applicable Law.

15.4 The Parties agree that no display of negative content or advertisement shall be permitted on the Contracted Buses irrespective of the time of the day and scale of the advertisement. Such negative content/ advertisement includes but is not limited to:

- a. advertisements prohibited by the Applicable Law and/or the Advertisement Council of India;
- b. advertisements of goods or services which are prohibited by Applicable Law;
- c. advertisements of political parties or religious groups;
- d. advertisements of any kind of prohibited drugs, alcohol and all kind of tobacco products for smoking;
- e. advertisements containing pornographic contents and/ or an “indecent representation of women” within the meaning of the Indecent Representation of Women (Prohibition) Act, 1986;
- f. advertisements containing sexual overtone and/ or nudity;
- g. advertisements glorifying exploitation of women or child;
- h. advertisements showing violence and cruelty to either human being or any kind of plant or animal;
- i. advertisements showing racial abuse to any caste or community or propagating ethnic differences;
- j. advertisements related to lottery tickets, sweepstakes entries and slot machines;
- k. any other advertisement policy or regulation as may be notified by the [State/Central] Government from time to time; and
- l. any other advertisement found inappropriate by the Authority.

15.5 Notwithstanding the provisions of Clause 15.1, the Operator shall at all times ensure that no part of the Contracted Buses including but not limited to the external and internal colour, body of the Contracted Buses or any part thereof are damaged due to advertisement stickers or any other form of displays.

15.6 The Operator shall not display advertisements in a manner which may

obstruct partially or completely the visibility from inside and outside the Contracted Buses including on the windows of the Contracted Buses.

- 15.7 Subject to Applicable Laws, the Operator shall be entitled to appropriate revenue generated from the advertisement on Contracted Buses.

16. PAYMENTS TO THE OPERATOR FOR KILOMETER CHARGE

- 16.1 Bus Kilometres for any particular Contracted Bus of a particular type shall comprise of the following:

- a. Distance travelled by the Contracted Bus assigned on given Route(s) as per the Operating Plan.
- b. Distance travelled by the Contracted Bus from the Bus Depot to the first point of loading passengers at the commencement of its service on a day.
- c. Distance travelled by the Contracted Bus from its last passenger stop as per the Operating Plan to the Bus Depot at the end of the day's service.
- d. Distance travelled by a Contracted Bus, which is outside the Operating Plan but approved by the Authority for specific and special requirements.

- 16.2 Bus Kilometres shall not constitute any kilometres travelled by the Contracted Bus to a maintenance facility other than that set up by the Operator at the Bus Depot provided for by Authority or for any travel not authorized by Authority.

- 16.3 The Authority shall compute and provide to the Operator, for every Payment Period, from when the first of the Contracted Buses commences service, the total number of kilometres that the Contracted Buses have travelled for the said period. Such calculation shall be made using GPS and in case of absence of GPS, manually with the supervision of the Authority staff. The Operator shall be paid based on the Bus Kilometres logged and verified in this manner according to the Kilometre Charge fixed.

16.4 Basis for Payments

Payment to the Operator by the Authority for the Bus Services rendered

shall be as per the provisions described hereinafter (“**Operator Payment**”)

The Base Kilometre Charge, Base Year Price of Fuel per Unit and the Base Year Wholesale Price Index (WPI) which shall be used for determining the Applicable Kilometre Charge are as follows:

Base per Kilometre Charge quoted by the Operator in the Price Proposal for the particular Bus Type:

Sr. No.	Bus Type ⁴¹ [Please insert the description of each Type/Category of Buses]	Quantity (Nos)	Quoted Rate ⁴² Rs / Km (Exclusive of service Taxes)
1	Type 1		
2	Type 2		
3	Type 3		
4	Type 4		
5	Type 5		

Base Year Price of Fuel/Unit : Rs [_____] per litre⁴³, being the prevailing price of fuel as available from the cheapest legal source in the vicinity of the Bus Depot on [____] being prices of a period immediately prior to the last date of submission of the RFP on [_____].

Base Year Wholesale Price Index⁴⁴ for all commodities:[_____]for Year [_____].

Source: Office of the Economic Adviser to the Government of India, Ministry of Commerce and Industry: Website: <http://www.eaindustry.nic.in>.

16.5 Payment Terms

a. Invoicing Period:

For each Contracted Bus that has been put into regular operations from the date of COD, the Operator shall submit an invoice at the end of every[10 (ten)] days (the “**Payment Period**”⁴⁴) specifying:

- i. registration number of each Contracted Bus and the type of bus that has travelled as part of the Bus Service,

⁴¹ **Drafting Note:**The bus types are given for illustration. There can be single type or Single Operator for different bus types in respective cities. Authority shall have to specify accordingly.

⁴² **Drafting Note:** At the time of submission of proposal as per the terms and conditions of the RFP, the bidder, who shall intern be selected as Operator, shall be required to submit breakup of the per Kilometre Charge including, but not limited to 1) Fuel Cost 2) Repair and Maintenance cost 3) Manpower cost 4) Insurance cost 5) other taxes and charges applicable to the Operator for Operation and Maintenance of Buses. Such break-up shall be exclusive of Service tax and other statutory levies as applicable.

⁴³ **Drafting Note:**Fuel charge applicable in the respective cities.

⁴⁴ **Drafting Note:**WPI for the year in which the Agreement is being signed.

- ii. Bus Kilometres travelled by each Contracted Bus as part of the Bus Service in the relevant payment period (clearly identifying the Contracted Bus)
- iii. Applicable Kilometre Charge for the period for the particular type of Contracted Bus.
- iv. Service tax, and any applicable surcharge or cess on it, if any, payable on the amount; and
- v. copy of fuel purchase bills indicating source, quantity and rate per fuel purchased⁴⁵.

(hereinafter together referred as “**Invoice Amount**”)

b. Payment Period

The Authority shall within a period of [7 (seven) days] from receipt of the invoice, subject to verification of the invoice against the records that it has in relation to the Bus Services and the evidence of salary paid to employee, make the payments of 50% of the Invoice Amount. The payment of balance 50% of the Invoice Amount shall be made within [17 (seventeen) days] of the receipt of invoice after adjustment against or fines or making other adjustments as may be applicable against the invoice under the terms of the Agreement. All payments shall be made by the Authority to the Operator after making any tax deductions at source under Applicable Law.

c. Method for Calculation of Aggregate Payment

The payment for Bus Kilometres up to Assured Bus Kilometres per each Contracted Bus deployed shall be calculated as

Payment = Applicable Kilometre Charge for the relevant Contracted Bus category x [Operated KM]⁴⁶

(Where Operated KM is Bus Kilometres Operated by Fleet as part of the Operating Plan during the relevant Payment Period)

Any Fines levied shall be adjusted from the Aggregate Payment subject to Clause 24.3 of this Agreement.

Service tax, and any applicable surcharge or cess on payment for services rendered by the Operator, if any, shall be levied and billed over

⁴⁵ **Drafting Note:** The receipts are required to keep observation of the actual fuel cost to the Operator as it is the major component in the per Kilometre Charge.

⁴⁶ **Drafting Note:** Payment will be separately calculated for each type of Bus which forms part of the total Contracted Buses and aggregated, for each relevant payment period of 10 (ten) days/Payment Period.

and above the payment amount based on the number of operated kilometres in the given period multiplied by the Applicable Kilometre Charge. The Authority is liable to pay this additional amount on the Invoice Amount.

d. Guarantee to operate particular number of kilometres

The Authority hereby assures the Operator that the Operating Plan will be formulated so as to ensure that the average number of Bus Kilometres travelled by each of the Contracted Buses, in a continuous period of six (06) calendar months, commencing from CoD of relevant Lot of Contracted Buses, and then onwards on a half yearly basis, will be no fewer than the [_____] [Half Yearly Assured Bus Kilometres as provided below]

The Half Yearly Assured Bus Kilometre shall be as follows⁴⁷:

Sr. No.	Bus Type ⁴⁸ [to Describe the Type]	Half Yearly Assured Km for that type of Bus
1	Type 1	
2	Type 2	
3	Type 3	
4	Type 4	
5	Type 5	

e. Half Yearly Assured Payment Amount

i. Payment for Unutilised Kilometres:

In the event that the Authority is unable to demand from the Operator the operations of the Contracted Bus trips such that the average number of kilometres operated per Contracted Bus is not equal to the Half Yearly Assured Bus Kilometres, Authority will pay to the Operator, in addition to the payments made for Bus Services based

⁴⁷ **Drafting Note:** Half Yearly Assured km for the Fleet of Standard Ac and Non Ac Buses with 400/650/900 mm floor heights can be in the range of 32400 km to 36000000 km (Approx. 180 km per day per bus to 200 km per day per bus) and 28800 km to 32400 km (Approx 160 km per day per bus to 180 km per day per bus) for the Fleet of Mini/midi Non AC Buses. However these figures are indicative and based on the observations in certain cities which are already operating Urban Bus services.

In mixed fleet situations, where the bidding variable in the RFP is based on an aggregate quote for the mixed fleet, ideally the Authority should not substitute one Bus type with another bus type in order to meet the requirement of Half Yearly Assured Bus Kilometres. This is because the operator may have assumed separate profitability margin in each type of bus. For instance, the Authority at a later date could be tempted to operate lower km for AC buses since cost recovery on AC buses could be lower and substitute these lower km with higher km of say a Non AC bus. However, the operator would stand to lose the higher margins it might have assumed on the AC buses and could be forced to live with lower margins in say, non AC buses. In case where the Authority wishes to substitute, it must indicate so clearly in the RFP, so that bidders may take appropriate decisions in their cost models. Where the Authority has declared that there would be separate comparisons of Km charge quotes for different types of buses, leading to separate operators based on the lowest quote for each type of Bus, the question of substitution does not arise.

⁴⁸ **Drafting Note:** The bus types are given for illustration. There can be single type or Single Operator for different bus types in respective cities. Authority shall have to specify accordingly.

on invoices presented by the Operator, an amount (“**Half Yearly Assured Payment Amount**”), which shall be determined as follows:

Half Yearly Assured Payment Amount = $0.25^{49} \times (T_m - T_a) \times$
Applicable Kilometre Charge

where

T_m = Half Yearly Assured Bus Kilometres x Available fleet

T_a = Actual Bus Kilometres Operated by all Contracted Buses comprising the Available Fleet during the relevant period of 12 (twelve) calendar months that has triggered this provision

It should be noted that the Half Yearly Assured Payment Amount will not be payable for any shortfall in Kilometres of the Fleet that arises due to:

- a. *Default of the Operator under this Agreement*
- b. *Non-availability of Contracted Buses for reasons attributable to maintenance or accidents*
- c. *Breach of law by the Operator*
- d. *Occurrence of a Force Majeure Event.*

ii. Payment for Excess Kilometres

If the Contracted Buses operated under this Agreement exceed the Half Yearly Assured Bus Kilometres, then the Kilometre Charge payable applicable for such additional kilometres in excess of the Half Yearly Assured Bus Kilometres shall be calculated as follows;

Additional Kilometre Payment = Applicable Kilometre Charge for the relevant payment period x 0.75^{50} x Additional Km done by the each Lot of Contracted Buses in aggregate beyond the Half Yearly Assured Km

iii. The Applicable Kilometre Charge for the purpose of the Payment of Unutilised or Excess Km shall be the weighted average of the applicable Kilometre Charge used in payment periods during the relevant year.

⁴⁹ **Drafting Note:** As the bus procurement is not under the purview of the Operator, he will have to bear fixed cost only for manpower, insurance for other assets and expenses related to cleaning and washing which is estimated to be around 25% of the total operation cost /km including the margin of 10%.

⁵⁰ **Drafting Note:** It is estimated that generally, bus operators would be able to cover fixed costs such manpower, insurance etc and margins by running the buses for assured kilo-meters. However by operating the buses for extra kilo-meters, the bus operator bears only variable operating cost mainly in terms of Fuel, spare parts and consumables which comprises of 70% to 75% of the total km charges which should be reimbursed by the Authority. Such formula based arrangement also mitigates the risk of regulatory capture in terms of buses running extra kilometers even during non peak hours or on non profitable routes.

- iv. The determination of whether Half Yearly Assured Payment Amount is due will be done at the end of a period of six consecutive calendar months. The Authority will provide the Operator with a notice of the calculation with the supporting data (the kilometres travelled by each of the Contracted Buses comprising the Available Fleet).
- v. The Authority shall have right to compute on its own and verify the Half Yearly Assured Kilometres. The Authority shall compute and provide to the Operator, every quarter from the COD for the respective lot of buses, the total number of Kilometres that the Available Fleet has travelled for the aforesaid period. Such calculation shall be made using GPS and in case of absence of GPS, with the help of Authority staff or its authorised agency.

f. Basis of Revision of Kilometre Charge⁵¹

The Kilometre Charge shall be reviewed and (if applicable) revised. Kilometre charge for any given payment period shall be called the Applicable Kilometre Charge and shall be revised;

- a. For variable cost change, using fuel price as an indicator, on a monthly basis. The fuel price must reflect a legal source of supply of fuel for urban bus operations.
- b. For fixed cost change, using the Wholesale Price Index, annually.

$$R_L = [R_L\text{-base}] + [R_L\text{-base} \times 0.5^{52} \times (F - F\text{-base})/F\text{-base}] + [R_L\text{-base} \times 0.5 \times (W - W\text{-base})/W\text{-base}]$$

Where

R_L is the Kilometre charge for each Lot

R-base is the Base Kilometre Charge

F is present Price of Fuel/unit

F-base is the Base Year Price of Fuel/unit

W is the Present Year Wholesale Price Index

W-base is the Base Year Wholesale Price Index

⁵¹ **Drafting Note:** This is an indicative formula and will depend the type of Bus (Mini, Midi, AC, Non AC) and the geographical nature of the Bus Service Area.

⁵² **Drafting Note:** The fuel expense is estimated to consist around 50% of the total Kilometre Charge.

The Wholesale Price Index for the present year (WPI) shall be obtained from the latest WPI available as published by the Ministry of Commerce, Government of India, or such other body that is reliably entrusted with this task, and shall be revised on every anniversary of the COD of each Lot of Contracted Bus.

16.6 Limitations to Liability of Authority for Operations and Maintenance

The Authority shall not be liable to make any other payments other than the payments described in this section.

16.7 Liabilities arising from negligent driving and accidents

Any damages arising due to negligent driving, or accidents of the Contracted Buses on the street shall be the liability of the Operator.

16.8 Fines and Compensation

Any fines levied by traffic police or any competent authority will be borne solely and directly by the Operator. The Authority shall have no liability in relation thereof.

17. TAXES AND STATUTORY LEVIES

17.1 The responsibility to pay taxes and statutory charges related to Bus Services would be divided between the Authority and the Operator as mentioned in the responsibility matrix provided in the table below:

Sr. No.	Taxes and Charges	Parties responsible for payment
1	Vehicle Registration Charges	Authority
2	Insurance premium for the Buses and other assets owned by the Authority	Authority
3	Motor Vehicle tax within Municipal Limit of [Name of the Urban Area]	Authority
4	Motor Vehicle tax out side Municipal Limit of {Name of the Urban Area}	Authority
5	Passenger Tax	Authority
6	Stage Carriage Permit	Authority
7	Service Tax	Payable by the Operator and shall be reimbursed by Authority.

18. ESCROW ACCOUNT

- 18.1 The Authority shall within [_____] ⁵³ days from the Execution Date open and establish an account (the “**Escrow Account**”) with a nationalised bank (the “**Escrow Bank**”).
- 18.2 For the purpose of opening and operating an Escrow Account, the Authority shall enter into an Agreement with the Operator and the Escrow Bank (“the Escrow Agreement”) in accordance with the format provided in **Annexure 10** to this Agreement. The Escrow Agreement shall remain in full force and effect until the Escrow Account is not discharged in accordance with the terms contained thereof.
- 18.3 The Authority shall deposit all the revenues generated and all the income accruing from the operation and maintenance of the Contracted Buses and provision of Bus Service within the Bus Service Area including but not limited to the Passenger Fare collected by the Authority (itself or through a third party) in the Escrow Account.
- 18.4 The Authority shall at all times throughout the Total Contract Period maintain at least an amount equivalent to [1 (one)] month’s estimated payment of Kilometer Charge payable to the Operator and for this purpose, replenish with its own resources, any deficit that may arise in maintaining such balance of funds.
- 18.5 The Escrow Account shall only be operated by the Authority.
- 18.6 The Escrow Account shall, inter alia, provide for a priority order for payment to be made out of it at the beginning of every Payment Period. The order of priority shall be as given below:
- a. Payment towards taxes and other statutory levies.
 - b. Payments to the Operator towards Kilometer charge after adjusting for ‘a’ above.
 - c. Balance funds to flow to Authority, subject to the maintenance of balance of amount equivalent to [1 (one)] month’s estimated payment of Kilometer Charge to the Operator.

⁵³ **Drafting Note:** Authority to specify.

18.7 Notwithstanding anything to the contrary contained in the Escrow Agreement upon Termination of this Agreement, all amounts standing to the credit of the Escrow Account shall be appropriated by the Authority.

19. OPERATION AND MAINTENANCE STANDARDS

19.1 The Operator shall observe the minimum service standards for operations and maintenance of Contracted Buses as provided in the Agreement.

19.2 The Operator shall operate and maintain the Contracted Buses in accordance with the Fleet Deployment Plan, and shall at all times ensure that the frequency is maintained as specified under the Fleet Deployment Plan or as per the instructions of the Authority from time to time.

19.3 The Operator shall ensure that the following activities are undertaken as part of the maintenance activity of the Contracted Buses without any causing disruption to the frequency or the availability of the Contracted Buses in accordance with the terms contained herein:

- a. Fuelling
- b. Water topping of radiators
- c. Checking and topping of engine oils
- d. Checking of tyres
- e. Cleaning, sweeping and washing of buses including soap washing every week.
- f. Attending to defects reported by drivers.

19.4 In addition to the Operator Clearances, the Operator shall ensure that he procures and maintains a valid certificate of fitness and a pollution control certificate from the relevant authorities for all the Contracted Buses from time to time.

19.5 In the event the Operator fails to maintain the security of the Contracted Buses and there is any theft or damage of bus component/spare parts/hardware/software/instrument, then the Operator shall reinstall/re-instate such bus component/spare parts/hardware/software/instrument of

the same or equivalent quality and specification after giving prior written notice to the Authority.

19.6 The Authority or representative of the Authority shall monitor the replacement or re-installation done by the Operator and shall determine whether the replaced or re-installed bus component/spare parts/hardware/software/instrument is the same or equivalent quality as originally provided or installed in the Contracted Bus. In the event that the Authority or representative of the Authority determines that the replaced or re-installed bus component/spare parts/hardware/software/instrument is of an inferior quality then the Authority shall consider this an Operator's Event of Default.

19.7 In the event of such breach in security, the Operator shall extend all co-operation to the Authority including but not limited to filing complains to the police and or any other investigation undertaken in relation thereof.

20. SHAREHOLDING REQUIREMENTS

20.1 In case the Selected Bidder is a consortium, the aggregate equity share capital of the lead member, in the issued, subscribed and paid-up equity share capital of the Operator shall not be less than 51% (fifty one per cent) for the first three years of the Contract Period. The other member of the consortium shall hold equity share capital representing not less than 26% (twenty six per cent) of the subscribed and paid-up equity of the Operator for the first three years of the Contract Period (The "**Lock-in Period**").⁵⁴

20.2 Any non-compliance with the provision hereof by the Selected Bidder/Lead Member/consortium members/the Operator, and failure to remedy such non compliance within [30 (thirty)] days from the date of Authority's notice in this regard shall constitute an Operator(s) Event of Default, which shall entitle the Authority to terminate this Agreement in accordance with the provisions hereof.

20.3 The shareholders of the Operator, with prior approval from the Authority, can disinvest/sell off their respective Equity stake, fully or partially, after

⁵⁴ **Drafting Note:** This provision will be revised in the event a single Bidder is also required to be locked in.

completion of the Lock-in Period, to any interested party having eligibility and qualification similar to the Selected Bidder.

20.4 Notwithstanding the provisions of Clause 20.3 above, the Operator/Selected Bidder shall further ensure, that in the event it has been selected for the Project on the strength of the technical and or financial capabilities of its/any of the consortium member's associates, the said associate shall remain an associate of the Selected Bidder/member of the consortium, throughout the Contract Period.

21. ROLES, RESPONSIBILITIES AND OBLIGATIONS OF THE OPERATOR AND THE AUTHORITY

21.1 Obligations of the Operator

In addition to the terms and conditions of this Agreement, the Operator shall perform the following obligations. The Operator shall:

21.1.1 Operation and Maintenance of Contracted Buses:

- a. take possession of the Contracted Buses for the purposes of operating and maintaining the Bus Service in accordance with the Fleet Deployment Plan and the terms contained herein;
- b. operate and maintain the Contracted Buses in accordance with the Operation and Maintenance Standards;
- c. use the Contracted Buses only for the purpose of providing Bus Services in accordance with this Agreement and shall not use the Contracted Buses for any other purposes;
- d. allow access to the Contracted Buses to all members of the public without any prejudice or discrimination;
- e. Make drivers and technicians for undergo orientation / familiarisation training programme at [Name of the Urban Area]. Operator would also arrange for space, the training bus, fuel etc for said training programme at his cost.
- f. The training program shall be organised by the Operator on periodic basis as an ongoing activity of providing primary training to newly recruited drivers and technicians as well as updation

training to existing manpower.

- g. ensure the highest standards of cleanliness both inside and outside the Contracted Bus at the time of reporting for the first shift of operations of the bus service of the day;
- h. ensure safety and security of the passengers, personnel and any third party using the Contracted Buses. The Authority may impose penalties/damages for breach of safety, maintenance and operating requirements;
- i. ensure safety and security of the Contracted Buses against theft or other forms of damage;
- j. submit invoices in a timely manner in accordance with the terms contained herein;
- k. maintain working capital equivalent to at least [1 (one)] month's Operator Payment payable for [one (1)] month;
- l. pay all monies due and payable including but not limited to damages and/or fines to the Authority as per terms of Agreement without any delays;
- m. ensure that the Contracted Buses stop to pick up and allow the passenger to get off at the nominated bus stations;
- n. provide and maintain (and keep up to date) first aid box in each Contracted Bus during Contract Period;
- o. keep available any and all equipment, fuel, consumable, machine or material that is required for the uninterrupted and continuous operation, management and maintenance of the Fleet at all times and places during the Contract Period;
- p. make adequate arrangement either in-house or outsourced for overhauling of bus aggregates, repair and retreading of tyres, repair of bus bodies, repair of accidental buses, etc to the satisfaction of the Authority.
- q. make adequate arrangement either in-house or outsourced for attending to road calls on-line, towing of failed vehicles if required, clearance of bus ways, etc in least possible time.
- r. shall not tamper or interfere with any equipment, instrument or system including the GPS tracking facilities and CCTV surveillance and any other IT and Contracted Bus monitoring devices provided in the Contracted Buses and the Project to

- enable provision of safer Bus Services to the passengers.
- s. shall ensure the air conditioners (if any) provided in the Contracted Buses are operated and maintained in good working condition as per the design capacity, failing which the Authority shall have the right to impose fines in relation thereof.
 - t. All provisions of this document would be applicable, mutatis mutandis, for providing buses for operation during night shift if so required and or full complement of buses required on festival days / special occasions etc as decided by Authority.
 - u. ensure at its own cost and expense and keep available at all times, any and all equipment, fuel, consumable, machine or material that is required for the uninterrupted and continuous operation, management and maintenance of the Bus Service and the implementation of this Agreement. It is clarified that all the costs, including costs relating to the equipment, material and consumables shall be solely borne by the Operator.
 - v. submit the copy of the Employee State Insurance and Provident Fund challans to the Authority every month; and
 - w. agree to comply with all Applicable Laws including labor and local laws, pertaining to the employment of labor, staff and personnel engaged by it for implementing the Project, that are now or may in the future become applicable to Operator's management, operation and maintenance of the Project, and personnel/ drivers, engaged in such operations covered by this Agreement or accruing out of the performance of Bus Services and operations contemplated hereunder. The Operator shall be solely responsible and liable for compliance with all Applicable Laws, including labor and local laws, pertaining to the employment of labor, staff and personnel engaged by it for implementing the Project.

21.1.2 Co-operation with the Authority

- a. cooperate with the Authority and/or any third party appointed by Authority for the purposes of establishing or operating any equipment, instruments or systems in the Contracted Buses or Bus Depots, Terminals and/or Parking Spaces;

- b. make adequate communication arrangements / develop communication facilities / centre for effective and efficient, timely communication of all incidents/ accidents/ breakdowns etc. to relevant authorities / persons / officials.
- c. cooperate with the Authority and/or any third party appointed by the Authority for the purpose of collection of Passenger Fare;
- d. co-operate with the Authority or any third party appointed by the Authority in relation to the installation, operation, and maintenance of the ticket vending and validation machines and collection of fare through hand held machines if required. The Authority, its personnel, and authorized contractors shall have complete access to such ticket vending and validation machines and shall not be in any manner obstructed by the Operator, its personnel, or contractors, and the said machines shall in no manner be tampered with or damaged by the Operator or its personnel;
- e. Cooperate with the Authority for the purposes of monitoring and supervision of the quality, efficiency and adherence of the Operator to other contractual arrangements pertaining to Project.
- f. Maintain log books, bus wise, and all maintenance work / activities pertaining to each bus shall be entered there-in on regular basis. Authority shall be free to inspect logbooks at all times and the Operator shall make log books available to Authority or it's representative and answer all queries to it's satisfaction.
- g. respond to all notices letters communications received from Authority within the given time frame;
- h. provide all information, data, records, documents or information as may be required by Authority or Project Management Consultant , from time to time; and
- i. participate in all the meetings, , discussions as directed by the Authority from time to time.

21.1.3 Compliance with the terms of the Warranty and Good Industry Practice

- a. shall comply with all terms of Warranty and instructions that are provided as a part of the purchase order with each Contracted Bus;
- b. undertake all preventive and corrective maintenance in compliance with terms of the Warranty as provided by the bus manufacturer, standards and instructions as may be notified by the Authority from time to time and in accordance with Good Industry Practice;
- c. carry out major overhauls of the Contracted Buses according to the number of kilometres travelled as per terms of the warranty/purchase order as provided by the bus manufacturer, standards and instructions as may be notified by the Authority from time to time and in accordance with Good Industry Practice;
- d. shall comply with all the literature provided by the Authority as received from bus manufacturer in terms of manuals, operating, and maintenance and safety instructions/manual to the Operator. The Operator shall be responsible for understanding the working of Contracted Buses allotted to it in all aspects specified above including safety features. Operator shall abide by the instructions specified in the operating, and maintenance and safety instructions/manual all times during the Contract Period. The inspection procedures for the frequency and type of the inspection for each technical condition criteria as specified therein for Contracted Buses shall be complied by the Operator;
- e. notify defects of any bus component or equipment and/or monitoring device that may be within the scope of the warranty/purchase to the order within [1 (one) day] of noting such defect, to the Authority and take prompt and immediate action as per the instructions of the Authority to remedy or rectify the defects. In the event that the Operator does not notify the Authority within the stipulated time period then it shall be liable to repair or remedy at its own cost and expense such defect, as per the instructions issued by the Authority.

21.1.4 Annual Maintenance Contract

- a. procure and maintain an annual maintenance contract with the Contracted Bus manufacturer or his authorized dealer or through his own or other well equipped workshops for the purpose of ensuring regular servicing and preventive maintenance activities in relation to the Contracted Buses.

21.1.5 Record and Reporting Requirements

- a. maintain record of all preventive maintenance activities shall be kept in the bus maintenance log book and duly authenticated by the person in charge of carrying out Contracted Bus maintenance. The Operator shall submit the log books for inspection by Authority staff as and when demanded;
- b. submit to the Authority in a format as specified by the Authority from time to time:
 - i. a monthly report which shall include but not be limited to:
 - Progress reports
 - Status of all risks and issues.
 - Status of readiness the skilled staff to operate Contracted Buses and supervise Contracted Bus operation.
 - Status of Contracted Buses with regards to roadworthiness and compliance with highest maintenance standards/manufacturer's manual or instruction.
 - ii. report on an immediate basis reporting incidents requiring urgent attention of the Authority such as accidents, theft, etc.
 - iii. submit a summary of all the complaints on a monthly basis to Authority.

21.1.6 Inspection :

Make available Contracted Buses to the Authority or its authorised personnel for inspection as and when required/instructed by Authority for assessment of compliance with maintenance and roadworthiness.

Upon such inspections any suggestions/instruction received from the Authority with regards to corrective actions, maintenance requirement, part replacement requirement, shall be implemented

by the Operator at its own cost within [15 (fifteen)] days or a reasonable time period as specified by the Authority. In case of non rectification/non action of such instruction within stipulated time period, the Authority may replace or rectify such defect at its own cost and such expenses borne by the Authority shall be reimbursed by the Operator on an immediate basis.

It is hereby clarified that the Authority at its sole discretion, if it determines that such events are occurring on regular basis or are causing undue interference with the Bus Services, may: (i) impose fines and/or damages in accordance with the terms contained herein; and/or (ii) terminate this Agreement.

21.1.7 Repair and Replacement

Subject to obtaining prior written permission of the Authority and any instructions/specifications issued by the Authority, the Operator may if need so arises, replace or install any equipment or accessory for beyond the specifications inside or on the outside of the Contracted Buses. In the event the Operator replaces or installs any equipment or accessory in accordance with this provision, it shall ensure that such additional equipment or accessory is compatible with the existing bus components, parts, software, accessories, or equipment.

21.1.8 Appointment of Drivers and Staff

a. appoint: (i) drivers holding a valid licence for a period of [3 (three)] years before the Execution Date in accordance with the Motor Vehicles Act, 1988; and submit the license of all appointed drivers to the Authority before deployment of the Contracted Buses; and (ii) appoint either on a temporary, permanent or contractual basis trained and skilled staff for operation, maintenance, and supervision of the Contracted Buses and other facilities related thereto at his cost for services as per the Agreement.

Provided however, the Authority may require the Operator, to remove any person employed for the Bus Services, who in the opinion of the Authority:

- persists in any misconduct,

- is incompetent or negligent in the performance of his duties,
 - fails to conform with any provisions of this Agreement, or
 - persists in any conduct which is prejudicial to safety, health, or the protection of the general public / environment.
- b. be solely and exclusively responsible for all drivers, employees, workmen, personnel and staff employed for the purposes of implementing the Agreement. The Operator shall ensure that all personnel and staff are under its supervision so as to provide the Bus Service in a safe and efficient manner to the public.
- Provided, however the Authority shall not be liable for any payment or claim or compensation (including but not limited to compensation on account of death/injury/termination) of any nature to such foregoing persons at any point of time during tenure of this Agreement or thereafter and the Operator shall keep the Authority indemnified in this regard.
- c. ensure that all drivers, personnel and staff shall wear uniform as approved by Authority and are well behaved with passengers and officials of Authority. The Operator shall at its own cost and expense provide uniforms and shall ensure that clean uniforms shall be worn by drivers and any other personnel and staff employed at all times when they are on duty and doing any act in relation to providing the Bus Service under this Agreement.
- d. hold periodic training sessions for drivers, staff and all personnel (temporary or on contractual or permanent basis) so as to ensure to implementation of Bus Services efficiently.
- e. be responsible for all the costs and expenses of maintenance, operation, employment of drivers and other personnel including but not limited to travel, training of its employees, and vendors engaged by the Operator in connection with the implementation of this Agreement.
- f. make efforts to maintain harmony and good industrial relations among the labor and personnel employed in connection with the performance of the Operator's obligations under this Agreement and shall at all times be the principal employer in respect of such

labor and personnel.

21.1.9 Appointment of Operator's Manager

Shall appoint a qualified personnel to act as a single point contact to manage all the communications and correspondence with Authority ("**Operations Manager**").

21.1.10 Payment of Taxes and Duties

Subject to Clause 17, make timely payment of all taxes and duties due and payable under Applicable Law.

21.1.11 Payment of Fines

Shall ensure that it promptly pays any fines or damages that may be imposed for any defaults in compliance with traffic rules or other Applicable Laws in relation to the operation of the Bus Service.

21.1.12 No Alterations or Modifications of the Contracted Buses

- a. ensure that there no alterations in the Contracted Buses or any part thereof made at any point of time including the colour of such Contracted Buses without the prior written approval of the Authority.
- b. ensure that no additional or new equipment, hardware or software is installed or used in the Contracted Buses without prior approval of Authority.
- c. shall not tamper or interfere with any equipment, instrument or system including the GPS tracking facilities and CCTV surveillance and any other equipment or monitoring devices provided in the Contracted Buses

21.1.13 Complaints Redressal

- a. maintain a complaints register on every Contracted Bus, and shall ensure that the Complaint Register is not tampered with in any manner at any point of time.
- b. take appropriate action as per the instructions notified by the Authority in relation to any complaint made by the passenger or user of the Contracted Bus or any third person in relation to the Bus Service.

21.2 Rights of the Operator

The Operator shall have right to:

- 21.2.1 receive Contracted Bus(es) from the Authority for providing Bus Services as per the terms of this Agreement;
- 21.2.2 receive Operator Payment from the Authority as per the terms mentioned in this Agreement;
- 21.2.3 receive support for obtaining required permits and sanctions from the government, or local body and to obtain assistance and support in dutifully carrying out the obligations as provided for in this Agreement as may be within the purview and general jurisdiction of the Authority;
- 21.2.4 use Bus Depot subject to the terms of the Bus Depot Agreement and the terms provided herein; and
- 21.2.5 operate and maintain the Contracted Buses on the Routes as per conditions set forth in the Agreement.

21.3 Authority's Rights and Responsibilities

In addition to the terms and conditions of this Agreement, the Authority shall:

- 21.3.1 procure Contracted Buses for the purposes of the implementation of this Project and hand over the possession of the same to the Operator for the limited purpose of enabling it to operate and maintain the Bus Services as per this Agreement;
- 21.3.2 provide adequate water and electric supply to the Depot during the Agreement Period;
- 21.3.3 provide to the Operator the Bus Depot right to use to the Operator in accordance with the terms of this Agreement and Depot License Agreement
- 21.3.4 obtain, at its own cost, Route licenses (stage carriage permits) from the relevant RTA/RTO, and allow the Operator to operate the buses on its behalf under these Licenses;
- 21.3.5 provide and install monitoring devices on the Contracted Buses to enable real time tracking (including but not limited to CCTV camera or Vehicle Tracking System);
- 21.3.6 establish and operate a Central Control Centre to: (i) register complaints, public grievances in relation to the Bus Services being undertaken by the Operator under this Agreement; and (ii) monitor

- and supervise the functioning of the Operator; (iii) maintain records and reports in relation to the implementation of the Project;
- 21.3.7 provide assistance, on a best effort basis, in obtaining the Operator Clearances, provided the Operator has made the applications for such permits/ clearances to the concerned government authorities and is otherwise in compliance with the terms applicable for grant of the same;
- 21.3.8 conduct regular inspections of Contracted Buses and the Project at any time during the Contract Period. The Authority may penalise traveller commuting without ticket in cash as determined by the Authority;
- 21.3.9 provide the right of use and right of way to the Operator, in respect of the space for parking of Contracted Buses/ maintenance depot, together with the right to use and right of way for such space only for the purposes set forth in this Agreement;
- 21.3.10 have the right to levy damages and or fines as provided in this Agreement and in the event the Operator fails to make payments of such fines, the Authority shall have the right to deduct the same from the payments for Km charge and / or Performance Security
- 21.3.11 have the right to issue operating instructions and any other advisory or instruction as deemed necessary to maintain highest standards of Bus Services including safety, functionality and operationality of the Bus Services.

22. INSURANCE

22.1 Insurance to be taken out by the Authority

- 22.1.1 The Authority shall, with effect from the COD of each Lot of Contracted Buses, at its own cost and expense, effect, purchase and maintain all/any insurances on behalf of and in the name of the Authority in respect of such Lot of Contracted Buses as per Applicable Laws including but not limited to Motor Vehicles Act, 1988.
- 22.1.2 The Authority shall procure and maintain any additional insurances as may be reasonably considered necessary and prudent in accordance with good industry practices, during the Total Contract

Period, including but not limited to the following:

- a. A comprehensive third party insurance cover as per the Motor Vehicles Act, 1988 and any amendments thereof for any incident resulting in the death of the users of the Contracted Buses or to any third party due to accident, for unlimited occurrences. Liability of passenger insurance shall be limited to the approved passenger capacity of the vehicle by RTA/RTO.
- b. Any other insurance that may be necessary to protect the buses, passengers and the personnel on board against loss, damage or destruction at replacement value including all Force Majeure Events that are insurable and not otherwise covered in above clauses with the Authority as beneficiary/co-beneficiary.
- c. Standard fire and perils policies as per market practices for any loss and damages to the extent possible to Bus Depot, Terminal(s) and Parking Space(s) handed over to the Operator

22.1.3 The Authority shall be responsible to pay the premium regularly and maintain the insurance policies specified in sub clause (1) and (2) of Clause 22.1 above at all time during the Total Contract Period.

22.2 Insurances to be taken out by the Operator

22.2.1 The Operator shall at his own expense, procure and maintain the following insurances-Insurance of employee compensation and other liability as per Workmen's Compensation Act, 1923 for its personnel employed for fulfilment of Project requirement.

22.2.2 In the event that the Operator fails to effect and keep in force the insurance for which it is responsible pursuant hereto, the Authority shall have the option to take or keep in force any such insurance and pay such premium and recover all costs thereof from Operator.

22.3 Evidence of Insurance Cover

22.3.1 The Authority and the Operator shall, from time to time, and in no case later than [15 (fifteen)] days from receiving any insurance policy certificate, share with each other copies of all insurance policies (or appropriate endorsements, certifications or other

satisfactory evidence of insurance) obtained by it as provided in Clause 22.1 and Clause 22.2 above.

22.3.2 If the Operator fails to procure and maintain the insurance for which it is responsible pursuant hereto, Authority may take or keep in force any such insurance, and pay such premium, and in such an event shall have the right to seek reimbursement or recover such costs from the Operator thereof.

22.4 Process of claiming Insurance and Application of Insurance Proceeds

22.4.1 For the purpose of claiming insurance against any insurance policies taken out by the Authority in fulfilment of its obligations under this Agreement, the Operator shall raise an insurance claim in an applicable format as may be notified by the Authority from time to time, after getting the same approved and signed by the Authority.

22.4.2 Subject to the provisions of this Agreement for insurance policies where the Authority is the beneficiary and where it received the insurance proceeds, only such sums as are required from the insurance proceeds for restoration, repair and renovation of the Contracted Buses, shall be released by the Authority to the Operator within [7 (seven) days] of receipt towards repair or renovation or restoration or substitution of the Contracted Buses based on such proof that such Contracted Buses or any equipment/part have been damaged or required repair/modification.

22.4.3 In the event of breakdown/accident of a Contracted Bus leading to the complete destruction, such that the Contracted Bus cannot be repaired and operated in normal circumstances, and is rendered inoperable, the Operator will be required to replace the damaged bus with another new bus of make and model acceptable to the Authority at his own cost. The Authority will pass on any insurance proceeds received by it towards damage of the Contracted Bus in question to the Operator for contributing to the purchase of the bus, subject to such proceeds not exceeding the cost of the new Contracted Bus. The Operator will bear all the remaining cost of replacement of the Contracted Bus to the extent not covered by the insurance proceeds. Such replaced Contracted Bus will be owned by the Authority and shall form part of the Contracted Buses and

shall be operated and transferred under similar contract conditions as the other Contracted Buses during the remaining Contract Period. The Operator will cause the scrap of the damaged/destroyed Contracted Bus to be delivered to the location specified by the Authority at his own cost, wherefrom the Authority will take its complete possession and control and dispose as it pleases without any compensation / payment to the Operator. The period of contract for such replaced bus shall be concurrent with the Contracted Bus it has replaced.⁵⁵

22.4.4 In the event of breakdown/accident of a Contracted Bus leading to the complete destruction, such that the Contracted Bus cannot be repaired and operated in normal circumstances, and is rendered inoperable, the Operator will be required to replace the damaged bus with another new bus of make and model acceptable to the Authority at his own cost. The Authority will pass on any insurance proceeds received by it towards damage of the Contracted Bus in question to the Operator for contributing to the purchase of the Contracted Bus, subject to such proceeds not exceeding the cost of the new Contracted Bus. The Operator will bear all the remaining cost of replacement of the Contracted Bus to the extent not covered by the insurance proceeds. The Operator will cause the scrap of the damaged/destroyed Contracted Bus to be delivered to the location specified by the Authority at his own cost, wherefrom the Authority will take its complete possession and control and dispose as it pleases without any compensation/payment to the Operator. The period of contract for such replaced bus shall be concurrent with the Contracted Bus it has replaced.⁵⁶ Such replaced Contracted Bus, at the expiry of each Lot of Contracted Buses of which such Contracted Bus is a part, shall be transferred to the Operator in accordance with Clause 31, and the Operator shall for such replaced Contracted Bus pay to the Authority the book value of the Contracted Bus on the date of such transfer after deducting the insurance proceeds.

⁵⁵ **Drafting Note:** This provision shall be used in the event the Authority is retaining the title and ownership of the Buses and there is no transfer of any Buses at the expiry of the Agreement to the Operator.

⁵⁶ **Drafting Note:** This provision shall be used in the event the Authority is exercising the option to transfer the title and ownership of the Buses to the Operator under the Handback provision.

23. DAMAGE TO CONTRACTED BUSES DUE TO VANDALISM

- 23.1 In the event that any damages or need for repairs to the Contracted Buses, Bus Depot, Terminals, and/or Parking Spaces or any other asset provided by the Authority arises during the Total Contract Period on account of Vandalism, the Operator shall be required to make good the damages and repair the Contracted Buses to the original conditions at the cost of Authority.
- 23.2 The Operator may claim re-imbursement of the cost less of insurance proceeds for such repair and rectification calculated at mutual agreed terms between Authority and the Operator.

For the purpose of this clause, “**Vandalism**” is defined as destroying or damaging Contracted Buses, deliberately and/or for no reasons attributable to omission of act or breach of obligation of the Operator by the persons other than the employee or sub contractor of the Operator.

Provided however, damage to Contracted Buses or any part thereof due to regular wear and tear, or breach of maintenance obligations or any other obligations by the Operator and/ or omission of act by the Operator shall not be considered within the scope of definition of Vandalism as defined herein, and shall be the liability of the Operator. In such cases, the repair, servicing and rectification Service shall be undertaken by the Operator at its own cost to the satisfaction of Authority.

24. FINES/DAMAGES

- 24.1 Without prejudice to and notwithstanding any other provision of this Agreement pursuant to which the Operator is liable to pay fines/damages, , the Operator shall be liable to pay damages/fines during the Payment Period to the Authority in respect of the deficiencies/events provided in **Annexure 2** of this Agreement (“**Fines**”).
- 24.2 Fines in respect of said specified deficiencies/events for each type of Contracted Bus as provided in **Annexure 2** to this Agreement and shall be the product of Applicable Kilometre Charge with respect of each category/type of Contracted Bus and the Fine Kilometre (Km – Fined) as provided in **Annexure 2** to this Agreement.

24.3 This sum total of all the Fines payable by Operator in respect of each category of Contracted Bus due to said deficiency/delinquent events in service by the Operator in any given Payment Period shall be computed as set out below.

The payments to be made under Clause 16 (Operator Payment) shall be made after deducting the total Fines payable during the Payment Period.

$$[D\text{-fines}] = [R] \times [KM\text{-Fined}]$$

Where

[D-fines] is the deduction in operator's payment against Fines, to be made by Authority in a Payment Period in respect of each category of buses.

[R] is Applicable Kilometre Charge for the relevant bus type for which Fine is imposed.

[KM-Fined] penal Kilometers applied against each deficiencies/events as set out **Annexure 2** to this Agreement.

24.4 The total Fines payable to the Authority in any Payment Period in terms of this clause in respect of all the categories of buses shall be computed by arriving at the arithmetic sum of [D-fines] computed for each such category ("**Aggregate Fines**").

Provided however that the Aggregate Fines applied on the Operator in any Payment Period in terms of this clause shall be limited to 10% of the average payment made in the previous 3 (three) Payment Periods.

24.5 In addition to the Fines as specified above, failure to meet the Assured Fleet Availability shall attract the following damages:

24.5.1 If for any Lot of Contracted Buses, the Assured Fleet Availability is not met with and such occurrence can be substantially attributed, in the opinion of the Authority, to acts of omission and performance of the Operator and substantially within the control of the operator, (such as driver absenteeism, poor maintenance etc.), then damages would be payable by the Operator to Authority equal to 10% of revenue lost by Authority owing to such lower fleet availability. Such losses would be calculated based on daily average revenue.

24.5.2 As an illustration, for avoidance of doubt, damages Payable for 88% Fleet Availability against an requirement of 95% of Assured Fleet Availability can be calculated as follows:

95%-88% = 7% (Assured Fleet Unavailability)

ADR = Average Daily Revenue per Contracted Bus for each type of Contracted Bus in relevant Lot in the preceding [15 (fifteen)] days prior to the day for which the losses are being calculated.

Then damages payable for the day = 7% x total assured fleet size for the particular type of Contracted Bus x ADR x 10%.

The damages shall be separately calculated for each day and aggregated for each Payment Period for levy.

24.5.3 The Authority may add/delete/change/modify the parameters on which Fines can be applied in consultation with Operator(s). At least [30 (thirty) days] prior notice shall be given to the Operator before such additional fines can be applied. Fines levied shall be supported by reports of inspection done by the Authority or its authorised representatives including the reports maintained by the Central Control Centre.

24.5.4 In case Aggregate Fines payable by the Operator exceeds the 10% limit specified above for consecutive 5 (five) Payment periods, it shall be considered as breach of obligation by the Operator and shall entitle the Authority to terminate the Agreement in accordance with the provisions hereof.

25. MONITORING

25.1 Evaluation of Performance of Operator

25.1.1 The Authority shall review the performance of the Operator, based on three sets of parameters, indicated broadly as follows;

Sr. No.	Performance Parameter	Appraisal Period	Time	Mode of appraisal
1	Bus Maintenance	Monthly	and Random Checking	Physical checking
2	Bus Operations	Daily basis		Through GPS system connected with Central Control Centre and operations registers to be maintained by the Operator and inspected by the Authority.

Sr. No.	Performance Parameter	Appraisal Period	Time	Mode of appraisal
3	Staff Behaviour	Through checking	random	Physical checking during operation hours, complaint call and letters from passengers.

25.1.2 In the event the Operator fails to perform any parameter as highlighted in sub-clause (i) above it shall be liable to pay damages to the Authority for such non performance in accordance with **Annexure 2** to this Agreement.

25.1.3 In the event the Operator fails to pay the damages and/or fines for non performance in accordance with the terms contained hereof, such fines and/or damages shall be deducted from the Operation Payment to be made by the Authority against the Invoice raised by the Operator.

26. CONFIDENTIALITY OBLIGATIONS OF OPERATOR

26.1. Protection of Confidential Information

The Operator shall not without Authority's prior written consent use, copy or remove any Confidential Information from Authority's premises, except to the extent necessary to carry out Operator's obligations hereunder. Upon completion or termination of each assignment hereunder, Operator shall return to Authority all documents or other materials containing Authority's Confidential Information and shall destroy all copies thereof.

For the purpose of this Clause, the term "Confidential Information" means the information or document which is specifically marked by the issuer/provider of information as confidential or otherwise clearly marked as confidential or proprietary, and shall include any proprietary or confidential information of Authority relating to the Bus Services provided under the Agreement in relation thereto and information relating to Authority's business or operations.

Confidential Information shall not include information which:

- a. Is or becomes generally available to the public without any act or omission of Operator;
- b. Was in Operator's possession prior to the time it was received from

Authority or came into Operator's possession thereafter, in each case lawfully obtained from a source other than Authority and not subject to any obligation of confidentiality or restriction on use;

- c. Is required to be disclosed by court order or operation of law; in such event, Operator shall so notify Authority before such disclosure; and
- d. Is independently developed by or for Operator by persons not having exposure to Authority's Confidential Information.

26.2. The Operator is under an obligation to protect Confidential Information as per this Clause 26 for a period of three (3) years after the expiry or termination of this Agreement.

27. EVENT OF DEFAULT AND TERMINATION

27.1. Operator's Event of Default

Any of the following events shall constitute an Event of Default by the Operator ("**Operator's Event of Default**") unless such event has occurred as a result of a Force Majeure Event:

- 27.1.1 Operator is in breach of any of its obligations under this Agreement and the same has not been remedied for more than [60 (sixty)] days;
- 27.1.2 A resolution for voluntary winding up has been passed by the shareholders of the Operator;
- 27.1.3 Any petition for winding up of Operator has been admitted and liquidator or provisional liquidator has been appointed or Operator has been ordered to be wound up by Court of competent jurisdiction, except for the purpose of amalgamation or reconstruction, provided that, as part of such amalgamation or reconstruction the amalgamated or reconstructed entity has unconditionally assumed all surviving obligations of the Operator under this Agreement;
- 27.1.4 Operator fails to comply with the Applicable laws, rules and regulations.

- 27.1.5 Any representation made or warranties given by the Operator under this Agreement or under the RFP document is found to be false or misleading.
- 27.1.6 Operator fails to maintain/ refurbish/ replenish the Performance security as per terms of this Agreement.
- 27.1.7 The Operator has failed to ensure minimum shareholding requirements as specified herein.
- 27.1.8 Operator suspends or abandons the operations of Contracted Buses without the prior consent of Authority, provided that the Operator shall be deemed not to have suspended/ abandoned operation if such suspension/ abandonment was (i) as a result of Force Majeure Event and is only for the period such Force Majeure is continuing, or (ii) is on account of a breach of its obligations under this Agreement by the Authority.
- 27.1.9 The Operator repudiates this Agreement or otherwise evidences an intention not to be bound by this Agreement.
- 27.1.10 The Operator failed to make any payments/damages/damages due to Authority within period specified in this Agreement or indicated by Authority without any valid reason.
- 27.1.11 The Operator failed to perform any of the Operator's obligations, which has a Material Adverse Effect on the Agreement
- 27.1.12 Operator creates an Encumbrance over the Contracted Buses, Bus Depot, Terminals or Parking Spaces.
- 27.1.13 Operator fails to adhere to the timelines set forth in the Agreement for performance of Operator's obligations there under; and reason thereof damages as provided in Clause 24 exceeds value of Performance Security;
- 27.1.14 Repeated occurrence of breach of Operator's obligations specified in this Agreement and which shall not be remedied in Remedial Period specified by Authority; and
- 27.1.15 Any other default/breach of its obligation by the Operator, for which default/breach termination has been prescribed in terms of this Agreement.

27.2. AUTHORITY'S EVENT OF DEFAULT

Any of the following events shall constitute an Event of Default by the Authority (Authority's Event of Default) unless such event has occurred as a result of a Force Majeure Event:

27.2.1. The Authority is in Material Breach of any of its obligations under this Agreement and has failed to cure such breach within [60 (sixty)] days of occurrence thereof.

27.2.2. The Authority has unlawfully repudiated this Agreement or otherwise expressed its intention not to be bound by this Agreement (for example Authority fails to renew stage carriage license/permit, demands withdrawal of the Contracted Buses etc.)

28. TERMINATION DUE TO EVENT OF DEFAULT

28.1. Termination for Operator's Event of Default

- a. Without prejudice to any other rights or remedies, which the Authority may have under this Agreement, upon occurrence of an Operator Event of Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Operator; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Operator of its intention to issue such Termination Notice and grant [15 (fifteen) days] or such other reasonable period as the Authority deems fit at its sole discretion to the Operator to remedy the default ("**Remedial Period**") and/or make representations, and may after the expiry of such Remedial Period on non remedy of breach/default to the satisfaction of the Authority, whether or not it is in receipt of such representation, issue Termination Notice and then terminate the Agreement.
- b. In the event of termination for an Operator Event of Default, the Authority shall:
 - i. Be entitled to invoke and retain the Performance Security amount in full;
 - ii. Takeover peaceful possession without any Encumbrance

of all Contracted Buses, Bus Depots, Terminals, and/or Parking provided to the Operator; and

- iii. Refund the Upfront Contribution made by the Operator till the date of termination, to the Authority in the table below after deduction of any payment due to the Authority;

Termination Year	Refund of Upfront Premium (In % of total) ⁵⁷
1st year of the Contract Period of N year	100%
2 nd year of the Contract Period of N year	$100\% - (100\%/N) = X$
N year of the Contract Period	$X - (100\%/N) = Y$

28.2. Termination for Authority's Event of Default

- a. Without prejudice to any other right or remedies which the Operator may have under this Agreement, upon occurrence of Authority's Event of Default, the Operator shall be entitled to terminate this Agreement by issuing a Termination Notice to the Authority; provided that before issuing the Termination Notice, the Operator shall by a notice inform the Authority of its intention to issue such Termination Notice and grant [15 (fifteen) days or reasonable period to the Authority to remedy the default and/or make representations, and may after the expiry of such Remedial Period on non remedy of breach/default, issue a Termination Notice.
- b. Upon Termination of this Agreement on account of Authority's Event of Default, the Authority shall:
 - i. Refund/ release of performance security [if still subsisting] in full provided there are no outstanding dues off the Authority on the Operator
 - ii. Pay any sum due and payable as the Operation Payment by

⁵⁷ **Drafting Note:** The calculation has been illustrated as follows with assumption of Contract Period being 9 years;

Termination Year	Refund of Upfront Fee (In % of total)
1 st year of the Contract Period	100%
2 nd year of the Contract Period	$100\% - (100\%/9) = 89\%$
3 rd year of the Contract Period	$89\% - (100\%/9) = 78\%$
4 th year of the Contract Period	$78\% - (100\%/9) = 67\%$
5 th year of the Contract Period	$67\% - (100\%/9) = 56\%$
6 th year of the Contract Period	$56\% - (100\%/9) = 44\%$
7 th year of the Contract Period	$44\% - (100\%/9) = 33\%$
8 th year of the Contract Period	$33\% - (100\%/9) = 22\%$
9 th year of the Contract Period	$22\% - (100\%/9) = 11\%$

the Authority till date of such termination

- Takeover unencumbered possession of all Contracted Buses, Bus Depot/Parking Space provided to the Operator.
- Refund the Upfront Contribution made by the Operator till the date of termination, to the Authority in the following manner after deduction of any payment due to the authority;

Termination Year	Refund of Upfront Contribution (In % of total) ⁵⁸
1 st year of the Contract Period of N year	100%
2 nd year of the Contract Period of N year	$100\% - (100\%/N) = X$
N year of the Contract Period	$X - (100\%/N) = Y$

29. FORCE MAJEURE AND CHANGE OF LAW

29.1. Force Majeure

29.1.1. For the purposes of this Agreement the expression “Force Majeure” or “Force Majeure Event” includes acts of God, war, revolutions, hostility, civil commotions, strikes, fires, floods, earthquake, epidemics, quarantine restrictions, freight embargoes or explosions and if it affects the performance by the Party claiming the benefit of Force Majeure (the “Affected Party”) of its obligations under this Agreement and which act or event: (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

29.1.2. A soon as practicable and in any case within [seven(7) days] of the date of occurrence of a Force Majeure Event or the date of knowledge thereof, the Affected Party shall notify the other Party, inter alia, the following in reasonable detail:

- a. the nature and extent of the Force Majeure Event;
- b. the estimated duration of the Force Majeure Event;

⁵⁸ **Drafting Note:** Please refer Drafting Note no. 34 to understand the calculation.

- c. the nature of and the extent to which, performance or any of its obligations under this Agreement is affected by the Force Majeure Event;
- d. the measures which the Affected Party has taken or proposes to take to alleviate / mitigate the impact of the Force Majeure Event and to resume performances of such of its obligations affected thereby; and
- e. any other relevant information concerning the Force Majeure Event, and / or the rights and obligations of the Parties under this Agreement.

29.1.3. As soon as practicable and in any case within [5 (five) days] of notification by the Affected Party in accordance with the preceding sub-clause (a), the Parties shall, hold discussions in good faith in order to:

- a. assess the impact of the underlying Force Majeure Event;
- b. to determine the likely duration of Force Majeure Period; and
- c. to formulate damage mitigation measures and steps to be undertaken by the Parties for resumption of obligations the performance of which shall have been affected by the underlying Force Majeure Event;

29.1.4. The Affected Party shall during the Force Majeure Period provide to the other Party representative regular (which shall not be less than weekly) reports concerning the matters set out in the preceding sub-clause (b) as also any information, details or document, which the other Party may reasonably require.

29.1.5. If the Affected Party is rendered wholly or partially unable to perform any of its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such obligation to the extent it is unable to perform the same on account of such Force Majeure Event provided that:

- a. due notice of the Force Majeure Event has been given as required in accordance with the terms contained herein;

- b. the excuse from performance shall be of no greater scope and of no longer duration than is necessitated by the Force Majeure Event;
- c. the Affected Party has taken all reasonable efforts to avoid, prevent, mitigate and limit damage, if any, caused or likely to be caused to the Project as a result of the Force Majeure Event and to restore the Bus Services affected as a result of the Force Majeure Event in accordance with the Good Industry Practice and its obligations under this Agreement;
- d. when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party written notice to that effect, and shall promptly resume performance of its obligations hereunder the non-issue of such notice being no excuse for any delay in resuming such performance;
- e. the Affected Party shall continue to perform such of its obligations which are not affected by the Force Majeure Event, and which are capable of being performed in accordance with the Agreement; and
- f. any insurance proceeds received shall be, subject to the provisions of Financing Documents, entirely applied to repair, replace or restore the assets damaged on account of the Force Majeure Event, or in accordance with Good Industry Practice.

29.1.6. If the inability on account of Force Majeure to perform continues for a period of more than [three (3) months], each Party shall have the right to be released from further performance of the Agreement, in which case, neither Party shall have the right to claim damages from the other. All prior performance shall be subject to the terms of this Agreement.

29.1.7. Upon Termination of this Agreement on account of a Force Majeure Event, the Operator shall be entitled to receive;

- a. The refund/ release of Performance Security in full provided there are no outstanding dues off the Authority on the Operator.
- b. Any payments due in full on account of Payment of Kilometer Charge

- c. Collect any other payments due in respect of services undertaken in terms of the Agreement to the satisfaction of the Authority till date of such termination
- d. Refund of the Upfront Contribution made by the Operator till the date of termination, to the Authority in the following manner after deduction of any payment due to the Authority;

Termination Year	Refund of Upfront Contribution (In % of total) ⁵⁹
1 st year of the Contract Period of N year	100%
2 nd year of the Contract Period of N year	$100\% - (100\%/N) = X$
N year of the Contract Period	$X - (100\%/N) = Y$

30. CHANGE OF LAW

30.1. Change in Law shall mean the occurrence or coming into force of any of the following, after the date of execution of this Agreement:

- a. The enactment of any new law;
- b. The repeal, modification or re-enactment of any existing law;
- c. A change in the interpretation or application of any law by a court of record;
- d. Any order, decision or direction of a court of record; and
- e. Any change in the rate of any of the taxes that have direct effect on the Agreement;

Provided, *however*, Change in Law shall not include:

- a. Coming into effect, after the Execution Date, of any provision or statute which is already in place as of the date of execution of this n Agreement;
- b. Any new law or any change in the existing law under the active consideration of or in the contemplation of any government as of the Effective Date which is a matter of public knowledge;
- c. Any change in taxes, duties, levies, cess or any other form of charges;
- d. Non availability of any spare part, equipment, component due to price escalation or otherwise

⁵⁹ **Drafting Note:** Please refer Drafting Note no. 34 to understand the calculation.

30.2. Upon occurrence of a Change in Law, the Operator shall notify the Authority of the following:

- a. The nature and the impact of Change in Law on the Agreement and Project; and
- b. Upon receipt of the notice of Change in Law issued by Operator pursuant to preceding sub-clause, the Authority and the Operator shall hold discussions in relation thereof.

31. HANDBACK ON TERMINATION

31.1. Option 1: Contracted Buses, Bus Depots, Terminals, Parking Spaces, and other assets to be handed back to the Authority ⁶⁰

- a. The Authority shall retain at all times the title and ownership of Contracted Buses provided by the Authority to Operator under this Agreement.
- b. Upon expiry of this Agreement or in case of any early termination of the Agreement for whatever reason, the Operator shall handover without payment of any monies and free from Encumbrances the peaceful possession of all Contracted Buses and Bus Depots, Parking Spaces, Terminals and any other assets handed over or used by the Operator including without limitation any and all hardware, software, firmware, deliverables on board except the equipment, machinery and tools brought in by the Operator for the operation and maintenance of the Contracted Buses, in sound condition, subject to normal wear and tear.
- c. Any immovable infrastructure, which may be constructed by the Operator at the Bus Depot shall be transferred by the Operator.

31.2. Option 2: Contracted Buses to be transferred to the Operator ⁶¹

⁶⁰ **Drafting Note:** Authority to determine which Option 1 or Option 2 is adopted.

⁶¹ **Drafting Note:** The Agreement is drafted under the assumption that the Buses shall be transferred back to the Authority at the end of contract period, in case the Authority exercises the Option 2, various clauses in Agreement shall have to be modified accordingly as follows Since some of the Govt SPV/STUs may have very little capacity for disposal of assets the Option 2 is more advisable.

1. Title of the Agreement shall be changed as "Agreement for Operation of Buses on Operate, Maintain and Own at Transfer Basis"

31.2.1. The Authority shall retain the title and ownership of Contracted Buses provided by the Authority to Operator in relation to the Project under this Agreement during the Total Contract Period.

31.2.2. Subject to Applicable Clearances, and Applicable Law, the title and ownership of Contracted Buses shall be passed /transferred to the Operator upon expiry of Total Contract Period against payment of [___]⁶²("Bus Transfer Cost"). Such Bus Transfer Cost shall be payable in 12 (twelve) equal monthly instalments beginning from a period 12 (twelve) months prior to the date signifying the end of the Contract Period. Such payment shall be effected through a monthly deduction in the Km charge payments being paid to the Operator by the Authority, provided that if such deductions are insufficient to effect the required monthly payment, the Operator shall be bound to make a separate payment on demand through a Demand Draft. The Performance Security of the Operator shall be returned only after Bus Transfer Cost is paid.

31.2.3. Subject to provisions of Clause 22.4.4, the Operator shall not have the right to refuse such transfer as provided herein. In case the Operator refuses to accept the title and ownership of the Contracted Buses or refuses to pay the stipulated Bus Transfer Cost in respect of any or all

2. Add Definition of "Bus Transfer Cost".

3. Clause 9.1 of the agreement shall be revised as follows;

"The ownership of the Buses shall remain fully with the Authority during the entire term of the Contract and the ownership shall be transferred to the Operator at the end of the Contract Period and upon successful completion of the all Contract terms including safe keeping and proper maintenance of the Buses."

4. Save and except everything else in Clause 6, the Clause 6.5 shall be revised as follows;

"On the performance and completion of the contract in all respects, and submission of Demand Draft of Bus Transfer Cost as per clause 31.2.2 of this Agreement, the Performance Security shall be returned to the Operator without any interest, provided there are no outstanding dues of the Authority with the Operator."

5. Save and except everything else in the Clause 21.2, following shall be added at as part of clause "Expect Transfer of Bus Fleet after completion of contract as per the terms specified in clause 31 of the Agreement."

6. Save and except everything else in the Clause 28.2 and 29.1.7 following shall be added at as part of clause:

"In the event of early termination of the Contract on account of a Authority Event of Default / due to Force Majeure event, (text of 1) Authority event of default and 2) due to force majeure has to be changed for respective clauses) Authority may, at its own sole and absolute discretion, allow the buses to be purchased at the Bus Transfer Cost by the Operator, but only in case the Termination occurs at the end of (N) year of operation or thereafter. (N:- the year shall have to specified by the Authority. Such year, arguably, should be the year in which 80% Agreement Period gets completed.)

⁶²**Drafting Note:** Authority to specify the amount. Bus Transfer Cost could be the estimated Book Value of the Buses at the end of Contract Period. Whatever be the Bus Transfer Cost, the same should be indicated clearly in absolute amount terms in the RFP since it is an important cost input for the proposer / bidder.

Contracted Buses, the Authority shall be liable to deduct an amount equal to the payable monthly instalment from the payments due to the Operator for the Kilometre Charge and the Operator shall not have any claims to such amount. In the event the Authority is unable to recover the Bus Transfer Cost from the Operator by the end of the Contract Period for whatever reason, it shall be entitled to recover such full amount from the Performance Security along with applicable interest for the delayed amounts in accordance with the provisions of this Agreement

31.2.4. The title and ownership of the Contracted Buses above shall not pass on the Operator, until the Bus Transfer Cost has been paid or recovered in full, and until applicable ownership transfer documents have been executed as per Applicable Law.

31.2.5. The Operator shall have no right to seek the transfer of the Bus Depots, Parking Spaces, Terminals or any other immovable asset that may be provided by the Authority to the Operator, and the Authority shall retain the title, and ownership in relation to such assets at all times.

31.2.6. In case of any early termination of the Agreement before its normal expiry with the efflux of time, for whatever reason, the Operator shall handover free from Encumbrances the peaceful possession of all awarded/allotted Contracted Buses or besides the vacant and encumbrance free possession of the Bus Depots, Parking Spaces, Terminals, and any other assets installed or developed by Authority or Operator including without limitation any and all hardware, software, firmware, and deliverables on board in sound condition.

32. DISPUTE RESOLUTION

32.1. Amicable Resolution

32.1.1. Save where expressly stated otherwise in this Agreement, any dispute, difference or controversy of whatever nature howsoever arising under, out of or in relation to this Agreement including non

completion of the Agreement between the Parties and so notified in writing by either Party to the other (the "Dispute") in the first instance shall be attempted to be resolved amicably by the Parties and failing such resolution of the same, in accordance with the procedure set forth below.

32.1.2. Either Party may require the Dispute to be referred to the Chief Executive Officer (CEO)/Other Designated Officers, Authority for amicable settlement. Upon such reference, both the Parties and the CEO/ Other Designated Officers or his nominee (who can be an employee of Authority dealing the Authority functions or otherwise) shall meet at the earliest mutual convenience and in any event within [15(fifteen)] days of such reference to discuss and attempt to amicably resolve the dispute. If the Dispute is not amicably resolved within [15(fifteen)] days of such meeting, either Party may refer the Dispute to arbitration in accordance with the provisions of clause 32.2. below.

32.2. Arbitration

32.2.1. Arbitrator

In the event of any dispute arising between the Parties in relation to or under this Contract, the same shall be settled by arbitration conducted by an arbitration tribunal consisting of three arbitrators, one to be appointed by each Party and the third arbitrator being appointed by the two arbitrators so appointed. The decision of the arbitration tribunal shall be final and binding.

32.2.2. Place of Arbitration

The place of arbitration shall be [Name of the Urban Area].

32.2.3. Language

The request for arbitration, the answer to the request, the terms of reference, any written submissions, any orders and rulings shall be in English and, if oral hearings take place, English shall be the language to be used in the hearings.

32.2.4. Procedure

The procedure to be followed within the arbitration/arbitral tribunal and the rules of evidence which are to apply shall be in accordance with the Arbitration and Conciliation Act, 1996.

32.2.5. Enforcement of Award

Any decision or award resulting from arbitration shall be final and binding upon the Parties. The Parties hereto agree that the arbitral award may be enforced against the Parties to the arbitration proceedings or their assets wherever they may be found and that a judgment upon the arbitral award may be entered in any Court having jurisdiction thereof.

32.2.6. Fees and Expenses

The fees and expenses of the arbitrators and all other expenses of the arbitration shall be initially borne and paid by respective Parties equally subject to determination by the arbitrators. The arbitrators may provide in the arbitral award for the reimbursement to the prevailing Party of its costs and expenses in bringing or defending the arbitration claim, including legal fees and expenses incurred by the said Party.

32.2.7. Performance during Arbitration

Pending the submission of and/or decision on a Dispute, difference or claim or until the arbitral award is published; the Parties shall continue to perform all of their obligations under this Agreement without prejudice to a final adjustment in accordance with such award.

33. INDEMNITY

The Operator shall at all times, i.e. during the Total Contract Period and at any time thereafter, defend, indemnify and hold the Authority harmless from and against all claims (including without limitation claims for infringement of intellectual property, breach of contract, death or injury to person or injury to property, or other tort claims) and expenses (including costs incurred in defending itself in court proceedings) arising out of or relating to the breach by Operator of any covenant representation or warranty or from any act or omission of the Operator or his

agents, employees or sub-contractors.

34. DELAYED PAYMENTS

Any payments due under any clause of this Agreement to either Party by the other Party which is delayed beyond the time stipulated in this Agreement, and for which payment for any extended time has not been permitted through mutual agreement in writing between the Parties, shall be paid along with interest at the rate of [SBI Prime Lending Rate + 2%]⁶³ pa on the delayed amount for the delayed time.

35. MISCELLANEOUS

35.1. Governing Law and Jurisdiction

35.1.1. This Agreement shall be governed and interpreted in accordance with the laws of India.

35.1.2. The Courts of [Name of the Urban Area⁶⁴] alone shall have exclusive jurisdiction over all matters arising out of or in respect of the Agreement.

35.2. No waiver of rights and claims

Any forbearance, toleration or delay in invoking any of the rights or claims accruing in favour of any party under the terms of this Agreement shown or made by such a party in whose favour such rights or claims might have vested by virtue of this Agreement shall neither constitute nor be construed to be a waiver of such rights or claims accruing in respect of such a party.

35.3. Schedules and Annexure

All schedules and annexures and other explanatory details attached to this Agreement shall be deemed to be a part of this Agreement.

35.4. Supersession of earlier Agreements

This Agreement represents the entire Agreement between the Authority and the Operator, and all agreements, correspondence, notes or any other

⁶³ **Drafting Note:** Authority to specify.

⁶⁴ **Drafting Note:** the place for which the 'Letter of Award' has been issued to be added.

document submitted or understandings made or reached by and between the Parties inter se in respect of the subject matter of these presents prior to the date hereof shall be deemed to have been superseded and revoked on the execution of this Agreement.

35.5. Notices

Unless otherwise stated, notices to be given under this Agreement shall be in writing and shall be given by hand delivery/ recognized international courier, mail, telex or facsimile and delivered or transmitted to the Parties at their respective addresses set forth below:

If to Authority

.....

If to the Operator

All notices under this Agreement shall be in English.

35.6. Counterparts

This Agreement may be executed in two counterparts, each of which when executed and delivered shall constitute an original of this Agreement but shall together constitute one and only one Agreement.

35.7. Assignment

No assignment of this Agreement, or any rights or duties hereunder shall be made in whole or in part by any Party at any point of time during the Total Contract Period.

Provided, however, the Operator may sub-contract part of the operation and maintenance of the Bus Services with the prior approval of the Authority.

Provided, further that, under no circumstances shall the Operator be absolved of his rights, duties, obligations under the terms and conditions of this Agreement, and the Operator shall be solely and exclusively responsible for the implementation of this Agreement.

35.8. No Partnership

Nothing herein contained shall be construed to constitute a partnership between Authority and the Operator, or to constitute either party as the agent of the other and neither party shall hold itself out as such.

35.9. Severability

If any provision of this Agreement shall be declared illegal, void or unenforceable, the same shall not affect the other provisions herein which shall be considered severable from such provision and shall remain in full force and effect.

35.10. Representation and Warranties

35.10.1. Representation and Warranties of the Authority

The Authority hereby represents, assures, confirms and undertakes to the Operator as follows:

- a. That it is duly incorporated under the laws of India and has the power to conduct its business as presently conducted, and to enter into this Agreement;
- b. That it has full power, capacity and authority to execute, deliver and perform this Agreement and has taken all necessary sanctions and approvals and followed all the procedure required to authorise the execution, delivery and performance of this Agreement;
- c. Nothing in this Agreement conflicts with its constitutional authority, mandate, or any law or any other agreement, understanding or arrangement or any judgment, decree or order or any statute, rule or regulation applicable to it; and
- d. All approvals and permissions as are necessary for the execution of this Agreement have been obtained, all the required procedure for the due execution of this Agreement have been adhered to, and this Agreement will be valid, legal and binding against it under the Applicable Law.

35.10.2. Representation and Warranties of the Concessionaire

The Operator hereby represents, assures, confirms and undertakes to the Authority as follows:

- a. That it is duly incorporated under the laws of India, and has the power to conduct its business as presently conducted and to enter into this Agreement;
- b. That it has full power, capacity and authority to execute, deliver and perform this Agreement, and has taken all necessary sanctions and approvals (corporate, statutory or otherwise) to authorise the execution, delivery and performance of this Agreement;
- c. Nothing in this Agreement conflicts with its Memorandum and Articles of Association or any other agreement, understanding or arrangement or any judgment, decree or order or any statute, rule or regulation applicable to it; and
- d. this Agreement will be valid, legal and binding against it under the Applicable Law.

35.10.3. Exclusion of Consequential Losses

Notwithstanding anything to the contrary contained in this Agreement, the indemnities herein provided shall not include any claim or recovery in respect of; any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Concession Agreement.

IN WITNESS WHEREOF the Parties hereto have placed their respective hands and seals hereto on the day and year first herein above mentioned.

SIGNED, SEALED AND DELIVERED BY:

ANNEXURE 1: BUS SERVICE AREA

ANNEXURE2: DAMAGES/ PERFORMANCE REVIEW SYSTEM

1. Performance Review System⁶⁵ (Bus maintenance)

1. Fines to be calculated per month basis

Sr. No.	Quality Parameters	Specified service quality levels	Fine Km for violation
1	Break down ⁶⁶ per 10,000 bus-kms	First year - 2	100 kms per additional breakdowns
		Second year - 3	
		Third year-4	
		Fourth year and above - 5	
2	Loss of Kms due to breakdown of buses	First year - 1% of total loss of kms	50 kms per lost km
		Second year - 2% of total loss of kms	
		Third year-3% of total loss of kms	
		Fourth year and above – 4% of total loss of kms	

2. Fines to be calculated on Daily basis

Sr. No.	Deficiencies	Fine Km for violation
1	Flooring not swept/seats found dirty at the start of the trip	10 kms per bus per day
2	Malfunctioning passenger door	15 kms per bus per day
3	Broken/Loose/Missing Passenger Seat	15 kms per bus per day
4	Placing any decorative article/religious figure or symbol or political symbol inside or outside the bus without prior approval of the Authority	15 kms per bus per day
5	Damage to the any vehicle tracking equipment or any Intelligent Transit Management System installed by Authority	25 kms per bus per day
6	Non operational or poorly performing AC for more than [3 (three)] days period after being provided notice by the Authority	25 kms per bus per day

⁶⁵ Indicative in nature and City / SPV may modify according to its requirement.

⁶⁶ Buses breaking down on-line would be considered available for a shift if they individually complete at least 90% of scheduled kms during that shift

2: Performance Review System⁶⁷ (Bus Operations)

1. Fines to be calculated per month basis.

Sr. No.	Quality Parameters	Specified service quality levels	Fine Km for violation
1	Trip Efficiency	95% of scheduled trips	100 kms
2	Safety operations (No's of Accidents per lakh Kms)	NIL	200 kms per fatal accident over and above penal action as per the law
3	Punctuality ⁶⁸ of buses	95%	100 kms

2. Fines to be calculated on incidence basis

Sr. No.	Deficiencies	Fine Km for violation
1	Non operating, of passenger information system, gadgets, devices etc	5 kms
2	The driver is not carrying a proper driving license	20 kms
3	Use of Cell phone by Driver while driving	20 kms
4	Any damage to the fixed infrastructure like railing, street lights, bus stops, terminals, parking places etc during the operation	To be repaired by the operator at his own cost
5	Skipping of designated stops	20 kms

⁶⁷ Indicative in nature and City / SPV may modify according to its requirement.

⁶⁸ A bus will be punctual/on time if its depart from scheduled departure point within Applicable limits from defined schedule:

S No	Points of Inspection	Applicable Limits in minutes (earliest start/latest start)
1	Start of first trip for each bus for the day	+/-10

**ANNEXURE 3: DETAILS OF CONTRACTED BUSES AND THE INDICATIVE
DELIVERY SCHEDULE OF CONTRACTED BUSES⁶⁹**

Details of Buses* and Bus Specifications[@]

Sr. No.	Manufacturer and Bus Type	Model Number	Registration	Lot Number	Date of Handover to Operator

**Details of Buses to be added when handed over and to form part of this Agreement.*

@ Bus Specifications to be inserted by the Authority.

[Please provide details of the New Lot of Contracted Buses and Existing Lot of Contracted Buses (if any) as above]

INDICATIVE DELIVERY SCHEDULE BUS TYPE WISE

Sr.No.	Type Of Bus	Date of Delivery of Prototype	Scheduled Delivery Date	Number of Buses

⁶⁹**Darfting Note:** Authority is required to insert timeline for delivery of buses as per it's agreement with the Bus Manufacturer. The Annexure would be part of this agreement only in case of the Operator has been selected during manufacturing stage of buses.

ANNEXURE4: DEPOT LICENSE AGREEMENT

THE GOVERNOR OF THE STATE OF [_____] /
[STATE TRANSPORT AUTHORITY]/[AUTHORITY] [description of the relevant
authority] and having its principal office at [_____] ,
(hereinafter referred to as “The Authority” which expression shall include its
successors and permitted assigns);

AND

[XYZ LTD.], a company incorporated under the Companies Act, 1956⁷⁰ acting
through [_____] having its registered office at
[_____] (hereinafter referred to as “the
Operator”, which expression shall include its successors and permitted assigns);

ANDWHEREAS

1. The Parties have entered into a Bus Operator’s Agreement dated [__/__/20__]
whereby the Authority has appointed the Operator for implementation of the
Project.
2. Pursuant to the Bus Operator’s Agreement, the Authority is providing to the
Operator the right to use and the right of way to the bus depot (the details of
which are provided in the Schedule 1 to this Depot License Agreement)
 (“**Depot**”) for the limited purpose of implementation of the Project.
3. The Parties are hereby entering into this Depot License Agreement to specify the
terms and conditions of the use of the Depot by the Operator.
4. The actual memorandum of handover of Depot to the Operator along with
relevant Depot details is placed as Annexure to this Agreement.

⁷⁰**Explanatory Note:** It is advisable that the Operator be a SPV company incorporated under the Companies Act, 1956 in light of better reporting and regulatory requirements, as opposed to a partnership or society or an individual directly.

NOW THEREFORE IT IS AGREED AS FOLLOWS:

1. All capitalized words used but not defined herein shall have the meaning specified in the Bus Operator's Agreement.
2. The Authority hereby provides on a license basis the Depot (the details of which are provided in Schedule 1 to this Agreement) and the Operator hires the Depot on the terms and conditions of this License, it being recorded that the Authority warrants that the Depot will, save for reasons beyond its reasonable control, be fit for the purpose for which it is to be used by the Operator, namely to provide a reasonable shelter for the Contracted Buses while not in use and to facilitate the cleaning, repair and maintenance of the Contracted Buses.

Provided, however, the Operator shall have no right, title, interest or any ownership rights over the Bus Depot or any part thereof.

3. This Depot License Agreement shall come into operation on the date of execution hereof and shall terminate on the termination or cancellation of this Depot License or the Bus Operator's Agreement for whatever reason, whichever is the earlier ("**License Period**").
4. There shall be rental of Rs. _____/-⁷¹per annum (Authority to specify) payable by the Operator to the Authority in respect of the License for use of the Depot, provided that the Operator discharges all of its obligations pursuant to this Depot License Agreement and the Bus Operator's Agreement.
5. The Operator shall be responsible for timely payment of the cost of all electricity and water consumed at or on the Depot, determined at prevailing municipal rates in accordance with readings of separate sub-meters. It is hereby clarified that the Operator shall be liable to pay the cost of all the utilities on actual consumption and only in relation to such area of the Bus Depot as has been provided under this Bus Depot Agreement.

⁷¹**Drafting Note:** The Authority can collect nominal rental from the Operator. The rental charge may not be creating a financial burden on the Operator.

6. Insurance

- a. The Operator shall not keep or do in or about the Depot anything which is liable to increase any of the risks against which the Depot (or any part thereof) is insured for the time being to the extent that such insurance is rendered void or voidable or the premiums of such insurance are, or become liable to be, increased.
- b. Without prejudice to any other right of action or remedy that the Authority may have arising out of a breach of the foregoing provision, the Authority may recover from the Operator on demand the full amount of any increase in insurance premiums in respect of the Depot attributable to such breach.
- c. For the purposes of the above provisions, the Operator shall be entitled to assume that the Depot is at all material times insured against such risks, on such terms, for such amounts, and at such premiums as are for the time being usual in respect of similar buildings in similar locations.
- d. The Operator shall, in accordance with its obligations pursuant to the Bus Operator's Agreement, obtain and maintain contract works insurance and public liability insurance in relation to the Depot.

7. Cession and Subletting

The Operator shall not be entitled to:

- a. cede all or any of its rights or delegate any of its obligations under this Depot License Agreement;
- b. sublet the Depot in whole or part; or
- c. give up possession and/or control of the Depot to any third party, without the Authority's prior written consent.

8. Operator's Obligations

The Operator shall:

- a. keep the Depot clean, tidy and commercially usable at all times;
- b. be responsible for the handling of all waste and effluent in accordance with the Applicable Law;
- c. not use the Depot or allow it to be used, in whole or part, for any purpose other than that of implementing the Project;

- d. not bring into the Depot any article which, by reason of its weight or other characteristics, is liable to cause damage to the Depot;
- e. not leave refuse or allow it to accumulate in or about the Depot except in the refuse bins provided;
- f. refrain from interfering with the electrical or plumbing serving the Depot, except as may be strictly necessary to enable the Operator to carry out its obligations of maintenance and repair in terms of this Agreement;
- g. not permit any person to permanently dwell in the Depot
- h. provide at the Operator's own expense all electric, fluorescent and incandescent light bulbs required in the Depot from time to time;
- i. co-operate with any other operator or third party using the Bus Depot or a part thereof as notified by the Authority from time to time; and
- j. allow for use of the Depot by one or more other bus operators at the written request of the Authority, provided that such use shall not materially adversely affect the Operator's ability to implement the Project under the Bus Operator's Agreement.

9. Maintenance and Repairs

The Operator shall at its own expense and without recourse to the Authority:

- a. throughout the License Period maintain in good order and condition the interior and exterior of the Depot and all parts thereof, including (without limitation of the generality of this obligation) all windows, doors, appurtenances, fixtures and fittings contained in the Depot;
- b. promptly and properly repair or make good all damage occurring in the interior and exterior of the Depot from time to time during the License Period, whatever the cause of such damage, and including damage to any part of the interior of the Depot or to any window, door, appurtenance, fixture or fitting, and replace all such items (as well as any keys) which have been broken, lost or destroyed (again regardless of cause); and
- c. on the termination or cancellation of this Depot License Agreement, forthwith return the Depot and all such parts thereof (including all keys) to the Authority in good order, condition and repair, normal wear and tear excepted.

- d. The Depot shall be deemed, at the commencement of this Depot License Agreement, to be in good order and condition except to the extent that the Operator notifies the Authority in writing within [15 (fifteen)] Business Days after having taken possession of the Depot of the need for any repairs to in the Depot or of the fact that any part of the Depot, including any lock, key, door, window, appurtenance, fixture or fitting, is damaged, missing, or out of order.
 - e. Upon receiving a notification contemplated in sub-clause (d) above the Authority shall promptly cause the necessary repair or replacement to be effected to the Depot at the Authority's own expense.
 - f. The Operator shall be responsible for the maintenance of, and for all repairs and replacements becoming necessary from time to time in or to, the Depot and all parts thereof.
 - g. In the event the Operator fail to carry out any of its obligations under this Agreement with regard to any maintenance, repair or replacement, the Authority shall be entitled, without prejudice to any of the Authority's other rights or remedies, to effect the required item of maintenance, repair or replacement and to recover from the Operator on demand, all reasonable amounts incurred by the Authority in respect thereof.
10. Alterations, additions and improvements
- a. The Operator shall not make any alterations or additions to the Depot without the Authority's prior written consent.
 - b. If the Operator does alter or add to the Depot in any way, whether in breach of sub-clause (a) or not, the Operator shall, if so required in writing by the Authority, restore the Depot on the termination or cancellation of this Agreement to the same condition as it was prior to such alteration or addition having been made, normal wear and tear excepted. Unless this Agreement is terminated or cancelled by the Authority as a result of a breach hereof by the Authority, the Authority's requirements aforementioned shall be communicated to the Operator not less than [10 (ten)] Business Days prior to the termination or cancellation. For the sake of clarity, the Parties agree that this sub-clause (b) shall not be construed as excluding any other or further remedy which the Authority may have in consequence of a breach by the Operator of sub-clause (a).

- c. Save for any alteration or addition which is removed from the Depot as required by the Authority in terms of sub-section (b), all alterations or additions made to the Depot shall, on termination or cancellation of this Depot License Agreement, become the property of the Authority and may not be removed from the Depot at any time. Subject to any prior written agreement to the contrary between the Parties, the Operator shall not, whatever the circumstances, have any claim against the Authority for compensation for any alterations or additions to the Depot.

11. Exclusion of Liability

- a. The Operator shall have no claim against the Authority for any loss or damage suffered by the Operator by reason directly or indirectly of:
 - i. any negligent act or omission of the Authority or any agent or servant of, or contractor to, the Authority, including (without limiting the generality of the foregoing) any negligent act or omission of any cleaner, maintenance person, handyman, artisan, labourer, workman, watchman, guard or commissionaire, excluding gross negligence and/or wilful default;
 - ii. any failure or suspension of, or any interruption in, the supply of water, electricity, air-conditioning, heating, or any other amenity or service to the Depot (including, without limiting the generality of the foregoing, any cleaning service), whatever the cause;
 - iii. any breakdown of, or interruption or delay in the operation of, any machinery, plant, equipment, installation, or system situated in or on, or serving, the Depot, and including (but without limiting the generality of the foregoing) any geyser, boiler, burglar alarm or security installation or system, again regardless of cause;
 - iv. any interruption of, or interference with, the enjoyment or beneficial occupation of the Depot or any parts of the common Depot caused by any building operations or other works to or in the Depot, whether by the Authority or by anybody else; or
 - v. any other event or circumstance beyond the Authority's reasonable control occurring, or failing to occur, upon, in, or about the Depot, whether or not the Authority could otherwise have been held liable for such occurrence or failure, and the Operator indemnifies the Authority

and holds it harmless against any and all liability to any employee or agent of the Operator, its guests and other invitees, and all other persons who may occupy or be entitled to occupy the Depot or any parts thereof through or under the Operator.

- b. The Authority shall not, however, be excused from specific performance of any of the Authority's obligations under this Agreement, whether express or implied, and particularly (but not only) the Authority's obligations to afford the Operator occupation and enjoyment of the Depot as contemplated by this Agreement.

12. Authority's Right of Entry and Carrying Out of Works

The Authority may at all reasonable times, without thereby giving rise to any claim or right of action on the part of the Operator or any other occupier of the Depot:

- a. enter the Depot in order to inspect it, to carry out any necessary repairs, replacements or other works, or to perform any other lawful function in the bona fide interests of the Authority; or
- b. carry out elsewhere on the Depot (or any part thereof) any necessary repairs, replacements or other works, provided that the Authority shall ensure that this right is exercised with due regard for, and a minimum of interference with, the beneficial enjoyment of the Depot by the Operator.

13. Damage to or destruction of Depot

- a. If the Depot is destroyed or so damaged that it can no longer be beneficially occupied, this Depot License Agreement shall, unless the Parties agree otherwise in writing, terminate when that happens in respect of that Depot.
- b. If the Depot is damaged but can still be beneficially occupied, this Depot License Agreement shall remain in force and the Authority shall repair the damage without undue delay.

14. Special Remedy for Breach

- a. Should the Operator be in breach of any of the terms or conditions of this Depot License Agreement or the Bus Operator's Agreement, in any way whatsoever, and fail to remedy such breach within [7 (seven)] Business Days after receiving a written demand that it be remedied, or such longer

period as may reasonably required in the circumstances and agreed upon in writing by the Parties, the Authority shall be entitled, without prejudice to any alternative or additional right of action or remedy available to the Authority under the circumstances, to terminate this Depot License Agreement with immediate effect, be repossessed of the Depot, and recover from the Operator such damages sustained as a result of the breach and the termination of this Depot License Agreement.

- b. Nothing in sub-clause (a) above shall be construed as excluding the ordinary lawful consequences of a breach of this Depot License Agreement by either party (save any such consequences as are expressly excluded by any of the other provisions of this Depot License Agreement) and in particular any right of termination of this Depot License Agreement on the ground of a material breach of this Depot License Agreement.
- c. In the event of the Authority having terminated this Depot License Agreement or this Agreement justifiably but the Operator remaining in occupation of the Depot, with or without disputing the termination, the Operator shall be obliged to pay, all amounts which would have been due and payable by the Operator but for the termination, for so long as the Operator continues to occupy the Depot or any part thereof.

15. Right to Negotiate Renewal

If the Bus Operator's Agreement is renewed and/or extended beyond its Term, the Parties agree to negotiate in good faith for renewal of this Depot License Agreement on such terms and conditions as may be agreed between the Parties in writing prior to the expiration of this Agreement.

IN WITNESS WHEREOF the Parties have executed and delivered this Agreement by their duly authorised representative on the date first above written:

**SIGNED ON BEHALF OF THE
AUTHORITY**

_____(Signature)
_____(Name)
_____(Designation)

SIGNED ON BEHALF OF OPERATOR

by the hand of its authorized
representative

_____(Signature)
_____(Name)
_____(Designation)

SIGNED ON BEHALF OF SELECTED

BIDDER by the hand of its authorized
representative

_____ (Signature)

_____ (Name)

_____ (Designation)

Schedule 1 to License Agreement: Details of Depot Infrastructure handed over to Operator during execution of Agreement

Depot 1:

Date of Handover	
Address of Depot	
Area of Depot:	
Facilities	
Utilities	
Security	

We have inspected the above depot premises and are satisfied as to its condition. We undertake to maintain the above premises in good working condition as per standard practices and terms and conditions of the Agreement. We understand that the premises above are only being licensed to us for the purpose of maintenance of the Contracted Buses during the Contract Period and shall not be used for any other purpose. We confirm to return the above premises to the Authority at the end of the Contract Period in the same condition as found when we took over, subject to normal wear and tear for such premises for prescribed uses. The Authority shall not bear liabilities arising from the use of these Premises.

We have accepted the right to use the Depot on _____ (date)

For Operator

Name, Sign, Time and Place

Details of other depots to be added as they are handed over and to form part of this Agreement.

**ANNEXURE 5: MINIMUM CIVIL INFRASTRUCTURE AND EQUIPMENTS TO BE
PROVIDED IN THE BUS DEPOT BY THE AUTHORITY**

[Indicative requirement for 100 buses (5 acres of Depot Land)]

1. Secured space with hard standing ground
2. Bus inspection Pits with shed (5 nos-1pit for every 20 buses)
3. Repair bays with shed (2 nos-1bay for every 50 buses)
4. Bus washing bays with shed (2 nos-1 bay for every 50 buses)
5. Fuelling shed (4 nos-2 sheds for every 50 buses)
6. Tyre section (Approx area 15ft X 20 ft closed and 60ft X 60ft open)
7. Electric section (Approx area 15ft X 20 ft closed)
8. Stores of stacking spares (Approx area 30ft X 30 ft)
9. Overhauling section – For overhauling of units (Approx area 15ft X 15ft)
10. Body shop (Approx area 20 ft X 20 ft)
11. Oil stores (10ft X 10ft)
12. Under chassis washing Ramp (1 no for every 100 buses)
13. Air Compressor Rooms (2 no's of 8ft X 8ft for every 100 buses)
14. Engineering office (Approx area 20 ft X 35 ft)
15. Record room (8ft X 8ft)
16. Scrap bins (2 no's)
17. High mast lights (3 no's)
18. Single phase and three phase electric supply
19. Water (storage capacity of 20,000 lts. per 100 buses)
20. Automatic washing machine with water recycling plant (1 no)

ANNEXURE 6: INDICATIVE ROUTE PLAN*

Sr. No.	Name of the route	Route Length (km)	Peak hour Headway	Off-peak hour headway	No of buses required during peak hours

** Authority to insert route map for city bus service*

ANNEXURE 7: LIST OF AUTHORITY CLEARANCES AND OPERATOR CLEARANCES

[Please insert a indicative list of clearances required to be procured by the Authority and clearances required to be procured by the Operator]

Sr. No.	Permission/ Clearance	Party responsible
1	Vehicle Registration	Authority
2	Insurance for Vehicle and other Authority owned assets like Depot	Authority
3	Stage Carriage Permit within Municipal Area	Authority
4	Stage Carriage Permit outside Municipal Area	Authority
5	No Objection Certificate from State Transport Department or RTA or from State Transport Undertaking as applicable	Authority
6	Fare Notification	Authority
7	Pollution Under Control Certification	Operator
8	Road worthiness Certificate	Operator

ANNEXURE 8: FLEET DEPLOYMENT PLAN

ANNEXURE 9: DETAILS OF PARKING SPACES AND TERMINALS

ANNEXURE 10: DRAFT ESCROW AGREEMENT

THIS ESCROW AGREEMENT (the “Agreement”) is made at on _____, by and amongst:

1. [_____], [a company incorporated in India under the Companies Act, 1956 / a banking company registered under the Banking Regulation Act, 1949], with its registered office at [_____] (hereinafter referred to as the “**Escrow Bank**” which expression shall, unless it be repugnant to the subject or context thereof, include its successors and permitted assigns) of the **FIRST PART:**
2. The [**STATE TRANSPORT AUTHORITY**]/[**AUTHORITY**]/[**Special Purpose Company for Operation of Urban Bus Services**⁷²] [description of the relevant Authority] and having its principal office at [_____], (hereinafter referred to as the “Authority” which expression shall include its successors and permitted assigns) OF THE SECOND PART;

AND

3. [**XYZ LTD.**], a company incorporated under the Companies Act, 1956⁷³ acting through [_____] having its registered office at [_____] (hereinafter referred to as the “Operator”, which expression shall include its successors and permitted assigns)⁷⁴ **OF THE THIRD PART;**

The Escrow Bank, the Authority and the Operator are hereinafter collectively referred to as the “**Parties**” and individually as the “**Party**”.

⁷²In the event this is an SPV then the description shall be modified accordingly.

⁷³**Explanatory Note:** It is advisable that the Operator be a SPV company incorporated under the Companies Act, 1956 in light of better reporting and regulatory requirements, as opposed to a partnership or society or an individual directly. The Companies Act 2013 Act has been passed by Indian Parliament. There are certain provisions of the Companies Act, 2013 have been notified. Therefore, the RFP should provide that the Bidder/Operator shall be a company incorporated under the Companies Act, 1956 including any other statutory amendment or re-enactment or restatement thereof and the rules and/or regulations and/or other guidelines or notifications having the effect of law, made there under, and including Companies Act, 2013 to the extent notified from time to time

⁷⁴ The requirement of forming a mandatory SPV shall be reflected as per the provisions of the RFP.

WHEREAS:

- (a) The Authority [has the power/function] to ensure the provision of public bus transport services within [*the area under its jurisdiction*].
- (b) The Operator was selected by the Authority under a competitive bidding process and is established, *inter-alia* with the objectives of providing Bus Services within the Bus Service Area.
- (c) The Authority and the Operator have entered into an Operator Agreement dated [] (hereinafter referred to as “**Operator Agreement**”), whereby the Authority has granted to the Operator a non exclusive right to operate and maintain the Contracted Buses and provide Bus Services within the specified Bus Service Area and the Operator has agreed to undertake the Project on the terms and conditions contained therein.
- (d) Under the terms of the Operator Agreement, it has been stipulated that an escrow account shall be created into which the Authority shall deposit all the revenues generated and all the income accruing from the operation and maintenance of the Contracted Buses and provision of Bus Service within the Bus Service Area including but not limited to the Passenger Fare collected by the Authority (itself or through a third party) in the Escrow Account.
- (e) This Agreement sets forth the detailed mandates, terms and conditions and operating procedures for such escrow account.

NOW, THEREFORE, in consideration of the premises contained herein, the Parties hereto agree as follows:

1. Definitions

- 1.1 For the purposes of this Agreement, unless the context otherwise requires, capitalized terms shall have the meaning set forth hereunder.

“**Beneficial Parties/Party**” means the Authority and the Operator as the case may be.

“**Business Day**” means any day of the week (excluding Saturdays, Sundays and public holidays) on which banks in _____ are generally open for business;

“**Dispute**” shall mean any dispute, difference, question or controversy between the Parties arising out of, in connection with or in relation to this Agreement.

“**Event of Default**” shall mean an event or default of the Operator under the Operator Agreement, as certified by the Authority in a written notice in this regard to the Escrow Bank.

“**Month**” shall mean a calendar month.

“**Priority Cash-now Application**” shall have the meaning ascribed to the term in Clause 3.5(B) (a) hereunder;

“**Tax**” shall mean the taxes, duties, charges, cess, levies and other such analogous payments due under Applicable Law.

Other capitalized terms used herein (and not defined herein) but defined under the Operator Agreement shall have the meaning ascribed to the term under the Operator Agreement

- 1.2 In this Agreement, unless the context otherwise requires, the rules of interpretation and construction as mentioned in Clause 1.2 of the Operator Agreement shall apply.

2. Establishment of Escrow Account and Declaration of Trust

2.1 Establishment of the Accounts

The Operator and the Escrow Bank confirm that the Escrow Bank has established, in the name of _____ at the Escrow Bank's _____ branch, an account titled the “_____ **Escrow Account**”.

2.2 Declaration of Trust

The Authority hereby settles in trust with the Escrow Bank a sum of Rs 100 (Rupees Hundred) for the benefit of the Beneficial Parties. The Authority further declares that all the legal right, title and interest in and to the Escrow Account, including any document of title in relation thereto made from the Escrow Account shall be vested in the Escrow

Bank and held for the benefit of the Beneficial Parties in accordance with the terms of this Agreement and their respective interests are provided for herein. The Escrow Bank hereby accepts the abovementioned amount of Rs. 100 in the trust hereby declared upon the terms and conditions set forth in this Agreement and acknowledges that any amounts deposited in the Escrow Account from time to time shall be held in trust for the benefit of the Beneficial Parties in accordance with the terms and conditions of this Agreement. No Entity other than the Beneficial Parties shall have any rights hereunder as the beneficiaries of or as third party 'beneficiaries under this Agreement.

2.3 General Right or Withdrawal

The Escrow Bank shall not make any transfer or withdrawal other than in accordance with this Agreement, unless the Escrow Bank has received the prior written instructions of the Beneficial Parties authorizing such use.

3. Deposits into and Withdrawals from the Escrow Account

3.1 The Authority shall deposit all the revenues that it receives from Bus Operations under the terms of the Operator Agreement.

3.2 The Authority shall, at the time of opening the Escrow Account, give irrevocable instructions, under the Escrow Agreement, to the Escrow Bank instructing, inter alia, that deposits in the Escrow Account shall be appropriated in the following order based on the receipt of relevant demand or instructions:

- a. all taxes due and other statutory dues
- b. Operator Payment after deducting any taxes/charges under Applicable Law and as specified under the Operator's Agreement.

Provided, *however*, the Escrow Account can only be operated at all times by the Authority

4. Escrow Bank Provisions

4.1 Escrow Bank and the Beneficial parties

- (a) The Beneficial Parties hereby appoint the Escrow Bank for benefit of the Beneficial Parties in connection herewith, and authorize the Escrow Bank to exercise such rights, powers, authorities and discretions as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretions as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.
- (b) The Authority hereby agrees to pay to the Escrow Bank, fees of Rs. [] per [] consideration for acting as the Escrow Bank hereunder.

4.2 Obligation of the Escrow Bank

The Escrow Bank:

- (a) undertakes to perform only such duties as are specifically set forth to be performed in this Agreement. in accordance with the terms and conditions contained herein, and further undertakes to act in good faith and without negligence;
- (b) may, in the absence of bad faith or gross negligence on its part. rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Operator upon a certificate signed by or on behalf of the Operator;
- (c) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or documents believed by it to be authentic;
- (d) shall, within [five (5)] Business Days after receipt, deliver a copy to the Authority acting through []⁷⁵ of any notice or document received by the Escrow Bank (in its capacity as the Escrow Bank) from the Operator or any other entity;
- (e) Shall, within [five (5)] Business Days after receipt. deliver a copy to the Operator of any notice or document received by the Escrow Bank (in its capacity as the Escrow Bank) from the Authority or any entity in connection herewith; and

⁷⁵ **Drafting Note:** Authority to specify.

- (f) Shall within seven (7) Business Days prior to any date on which any payment is due to a Beneficial Party in accordance with the terms and conditions of this Agreement, provide notice to the Authority of any anticipated shortfall in the Escrow Account (or any account there under) for making any payments due in accordance with the terms and conditions of this Agreement.

5. Term and Termination

- 5.1 This Agreement shall, unless terminated earlier by the mutual consent of the Parties or otherwise in accordance with the provisions of this Clause by written notice from the Beneficial Parties to the Escrow Bank, remain in full force and effect for the duration of the Operator Agreement
- 5.2 The Authority may, after consultation with the Operator, at any time may remove the Escrow Bank, with or without cause, and appoint a successor Escrow Bank by written notice of such action to the Operator, the Escrow Bank and the successor Escrow Bank.
- 5.3 Provided however that the Authority shall not be required to consult with the Operator (as required above) if Termination of the Contract has occurred in accordance with the terms of the contained therein.
- 5.4 If, at any time, the Escrow Bank or any of its associates, shall become a Beneficial Party and after such time there is an Event of Default, the Escrow Bank shall resign as Escrow Bank immediately upon the occurrence of such Event or Default, if in the sole judgment of the other Beneficial Parties (which, for this purpose, shall not include the Escrow Bank), there shall be, or be reasonably likely that there will arise, any conflict in or impediment to the Escrow Bank's performance as Escrow Bank under this Agreement.
- 5.5 The Escrow Bank shall be entitled to terminate its services under this Agreement if the Authority fails to comply with any of its material obligations owed to the Escrow Bank under this Agreement and fails

to remedy the failure within [60 (sixty)] days after receipt of notice thereof from the Escrow Bank in relation thereof. Provided however, the Authority has arranged for the appointment of a successor Escrow Bank and arrangements are made for the transfer of amounts deposited in the Escrow Account (including any sub-accounts thereof) to new accounts established with successor Escrow Bank.

- 5.6 Any successor Escrow Bank appointed as provided in accordance with this Clause 5 shall execute, acknowledge and deliver to, and for the benefit of, the Beneficial Parties and to its predecessor Escrow Bank an instrument accepting such appointment, and thereupon the resignation or removal of the predecessor Escrow Bank shall become effective and such successor Escrow Bank, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder, as if it was originally named as Escrow Bank;
- 5.7 provided that on the written request of the Beneficial Parties or of the successor Escrow Bank, the Escrow Bank ceasing to act shall take such steps or actions as are required of it by the Beneficial Parties. Including without limitation the execution and delivery of an instrument or instruments transferring and assigning to such successor Escrow Bank (without obligation to indemnify such successor) all the rights and powers of the Escrow Bank so ceasing to act, delivery to the Beneficial Parties all documents, instruments, etc. relating to its obligations under this Agreement.
- 5.8 Upon the reasonable request of any such successor Escrow Bank, the Beneficial Parties shall execute any and all instruments in writing in order more fully and certainly to vest in and confer to such successor Escrow Bank all such rights and powers.
- 5.9 Any corporation into which the Escrow Bank may be merged or converted or with which it may be consolidated or any corporation resulting from any merger, conversion or consolidation to which the Escrow Bank shall be a party, or any corporation succeeding to the

corporate Escrow Bank's rights or business or either, shall, subject to approval of the Authority, be the successor of the Escrow Bank with all rights, benefits, obligations and duties as were originally available and provided for to the transferor Escrow Bank in relation to the merger, conversion or consolidation proceedings or process.

6. Books and records

6.1 The Escrow Bank shall be responsible for maintaining a correct and complete record of all transactions, deposits, withdrawals or transfer of funds relating to the Escrow Account (and all sub-accounts thereof).

6.2 5.7.2 The Authority shall have unrestricted access to review such books and records of the Escrow Bank in relation to the Escrow Account subject to restrictions in law. The Operator irrevocably grants the Authority access to review the books and records of the Escrow Account and irrevocably waives any right of confidentiality, which may exist in respect of such books and records.

7. Statement of Authorized Investments

Upon the request of the Authority and in any event, not later than [five (5)] Business Days after the end of any calendar Month, the Escrow Bank shall deliver to the Beneficial Parties a schedule of investments acquired or disposed of during that Month in such detail as may be reasonably required.

8. Confidentiality

The Escrow Bank agrees to keep all information ("**Information**") (including the terms and conditions of this Agreement and the Operator's Agreement) made available (whether before or after the date of this Agreement) by any of the Parties to the Escrow Bank concerning the Authority, Operator or the Bus Services, and hereby undertakes and covenants not to communicate any Information, or allow any Information to be communicated to any third party unless:

a. in connection with any proceedings arising out of or in connection with this Agreement to the extent that such party may consider it necessary to protect its interest or the interests of the Escrow Bank;

- b. required to do so by an order of a court of competent jurisdiction whether or not in pursuance of any procedure for discovering documents; or
 - c. pursuant to any Applicable Law in accordance with which such party is required to act;
 - d. to its auditors for the purposes of enabling the auditors to complete an audit of the Escrow Bank or to its legal advisers when seeking bona fide legal advice in connection with this Agreement;
 - e. in circumstances where the relevant Information has been published or announced by the Concessionaire and/or any other Beneficial Party in conditions free from confidentiality or has otherwise entered the public domain without default on the part of the relevant Party; or
 - f. the Information was obtained by such Escrow Bank from an independent or third party source who was not in breach of any confidentiality obligations with the Beneficial Parties.
9. Not Acting in Individual Capacity
In accepting the trusts hereby created, the Escrow Bank acts solely in its capacity as a Escrow Bank and not in its individual capacity and all entities having any claim against the Escrow Bank by reason of the transactions contemplated by the Operator Agreement shall look only to the Authority for payment or satisfaction thereof, save and except as provided in this Agreement, other than as a result of its wilful misconduct or gross negligence.
10. Representation and warranties of the Escrow bank and the Operator
Each of the Escrow Bank and the Operator represent and warrant that it is duly organized and validly existing under the laws of India with power to enter into this Agreement and to exercise its rights and perform its obligations hereunder and has taken all corporate and other actions required for the execution of this Agreement and the performance of its obligations hereunder. The Escrow Bank represents and warrants that it shall hold all funds in the Escrow Account in trust for the benefit of the Beneficial Parties in accordance with the provisions of this Agreement and further represents and warrants that it has obtained all approvals, permits and other clearances required for the execution of this Agreement and the performance of its obligations hereunder.

11. Miscellaneous

11.1 Restriction on Assignment

Save as provided in Clause 5.2, the Operator and the Escrow Bank, shall not assign or transfer any part or their respective rights or obligations under this Agreement without the prior consent of the Authority . It is expressly agreed between the Parties that nothing in this Clause 7.1 shall prevent the Authority from assigning, novating or transferring its rights, benefits and obligations under this Agreement to any entity.

11.2 Notices

11.2.1 All notices shall be sent to a Party hereto at its address and contact number specified hereunder , or at such other address and contact number as in designated by such Party in a written notice to the other Parties hereto.

Addresses:

11.2.2 All such notices and communications shall be effective (i) if sent by telex, when sent (with the correct answerback), (ii) if sent by telecopier, when sent (on receipt of a confirmation to the correct telecopier number), (iii) if sent by person, when delivered, (iv) if sent by courier, (a) one Business Day after deposit with an overnight courier if for inland delivery and (b) [5] five] Business Days after deposit with an international courier if for overseas delivery and (c) if sent by registered letter when the registered letter would, in the ordinary course of post, be delivered whether actually delivered or not.

11.2.3 An original of each notice and communication sent by telex or telecopy shall be dispatched by person, overnight courier (if for inland delivery) or international courier (if for overseas delivery) and, if such person or courier service is not available; by registered airmail (or, if for inland delivery, registered first class mail) with postage prepaid, provided however, that the effective date of any such notice shall be determined in

accordance with Clause 7.2.2, as the case may be, without regard to the dispatch of such original.

11.3 No Waivers; Remedies

No failure on the part of any Party to exercise, and no delay in exercising, any right, power or privilege hereunder shall operate as a waiver thereof or a consent thereto; nor shall any single or partial exercise of any such right, power or privilege preclude any other of further exercise thereof or the exercise of any other right, power or privilege. The remedies herein provided are cumulative and not exclusive of any remedies provided by Applicable Law.

11.4 Severability

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of prohibition or unenforceability but that shall not invalidate the remaining provisions of this Agreement or affect such provision in any other jurisdiction.

11.5 Amendments or Waiver

No amendment or waiver of any provision of this Agreement, nor consent to any departure by any of the Parties there from, shall in any event be effective unless the same shall be in writing and signed by the Parties hereto and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

11.6 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of India.

11.7 Dispute Settlement

11.7.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the

dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance the provisions of the Arbitration and Conciliation Act, 1996.

11.7.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be _____ and the language of arbitration shall be English.

11.7.3 This Clause 11.7 shall survive the termination or expiry of this Agreement.

11.8 Regulatory Approvals

The Operator shall procure and shall thereafter maintain and comply with all regulatory approvals required for it to establish and operate the Escrow Account.

11.9 Additional Rights

Any rights Conferred on the Parties pursuant to this Agreement shall be in addition to and not in substitution for or in derogation of any other rights and remedies which the Parties may at any time have under the Contract or otherwise.

IN WITNESS WHEREOF the Operator has caused its Common Seal to be affixed hereto and to a duplicate hereof on the date first above written and the Escrow Bank and Authority acting through have caused the same to be executed by the hand of an authorized official.

The signature of the authorized representative of the Operator has been affixed pursuant to the resolution of its Board of Directors dated the _____ day _____, which has hereunto been affixed in the presence of Shri. _____, and Shri. _____, Directors who have signed these presents in token thereof and countersigned by _____, the authorized officer/Company Secretary

SIGNED AND DELIVERED by the ESCROW BANK by the hand of _____
its authorized official.

SIGNED AND DELIVERED by Authority by the hand of
_____Mr. _____ its authorized official.

Schedule A to Escrow Account

ANNEXURE 11: INDICATIVE LIST OF EQUIPMENT TO BE PROVIDED BY THE OPERATOR

[Indicative requirement for 100 buses (5 acres of Depot Land)]

Sl no	Equipment Description	Qty required in nos
1	Air Compressors	2
2	Car Washers	2
3	Brake and clutch liner riveting Machine	1
4	Pedestal Drilling machine	1
5	Hydraulic press	1
6	Brake units testing machine	1
7	Electric Welding Machine	2
8	Spray painting machine	1
9	Tyre pressure gauges	6
10	Hub pullers	4
11	Decanting Pump	1
12	Torque wrenches	4
13	Hydraulic Jacks	20
14	Pit trolleys	3
15	Bench vices	4
16	Working tables	6
17	Greasing machine	3
18	Gas Welding machine set	1
19	Battery Chargers	3
20	Matra Jack	1
21	Electric clamp meter	2
22	Bench Grinder	1
23	Injector tester	1
24	Portable drilling machine	3
25	Wheel alignment gauge	2
26	Hot plates for tube repairing	3
27	Chassis stands	4
28	Tool Box set	20

