



**Public Private Partnership in
Operation and Maintenance
of
Electric Buses in Cities
(OPEX Model)**

MODEL CONCESSION AGREEMENT

**NITI Aayog
Government of India**

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Part I
Preliminary

SUPPLY-CUM-OPERATION AND MAINTENANCE AGREEMENT

THIS AGREEMENT is entered into on this {the day of....., 20.....}§

BETWEEN

1 **THE [GOVERNOR] OF [•]** represented by [•], and having its offices at [•] (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of One Part;

AND

2 {***** Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at, (hereinafter referred to as the “**Operator**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Other Part.

WHEREAS:

- (A) The Authority had resolved to procure electric Buses through a supply-cum-maintenance contract which will *inter alia* include setting in accordance with the terms and conditions to be set forth in the supply - cum - maintenance agreement (the “**Agreement**”).
- (B) The Authority had accordingly invited proposals by its Request for Qualification No. ***** (the “**Request for Qualification**” or “**RFQ**”) for short listing of bidders and had shortlisted certain bidders including, *inter alia*, the {the selected bidder/ consortium comprising and (collectively the “**Consortium**”) with as the Lead Member}.
- (C) The Authority had prescribed the technical and commercial terms and conditions, and invited bids (the “**Request for Proposals**” or “**RFP**”) from the bidders shortlisted pursuant to the RFQ for undertaking the Project.
- (D) After evaluation of the bids received, the Authority had accepted the bid of the {selected bidder/ Consortium} (the “**Selected Bidder**”) and issued its Letter of Award No. dated (hereinafter called the “**LOA**”) to the Selected Bidder requiring, *inter alia*, the execution of this Agreement within 30 (thirty) days of the date of issue thereof.
- (E) {The Selected Bidder has since promoted and incorporated the as a limited liability company under the Companies Act 2013, and has requested the Authority to accept the Operator as the entity which shall undertake and perform the obligations and exercise the

§The provisions in curly parenthesis and blank spaces shall be retained in the draft Agreement and shall be suitably modified/ filled after completion of the bid process to reflect the particulars relating to the selected bidder and other post-bid particulars.

rights of the Selected Bidder under the LOA, including the obligation to enter into this Agreement pursuant to the LOA for undertaking the Project.}

- (F) {By its letter dated, the Operator has also joined in the said request of the Selected Bidder to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder including the obligation to enter into this Agreement pursuant to the LOA. The Operator has further represented to the effect that it has been promoted by the Selected Bidder for the purposes hereof.}

- (G) The Authority has {agreed to the said request of the Selected Bidder and the Operator, and the Parties have accordingly} agreed to enter into this Agreement with the Operator for Supply-
cum-Operation and Maintenance of Buses and for setting up of the Maintenance Depots at {***} and {***} in {***} on Build, Own, Operate and Transfer (the “**BOOT**”) basis, subject to and on the terms and conditions set forth hereinafter.

NOW THEREFORE in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the sufficiency and adequacy of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 43) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of the State, laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a “**person**” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words “**include**” and “**including**” are to be construed without limitation and shall be deemed to be followed by “**without limitation**” or “**but not limited to**” whether or not they are followed by such phrases;
- (f) references to “**construction**” or “**building**” include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and “**construct**” or “**build**” shall be construed accordingly;
- (g) references to “**development**” include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and “**develop**” shall be construed accordingly;

- (h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (i) any reference to “**hour**” shall mean a period of 60 (sixty) minutes commencing either on the hour or on the half hour of the clock, which by way of illustration means 5.00 (five), 6.00 (six), 7.00 (seven) and so on being hours on the hour of the clock and 5.30 (five thirty), 6.30 (six thirty), 7.30 (seven thirty) and so on being hours on the half hour of the clock;
- (j) any reference to day shall mean a reference to a calendar day;
- (k) reference to a “**business day**” shall be construed as reference to a day (other than a Sunday and public holiday) on which banks in Delhi are generally open for business;
- (l) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (m) any reference to “**quarter**” shall mean a reference to the period of 3 (three) months commencing from April 1, July 1, October 1, and January 1, as the case may be;
- (n) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- (o) any reference to any period commencing “**from**” a specified day or date and “**till**” or “**until**” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (p) the words importing singular shall include plural and vice versa;
- (q) references to any gender shall include the other and the neutral gender;
- (r) “**lakh**” means a hundred thousand (100,000) and “**crore**” means ten million (10,000,000);
- (s) “**indebtedness**” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (t) references to the “**winding-up**”, “**dissolution**”, “**insolvency**”, or “**reorganisation**” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;
- (u) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such

reference; provided that this Sub-clause (u) shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;

- (v) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party in this behalf and not otherwise;
- (w) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (x) references to Recitals, Articles, Clauses, Sub-clauses, Provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses, Provisos and Schedules of or to this Agreement; reference to an Annex shall, subject to anything to the contrary specified therein, be construed as a reference to an Annex to the Schedule in which such reference occurs; and reference to a Paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a Paragraph of the Schedule or Annex, as the case may be, in which such reference appears;
- (y) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on *per diem* basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “**Damages**”); and
- (z) time shall be of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Operator to the Authority shall be provided free of cost and in three copies, and if the Authority is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.

1.2.3 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.

1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act, 1897 shall not apply.

1.3 Measurements and arithmetic conventions

All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down; provided that the drawings, engineering dimensions and tolerances may exceed 2 (two) decimal places as required.

1.4 Priority of agreements, clauses and schedules

1.4.1 This Agreement, and all other agreements and documents forming part of or referred to in this Agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:

- (a) this Agreement; and
- (b) all other agreements and documents forming part hereof or referred to herein, i.e. the Agreement at (a) above shall prevail over the agreements and documents at (b) above.

1.4.2 Subject to the provisions of Clause 1.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

- (a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
- (b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
- (c) between any two Schedules, the Schedule relevant to the issue shall prevail;
- (d) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
- (e) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
- (f) between any value written in numerals and that in words, the latter shall prevail.

Part II
Scope of the Agreement

ARTICLE 2
SCOPE OF THE AGREEMENT

2.1 Scope of the Agreement

The scope of the Agreement (the “**Scope of the Agreement**”) shall mean and include, during the Term:

- (a) supply of buses conforming to the Specifications and Standards set forth in Schedule-B (the “**Buses**”) and in accordance with the provisions of this Agreement;
- (b) Operation and Maintenance of Buses in accordance with the provisions of this Agreement; and
- (c) setting up and operation and maintenance of Maintenance Depots [and Real Estate Development], on the Depot Sites specified in Schedule-B, in accordance with the provisions of this Agreement.

ARTICLE 3
AWARD OF CONTRACT

3.1 The Contract

3.1.1 Subject to and in accordance with the provisions of this Agreement, Applicable Laws and the Applicable Permits, the Authority hereby awards to the Operator the right to procure, supply, Operate and Maintain the Buses and construct, Operate and Maintain the Maintenance Depots for the period specified herein (the “**Contract**”) for a period of 16 (sixteen) years from the Appointed Date, and the Operator hereby accepts the Contract and agrees to implement the same subject to and in accordance with the terms and conditions set forth herein.

3.1.2 Subject to and in accordance with the provisions of this Agreement, the Contract hereby granted shall oblige or entitle (as the case may be) the Operator to:

- (a) procure, and supply Buses in accordance with the provisions of this Agreement;
- (b) Operate and Maintain the Buses in accordance with the provisions of this Agreement;
- (c) Right of Way, access and licence in respect of Depot Sites for performing its Maintenance Obligations;
- (d) finance, construct, Operate and Maintain the Maintenance Depots;
- (e) perform and fulfil all of the Operator’s obligations under and in accordance with this Agreement;
- (f) save as otherwise provided in this Agreement, bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Operator under this Agreement; and
- (g) neither assign, transfer or sublet or create any lien or Encumbrance on this Agreement nor transfer, sub-lease, sub-licence or part possession of the Maintenance Depots and the real estate related thereto including the Depot Site, save and except as expressly permitted by this Agreement.

[3.1.3 Subject to and in accordance with the provisions of this Agreement and Applicable Laws, the Contract hereby granted shall, without prejudice to the provisions of Clause 3.1.2, entitle the Operator to undertake development, operation and maintenance of the real estate specified in Schedule-A and to exploit such development for commercial purposes (the “**Real Estate Development**”) with the right to sub-license any or all parts thereof by means of Project Agreements.]

ARTICLE 4
CONDITIONS PRECEDENT

4.1 Conditions Precedent

4.1.1 Save and except as provided in [Articles 4, 7, 8, 9, 10, 22, 30, 40 and 43], or unless the context otherwise requires, 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 4.1 (the “**Conditions Precedent**”). Provided, however, that a Party may grant waiver from satisfaction of any Condition Precedent by the other Party in accordance with the provisions of Clauses 4.1.2 or 4.1.3, as the case may be, and to the extent of such waiver, that Condition Precedent shall be deemed to be fulfilled for the purposes of this Clause 4.1.1

4.1.2 The Operator may, upon providing the Performance Security to the Authority in accordance with Article 9, at any time after 15 (fifteen) days from the date of this Agreement or on an earlier day acceptable to the Authority, by notice require the Authority to satisfy the Condition Precedent set forth in this Clause 4.1.2 within a period of 90 (ninety) days of the notice, and the Condition Precedent required to be satisfied by the Authority prior to the Appointed Date shall be deemed to have been fulfilled when the Authority shall have:

(a) procured for the Operator the Right of Way to the Depot Site in accordance with the provisions of Clause 10.3.1; and

[(b) procured all Applicable Permits required to be procured by the Authority as specified in Schedule- C, including those relating to environmental protection and conservation of the Site]¹

4.1.3 The Conditions Precedent required to be satisfied by the Operator within a period of 120 (one hundred and twenty) days from the date of this Agreement shall be deemed to have been fulfilled when the Operator shall have:

(a) provided Performance Security to the Authority pursuant to Article 9;

(b) executed and procured execution of the Escrow Agreement;

(c) executed and procured execution of the Substitution Agreement;

(d) delivered to the Authority from {the Consortium Members, their respective} confirmation, in original, of the correctness of their representations and warranties set forth in Sub-clauses (k), (l) and (m) of Clause 7.1;

(e) procured all the Applicable Permits specified in Schedule-C unconditionally or if subject to conditions, then all such conditions required to be fulfilled by the date

¹ In projects where environmental clearance is restricted to small portions of the Site or to the felling of trees, this Condition Precedent may be deleted and such portions may be included, as necessary, in the Appendix specified in Clause 10.3.1. The guiding principle should be that the obligations of the Operator are predictable and not beyond its control.

specified therein shall have been satisfied in full and such Applicable Permits are in full force and effect;

- (f) executed the Financing Agreements and delivered to the Authority 3 (three) true copies thereof, duly attested by a Director of the Operator;
- (g) delivered to the Authority 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Operator, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders; and
- (h) delivered to the Authority a legal opinion from the legal counsel of the Operator with respect to the authority of the Operator to enter into this Agreement and the enforceability of the provisions thereof;

Provided that upon request in writing by the Operator, the Authority may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 4.1.3. For the avoidance of doubt, the Authority may, in its sole discretion, grant any waiver hereunder with such conditions as it may deem fit.

- 4.1.4 Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.
- 4.1.5 The Parties shall notify each other in writing at least once a week on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied. For the avoidance of doubt, the Operator shall, upon satisfaction or waiver, as the case may be, of all the Conditions Precedent, notify the Authority of the occurrence of the Appointed Date.

4.2 Damages for delay by the Authority

In the event that (i) the Authority does not procure fulfilment or waiver of the Condition Precedent set forth in Clause 4.1.2 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Operator or due to Force Majeure, the Authority shall pay to the Operator Damages in an amount calculated at the rate of [0.1% (zero point one per cent)] of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of [20% (twenty per cent)] of the Performance Security.

4.3 Damages for delay by the Operator

In the event that (i) the Operator does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Clause 4.1.3 within the period specified in that Clause, and (ii) the delay has not occurred as a result of breach of this Agreement by the Authority or due to Force Majeure, the Operator shall pay to the Authority Damages in an amount calculated at the rate of 0.25% (zero point two five per cent) of the Performance Security for each day's

delay until the fulfilment of such Conditions Precedent, subject to a maximum amount equal to the Bid Security, and upon reaching such maximum, the Authority may, in its sole discretion and subject to the provisions of Clause 9.2, terminate the Agreement. Provided that in the event of delay by the Authority in procuring fulfilment of the Condition Precedent specified in Clause 4.1.2, no Damages shall be due or payable by the Operator under this Clause 4.3 until the date on which the Authority shall have procured fulfilment of the Conditions Precedent specified in Clause 4.1.2.

4.4 Deemed Termination upon delay

Without prejudice to the provisions of Clauses 4.2 and 4.3, and subject to the provisions of Clause 9.2, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, before 400 (four hundred) days of the date of this Agreement or the extended period provided in accordance with this Agreement, all rights, privileges, claims and entitlements of the Operator under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Operator, and the Agreement shall be deemed to have been terminated by mutual agreement of the Parties. Provided, however, that in the event the delay in occurrence of the Appointed Date is for reasons attributable to the Operator, the Performance Security of the Operator shall be encashed and appropriated by the Authority as Damages thereof.

ARTICLE 5
OBLIGATIONS OF THE OPERATOR

5.1 Obligations of the Operator

- 5.1.1 The Operator shall procure the Buses as per the Procurement Schedule provided in Schedule-G hereto for providing the Services in accordance with the Deployment Plan and in accordance with the terms and conditions of this Agreement.
- 5.1.2 The Operator shall procure at its cost and expense, all Applicable Permits from Government Instrumentalities including but not limited, the certificate of registration, certification of fitness from the relevant RTO having jurisdiction over the Project and shall operate and maintain the Buses in accordance with the terms and conditions of this Agreement.
- 5.1.3 Subject to and on the terms and conditions of this Agreement, the Operator shall, at its own cost and expense, procure finance for and undertake the design, engineering, procurement, construction and operation of the Maintenance Depots for the maintenance of Buses and shall observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.4 The Operator shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 5.1.5 Save and except as otherwise provided in this Agreement or Applicable Laws, as the case may be, the Operator shall, in discharge of all its obligations under this Agreement, conform with and adhere to Good Industry Practice.
- 5.1.6 The Operator shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
- (a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits, and obtain and keep in force and effect such Applicable Permits in conformity with Applicable Laws;
 - (b) procure, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes, know-how and systems used or incorporated into the Buses and Maintenance Depots;
 - (c) perform and fulfil its obligations under the Financing Agreements;
 - (d) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
 - (e) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Operator's obligations under this Agreement;

- (f) always act in a manner consistent with the provisions of this Agreement and not omit or cause or fail to do any act, deed or thing, whether intentionally or otherwise, which may in any manner be violative of any of the provisions of this Agreement;
- (g) ensure that Users are treated with due courtesy and provided with ready access to services and information;
- (h) support, cooperate with and facilitate the Government in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
- (i) take all reasonable precautions for the prevention of accidents on or around the Maintenance Depots and provide all reasonable assistance and emergency medical aid to accident victims; and
- (j) transfer the Maintenance Depots to the Authority upon Termination of this Agreement, in accordance with the provisions thereof.

5.2 Obligations relating to Project Agreements

- 5.2.1 It is expressly agreed that the Operator shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the Operator from its obligations or liability hereunder.
- 5.2.2 The Operator shall submit to the Authority the drafts of all Project Agreements or any amendments or replacements thereto for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Operator within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Operator shall submit to the Authority a true copy thereof, duly attested by a Director or any person authorised by the Board of Directors of the Operator, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that any failure or omission of the Authority to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by the Authority. No review and/or observation of the Authority and/or its failure to review and/or convey its observations on any document shall relieve the Operator of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever.
- 5.2.3 The Operator shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority, and in the event that any replacement or amendment is made without such consent, the Operator shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the debt of the Operator.

- 5.2.4 Notwithstanding anything to the contrary contained in this Agreement, the Operator shall not sub-lease, sub-license, assign or in any manner create an Encumbrance on the Depot Sites, without prior written approval of the Authority, which approval the Authority may, in its discretion, deny if such sub-lease, sub-license, assignment or Encumbrance has or may have a material adverse effect on the rights and obligations of the Authority under this Agreement or Applicable Laws.
- [5.2.5 Notwithstanding anything to the contrary contained in this Agreement, the Operator shall not sub-license, assign or in any manner create an Encumbrance on any Project Asset forming part of Real Estate Development without prior written approval of the Authority, which approval the Authority may, in its discretion, deny if such sub-license, assignment or Encumbrance has or may have a material adverse effect on the rights and obligations of the Authority under this Agreement or Applicable Laws; provided that the provisions of this Clause 5.2.5 shall not apply where the Operator grants a sub-license for a cumulative period, including any renewals thereof, not exceeding 11 (eleven) months. For the avoidance of doubt, it is agreed that if the Authority does not deny the approval required under this Clause 5.2.5 within a period of 60 (sixty) days from the date of receiving a notice along with full particulars and documents from the Operator, the approval shall be deemed to have been granted to the extent such sub-license, assignment or Encumbrance, as the case may be, is in accordance with the provisions of this Agreement.]
- [5.2.6 Notwithstanding anything to the contrary contained in Clause 5.2.5, the Operator shall not sub-license, assign or in any manner create an Encumbrance on any Project Asset forming part of Real Estate Development at any time prior to the [3rd (third) anniversary] of the Appointed Date. For the avoidance of doubt, the restriction imposed herein shall not apply to assignment under the Substitution Agreement.]
- 5.2.7 The Operator shall procure that each of the Project Agreements contains provisions that entitle the Authority to step into such agreement, in its sole discretion, in substitution of the Operator in the event of Termination or Suspension (the “**Covenant**”). For the avoidance of doubt, it is expressly agreed that in the event the Authority does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Authority and the Covenant shall expressly provide for such eventuality. The Operator expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Authority an acknowledgment and undertaking, in a form acceptable to the Authority, from the counter party(s) of each of the Project Agreements, whereunder such counter party(s) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Authority in the event of Termination or Suspension.
- 5.2.8 Notwithstanding anything to the contrary contained in this Agreement, the Operator agrees and acknowledges that selection or replacement of an O&M Contractor and execution of the O&M Contract shall be subject to the prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Operator, and undertakes that it shall not give effect to any such selection or contract without prior approval of the Authority. For the avoidance of doubt,

it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Operator or its Contractors from any liability or obligation under this Agreement.

5.3 Obligations relating to Change in Ownership

5.3.1 The Operator shall not undertake or permit any Change in Ownership, except with the prior written approval of the Authority.

5.3.2 Notwithstanding anything to the contrary contained in this Agreement, the Operator agrees and acknowledges that:

- (a) all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate 25% (twenty five per cent) or more of the total Equity of the Operator; or
- (b) acquisition of any control directly or indirectly of the Board of Directors of the Operator by any person either by himself or together with any person or persons acting in concert with him, shall constitute a Change in Ownership requiring prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Operator, and undertakes that it shall not give effect to any such acquisition of Equity or control of the Board of Directors of the Operator without such prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Operator from any liability or obligation under this Agreement. It is further agreed that in the event of any acquisition of shares or control in the Lead Member or its holding company by another overseas entity, which results in a Change in Ownership as set forth in this Clause 5.3.2, the Operator shall inform the Authority of such occurrence within 15 (fifteen) days thereof and seek consent of the Authority under and in accordance with the provisions of this Clause 5.3. In the event the Authority denies its consent to such Change in Ownership, a Change in Ownership in breach of this Clause 5.3 shall be deemed to have occurred.

For the purposes of this Clause 5.3.2:

- (i) the expression “acquirer”, “control” and “person acting in concert” shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011 or any statutory re-enactment thereof as in force as on the date of acquisition of

Equity, or the control of the Board of Directors, as the case may be, of the Operator;

- (ii) the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Operator; and
- (iii) power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situate in India or abroad) the Equity of the Operator, not less than half of the directors on the Board of Directors of the Operator or of any company, directly or indirectly whether situate in India or abroad, having ultimate control of 25% (twenty five per cent) or more of the Equity of the Operator shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Operator.

5.4 Obligations relating to employment of foreign nationals

The Operator acknowledges, agrees and undertakes that employment of foreign personnel by the Operator and/or its Contractors and their sub-contractors shall be subject to grant of requisite regulatory permits and approvals including employment/residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall and will always be of the Operator and, notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Operator or any of its Contractors or sub-contractors shall not constitute Force Majeure Event, and shall not in any manner excuse the Operator from the performance and discharge of its obligations and liabilities under this Agreement.

5.5 Obligations relating to employment of personnel

- 5.5.1 The Operator shall ensure that the personnel engaged by it in the performance of its obligations under this Agreement are at all times properly trained for their respective functions.
- 5.5.2 The Operator shall, notwithstanding its obligations contained herein for employment and training of staff, undertake capacity building training and workshops for Bus maintenance, Maintenance Depots and other infrastructure operations and maintenance etc., as may be directed by the Authority and in accordance with Article 23 hereto.
- 5.5.3 The Operator shall ensure that the personnel engaged by it in the performance of its obligations under this Contract are at all times properly trained and possess the requisite skill and qualifications as per Good Industry Practice for undertaking their respective functions as provided in Article 23 of this Agreement.
- 5.5.4 The Operator agrees that Drivers appointed by it for the performance of Services shall comply with the requirements set forth in Schedule-O.

- 5.5.5 Prior to engaging any Driver for operating the Buses, under and in accordance with this Contract, the Operator shall ensure that each such Driver receives a combination of classroom instruction and behind-the-wheel instruction as specified in Article 23 sufficient to enable each Driver to operate the Bus in a safe and efficient manner in terms of this Contract.
- 5.5.6 The Operator shall ensure that each Driver receives refresher training course from time to time during the Contract Period as specified in Clause 23.2.
- 5.5.7 The Authority may require the Operator to immediately remove any staff member/ personnel employed by the Operator for the purpose of the Project, subject to provision of reasonable evidence, who in the opinion of the Authority:
- (a) persists in any misconduct;
 - (b) is incompetent or negligent in the performance of his duties;
 - (c) fails to conform with any provisions of this Contract; or
 - (d) persists in any conduct which is prejudicial to the safety and security of the passengers and general public.
- 5.5.8 The Operator shall be solely and exclusively responsible for all Drivers, employees, workmen, personnel and staff employed for the purposes of implementing the Project. The Operator shall ensure that all personnel and staff are under its continued supervision to provide Bus Service in a safe and efficient manner to the public. Provided however the Authority shall not be liable for payment of any sum or give compensation for any claim (including but not limited to compensation on account of death/ injury/ termination) of such nature to such foregoing personnel and staff of the Operator at any point of time during the Contract Period or thereafter; the Operator undertakes to keep the Authority indemnified in this regard for any claim for payment raised by such foregoing persons.
- 5.5.9 The Operator shall ensure that all Drivers, personnel and staff wear uniform as approved by the Authority. The Operator shall at its own cost and expense, provide uniforms and shall ensure that Drivers and any other personnel and staff employed by it shall, at all times, wear clean uniforms while on duty or doing any act in relation to the Project.
- 5.5.10 The Operator shall be responsible for all the costs and expenses for employment of Drivers and other personnel including but not limited to expenses for travel, training of its employees, and payment to vendors engaged by the Operator in connection with the implementation of this Project.
- 5.5.11 The Operator shall make efforts to maintain harmony and good industrial relations among the labour and personnel employed in connection with the performance of the Operator's obligations under this Contract by exercising supervision and control over the establishment;
- 5.5.12 The Operator shall be responsible for employing any and all manpower, personnel, labour, etc., as may be required to be deployed by it for implementation of the Project and as such the Operator on an exclusive basis shall be responsible for exercising supervision and control

over such manpower, personnel, labour, etc. For all intents and purposes under this Contract, the Operator alone shall be the principal employer in terms of the provisions of the Factories Act, 1948 and the Contract Labour (Regulation and Abolition) Act, 1970 in respect of such manpower, personnel, labour, etc. The Authority shall at no point of time be concerned in any manner whatsoever with any employee or labour related issues of such manpower, personnel, labour, etc. of the Operator and shall not have any liability or responsibility towards them. The Operator shall keep the Authority indemnified for all claims that may arise due to Operator's non-compliance with any provisions of this Clause 5.5.12.

5.6 Advertisement and Branding of Buses

The Buses or any part thereof shall not be branded in any manner to advertise, display or reflect the name or identity of the Operator or its shareholders, save to the extent as provided in Clause 16.8. The Operator undertakes that it shall not, in any manner, use the name or identity of the Project shareholders to advertise or display its own identity, brand equity or business interests, including those of its shareholders, save and except as may be necessary in the normal course of business. [For the avoidance of doubt, it is agreed that the Operator may, at every Depot, display its own name at a spot where other public notices are displayed for the Users.]

5.7 Obligations regarding risk of loss or damage

- 5.7.1 The Operator shall bear the risk of loss in relation to each Bus for the performance of its Operation and Maintenance Obligations hereunder.
- 5.7.2 The Operator shall take or cause to be taken all steps necessary under Applicable Laws to protect the Authority against claims by other parties with respect thereto in accordance with the terms and provisions of this Agreement.

5.8 Obligations relating to information

- 5.8.1 Without prejudice to the provisions of Applicable Laws and this Agreement, upon receiving a notice from the Authority for any information that it may reasonably require or that it considers may be necessary to enable it to perform any of its functions, the Operator shall provide such information to the Authority forthwith and in the manner and form required by the Authority.
- 5.8.2 After receiving a notice from the Authority for reasoned comments on the accuracy and text of any information relating to the Operator's activities under or pursuant to this Agreement which the Authority proposes to publish, the Operator shall provide such comments to the Authority in the manner and form required by the Authority.

5.9 Obligations relating to aesthetic quality

The Operator shall maintain a high standard in the appearance and aesthetic quality of the Project and achieve integration of the Buses and Maintenance Depots with the character of the surrounding landscape through both appropriate design and sensitive management of all visible elements. The Operator shall engage professional architects, town planners and

consultants of repute for ensuring that the design of the Project meets the aforesaid aesthetic standards.

5.10 Obligations relating to noise control

The Operator shall take all such measures as may be necessary in accordance with Applicable Laws and Good Industry Practice to control and mitigate the noise arising from the Buses and the Maintenance Depots and its impact on Users and the neighbourhood.

5.11 Facilities for physically challenged and elderly persons

The Operator shall, in conformity with the guidelines issued from time to time by the Ministry of Social Justice and Empowerment, or a substitute thereof, procure a barrier free environment for the physically or visually challenged and for elderly persons using the Buses.

[5.12 Obligations relating to charging infrastructure

The Operator agrees that it shall provide for charging infrastructure at the Maintenance Depots for minimum [***] Buses and shall provide adequate infrastructure for metering of consumption of electricity at each of the individual charging stations. The Operator agrees that it shall ensure that the charging stations installed at the Maintenance Depots are used only for the purpose of charging of Buses and no other purpose whatsoever.]

ARTICLE 6
OBLIGATIONS OF THE AUTHORITY

6.1 Obligations of the Authority

6.1.1 The Authority shall, at its own cost and expense undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.

6.1.2 The Authority agrees to provide support to the Operator and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and Applicable Laws, the following:

- (a) provide the routes to be undertaken by the Operator as detailed in Clause 16.4 herein and in accordance with the Fleet Plan;
- (b) provide land (along with any buildings, constructions or immovable assets, if any, thereon), free from encumbrances, on licence for setting up and operating Maintenance Depots in accordance with the provisions of this Agreement;
- (c) provide, or cause to be provided, road connectivity at any location on the boundary of the Maintenance Depots;
- (d) provide, or cause to be provided, reasonable support to the Operator in procuring electric transmission lines and sub-station as specified in Schedule-A, at any location situated within 500 m (five hundred meters) of the boundary of the Maintenance Depots.;
- (e) upon written request from the Operator, assist the Operator in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity for the Maintenance Depots;
- (f) upon written request from the Operator, provide the Operator with competent and trained employees to assist the Operator in carrying out its duties under this Agreement;
- (g) upon written request from the Operator, and subject to the Operator complying with Applicable Laws, provide all reasonable support and assistance to the Operator in procuring Applicable Permits, including environmental for construction and operation of the Maintenance Depots, required from any Government Instrumentality for implementation and operation of the objectives set forth in this Agreement;
- (h) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
- (i) support, cooperate with and facilitate the Operator in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
- (j) upon written request from the Operator and subject to the provisions of Clause 5.4, provide reasonable assistance to the Operator and any expatriate personnel of the Operator or its Contractors to obtain applicable visas and work permits for the purposes of discharge by the Operator or its Contractors their obligations under this Agreement.

ARTICLE 7
REPRESENTATIONS AND WARRANTIES

7.1 Representations and warranties of the Operator

The Operator represents and warrants to the Authority that:

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

- (j) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;
- (k) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3; and that the {Selected Bidder/ Consortium Members}, together with {its/their} Associates, shall hold not less than (i) 51% (fifty one per cent) of its issued and paid up Equity on the date of this Agreement and a period of [3 (three)] years from the date of COD; and (ii) 26% (twenty six per cent) thereof, or such lower proportion as may be permitted by the Authority during the remaining Term; {and that no Member of the Consortium whose technical and financial capacity was evaluated for the purposes of pre-qualification and short-listing in response to the Request for Qualification shall hold less than 26% (twenty six per cent) of the issued and paid up Equity till [***];
- (l) {the Selected Bidder/ Consortium Members and its/their} Associates have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;
- (m) {the Selected Bidder/ each Consortium Member} is duly organised and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Authority to enter into this Agreement with the Operator pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (n) all its rights and interests in the Maintenance Depots shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Authority, and that none of the Project Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;
- (o) no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any Authority Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (p) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Agreement or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith; and
- (q) all information provided by the {Selected Bidder/ Consortium Members} in response to the Request for Qualification and Request for Proposals or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects

7.2 Representations and warranties of the Authority

The Authority represents and warrants to the Operator that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- (b) it has taken all necessary actions under Applicable Laws to authorise the execution, delivery and performance of this Agreement;
- (c) it has the financial standing and capacity to perform its obligations under this Agreement;
- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Authority Instrumentality which may result in any material adverse effect on the Authority's ability to perform its obligations under this Agreement;
- (f) it has complied with Applicable Laws in all material respects;
- (g) it has good and valid right to the Depot Sites, and has power and authority to grant a licence, in respect thereto to the Operator;
- (h) upon the Operator submitting the Performance Security and complying with the covenants herein, it shall not at any time during the term hereof, interfere with peaceful exercise of the rights and discharge of the obligations by the Operator, subject to and in accordance with the provisions of this Agreement; and
- (i) upon the Operator submitting a written request to this effect with necessary particulars, it shall enable personnel of the Operator to travel on board the Buses for the purpose of discharging the Maintenance Obligations in accordance with the provisions of this Agreement and Good Industry Practice.

7.3 Disclosure

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any right, remedy or obligation of either Party under this Agreement.

ARTICLE 8 DISCLAIMER

8.1 Disclaimer

- 8.1.1 The Operator acknowledges that prior to the execution of this Agreement, the Operator has, after a complete and careful examination, made an independent evaluation of the Request for Qualification, Request for Proposals, Scope of the Agreement, Specifications and Standards, Site, Depot Sites, existing structures, local conditions, physical qualities of ground, subsoil and geology and all information provided by the Authority or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. Save as provided in Clause 7.2, the Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumption, statement or information provided by it and the Operator confirms that it shall have no claim whatsoever against the Authority in this regard.
- 8.1.2 The Operator acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Operator, the {Selected Bidder/ Members of Consortium} and its Associates or any person claiming through or under any of them.
- 8.1.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above shall not vitiate this Agreement.
- 8.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1.1, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Authority to give any notice pursuant to this Clause 8.1.4 shall not prejudice the disclaimer of the Authority contained in Clause 8.1.1 and shall not in any manner shift to the Authority any risks assumed by the Operator pursuant to this Agreement.
- 8.1.5 Except as otherwise provided in this Agreement, all risks relating to the Agreement shall be borne by the Operator and the Authority shall not be liable in any manner for such risks or the consequences thereof.

Part III
Development and Operations

ARTICLE 9 PERFORMANCE SECURITY

9.1 Performance Security

- 9.1.1 The Operator shall, for the performance of its obligations hereunder till the expiry of the Contract Period, provide to the Authority no later than 30 (thirty) days from the date of this Agreement, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to Rs. [****] (Rupees)² in the form set forth in Schedule-D (the “**Performance Security**”). Until such time the Performance Security is provided by the Operator pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Authority shall release the Bid Security to the Operator.
- 9.1.2 Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Operator within a period of [180] days from the date of this Agreement, the Authority may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Operator under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Operator, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

9.2 Appropriation of Performance Security

Upon occurrence of an Operator Default or failure to meet any Condition Precedent, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate from the Performance Security the amounts due to it for and in respect of such Operator Default or for failure to meet any Condition Precedent. Upon such encashment and appropriation from the Performance Security, the Operator shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Operator shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 32. Upon such replenishment or furnishing of a fresh Performance Security, as the case may be, the Operator shall be entitled to an additional Cure Period of [120 (one hundred and twenty)] days for remedying the Operator Default or for satisfying any Condition Precedent, and in the event of the Operator not curing its default within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 32.

9.3 Release of Performance Security

The Performance Security shall remain in force and effect during the Contract Period and shall returned to the Operator upon Termination of this Agreement upon Authority Default within [120 (one hundred and twenty)] days of the Termination Date, without any interest, subject to any deductions which may be made by the Authority in respect of any outstanding dues under the terms of this Agreement.

² Calculated at approximately 3% (three per cent) of the amount specified in the definition of Total Project Cost.

ARTICLE 10
LAND FOR DEPOTS

10.1 Site for the Maintenance Depots

The site for the Maintenance Depots shall comprise the real estate described in Schedule-A and in respect of which Right of Way shall be provided and granted by the Authority to the Operator as a licensee under and in accordance with this Agreement (the “**Site**”). For the avoidance of doubt, it is hereby acknowledged and agreed that references to the Site shall be construed as references to the real estate required for the Maintenance Depots as set forth in Schedule-A [and includes Real Estate Development].

10.2 Licence and Right of Way for Depot Sites

10.2.1 The Authority hereby grants to the Operator access to the Depot Site for carrying out any surveys, investigations and soil tests that the Operator may deem necessary prior to the Appointed Date it being expressly agreed and understood that the Authority shall have no liability whatsoever in respect of survey, investigations and tests carried out or work undertaken by the Operator on or about the Depot Site pursuant hereto in the event of Termination or otherwise.

10.2.2 In consideration of the license fee of [Re.1 (Rupee One) per annum,] this Agreement and the covenants and warranties on the part of the Operator herein contained, the Authority, in accordance with the terms and conditions set forth herein, hereby grants to the Operator, effective from the dates specified in this Clause 10.2, leave and licence rights in respect of all the land (along with any buildings, constructions or immovable assets, if any, thereon) comprising the Depot Sites at {**** and ****} which is described, delineated and shown in Schedule-A hereto (the “**Licensed Premises**”), on an “as is where is” basis, free of any Encumbrances, to develop, operate and maintain the said Licensed Premises, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Licensed Premises, any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of this Agreement and, solely for the purposes permitted under this Agreement, and for no other purpose whatsoever.

10.2.3 The Authority shall provide and grant to the Operator, vacant access, constructive possession and Right of Way to the Depot Site on or prior to the dates specified below:

- (a) the Depot Site situated at {****} shall be provided within {***} months of the Appointed Date; and
- (b) the Depot Site situated at {***} shall be provided within {***} months of the Appointed Date.

10.2.4 In the event that the Authority fails to provide the Depot Site on or prior to the date specified in this Clause 10.2, it shall pay to the Operator as Damages, Rs. [10,000 (Rupees ten thousand)] per day for each day of delay until vacant possession thereof is delivered to the Operator. For the avoidance of doubt, the Parties agree that performance of Maintenance Obligations by the Operator shall be subject to the grant of the license and Right of Way with

respect to Depot Sites hereunder and in the event of any delay, the Parties shall, in good faith, determine alternative arrangements thereof.

10.2.5 Notwithstanding the provisions of Clause 10.2.2, the licence granted in respect of the Depot Sites hereunder shall expire in respect of such Depot Sites upon the transfer of the relevant Maintenance Depots under and in accordance with the provisions of Clause 17.14.

10.2.6 The Operator hereby irrevocably appoints the Authority (acting directly or through a nominee) to be its true and lawful attorney, to execute and sign in the name of the Operator, a transfer or surrender of the license granted/ to be granted pursuant hereunder, a sufficient proof of which will be the declaration of any duly authorised officer of the Authority, and the Operator consents to it being registered for this purpose.

10.3 Procurement of the Depot Site

10.3.1 Pursuant to the notice specified in Clause 4.1.2, the Authority Representative and the Operator shall, on a mutually agreed date and time, inspect the Depot Site and prepare a memorandum containing an inventory of the Depot Site including the vacant and unencumbered land, buildings, structures, road works, trees and any other immovable property on or attached to the Depot Site. Such memorandum shall have appended thereto an appendix (the “**Appendix**”) specifying in reasonable detail those parts of the Depot Site to which vacant possession has not been granted to the Operator. Signing of the memorandum, in two counterparts (each of which shall constitute an original), by the authorised representatives of the Parties shall, subject to the provisions of Clause 10.2.2, be deemed to constitute a valid licence and Right of Way to the Operator for free and unrestricted use and development of the vacant and unencumbered Depot Site during the Contract Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever. For the avoidance of doubt, it is agreed that possession with respect to the parts of the Depot Site as set forth in the Appendix shall be deemed to have been granted to the Operator upon vacant access thereto being provided by the Authority to the Operator.

10.3.2 Without prejudice to the provisions of Clause 10.3.1, the Parties hereto agree that the Authority shall have granted vacant possession and right of way such that the Appendix shall not include more than 10% (ten per cent) of the total area of the Site required and necessary for the Maintenance Depots and in the event Financial Close is delayed solely on account of delay in grant of such vacant access and Right of Way, the Authority shall be liable to payment of Damages under and in accordance with the provisions of Clause 4.2.

10.3.3 On and after signing the memorandum referred to in Clause 10.3.1, and until the Transfer Date, the Operator shall maintain a round-the-clock vigil over the Depot Site and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Operator shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its cost and expenses.

10.3.4 The Authority shall make best efforts to procure and grant, no later than 90 (ninety) days from the Appointed Date, the Right of Way to the Operator in respect of all land included in the Appendix, and in the event of delay for any reason other than Force Majeure or breach of this Agreement by the Operator, it shall pay to the Operator, Damages in a sum calculated at the

rate of Rs. [1,000 (Rupees one thousand)] per day for every [500 (five hundred)] square metres or part thereof, commencing from the [91st (ninety first)] day of the Appointed Date and until such Right of Way is procured.

- 10.3.5 The Operator may, if so requested by the Authority, procure on behalf of the Authority, on the terms and to the extent specified by the Authority, the additional land required for [ancillary buildings and electric sub-stations or for] construction of works specified in Change of Scope Order issued under Article 15, in accordance with this Agreement and upon procurement, such land shall form part of the Depot Site and vest in the Authority; provided that the Operator may, by notice given to the Authority no later than 60 (sixty) days from [the Appointed Date or the date of Change of Scope Order, as the case may be,] require the Authority to initiate and undertake proceedings for acquisition of such land under the provisions of the Applicable Laws and the Authority shall take all such steps as may be reasonably necessary for such land acquisition forthwith; provided further that the cost of land acquired under this Clause 10.3.6 shall be borne by the Authority in accordance with Applicable Laws; provided also that the land to be acquired by the Authority hereunder as a part of the Depot Site shall be deemed to be included in the Appendix referred to in this Clause 10.3 and dealt with in accordance with the provisions thereof. For the avoidance of doubt, it is agreed that the minimum area of land to be acquired for the ancillary buildings, electric sub-stations and approach roads thereof shall conform to the provisions of Schedule-A. It is further agreed that the Authority may, at any time after the Bid Date, *suo moto* acquire the land required hereunder.

10.4 Site to be free from Encumbrances

Subject to the provisions of Clause 10.3, the Depot Site shall be made available by the Authority to the Operator pursuant hereto free from all Encumbrances and occupations and without the Operator being required to make any payment to the Authority on account of any costs, compensation, expenses and charges for the acquisition, possession and use of such Depot Site for the duration of the Contract Period, except insofar as otherwise expressly provided in this Agreement. It is further agreed that the Operator accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Depot Site.

10.5 Protection of Site from encroachments

During the Contract Period, the Operator shall protect the Depot Site from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any Contractor or other person claiming through or under the Operator to place or create any Encumbrance or security interest over all or any part of the Depot Site or the Project Assets, or on any rights of the Operator therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement.

10.6 Special/temporary right of way

The Operator shall bear all costs and charges for any special or temporary right of way required by it in connection with access to the Depot Site. The Operator shall obtain at its cost such facilities on or outside the Site as may be required by it for the purposes of the Project and the performance of its obligations under this Agreement.

10.7 Access to the Authority

The licence, right of way and right to the Depot Site granted to the Operator hereunder shall always be subject to the right of access of the Authority and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

10.8 Geological and archaeological finds

It is expressly agreed that mining, geological or archaeological rights do not form part of the license granted to the Operator under this Agreement, and the Operator hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest. Such rights, interest and property on or under the Depot Sites shall vest in and belong to the Authority or the concerned Government Instrumentality. The Operator shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform the Authority and the concerned Government Instrumentality forthwith of the discovery thereof and comply with such instructions as the Authority or the concerned Government Instrumentality may reasonably give for the removal of such property. For the avoidance of doubt, it is agreed that any reasonable expenses incurred by the Operator hereunder shall be reimbursed by the Authority. It is also agreed that the Authority shall procure that the instructions hereunder are issued by the concerned Government Instrumentality within a reasonable period so as to enable the Operator to continue its construction works with such modifications as may be deemed necessary.

10.9 Felling of trees

The Authority shall assist the Operator in procuring the Applicable Permits for felling of trees to be identified by the Operator for this purpose if and only if such trees cause a material adverse effect on the construction, operation or maintenance of the Maintenance Depots, as the case may be. In the event of any delay in felling thereof for reasons beyond the control of the Operator, it shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay in the felling of trees. For the avoidance of doubt, the costs and expense in respect of felling of trees shall be borne by the Operator and any revenues thereof shall be paid to the Authority.

ARTICLE 11
UTILITIES, ASSOCIATED ROADS AND TREES

11.1 Existing utilities and roads

Notwithstanding anything to the contrary contained herein, the Operator shall ensure that the respective entities owning the existing roads, right of way or utilities on, under or above the Depot Site are enabled by it to keep such utilities in continuous satisfactory use, if necessary, by providing suitable temporary or permanent diversions with the authority of the controlling body of that road, right of way or utility, and the Authority shall, upon written request from the Operator, initiate and undertake at the Operator's cost, legal proceedings for acquisition of any right of way necessary for such diversion.

11.2 Shifting of obstructing utilities

The Operator shall, subject to Applicable Laws and with assistance of the Authority, undertake shifting of any utility including electric lines, water pipes and telephone cables, to an appropriate location or alignment within or outside the Depot Site if and only if such utility causes or shall cause a material adverse effect on the construction, operation or maintenance of the Maintenance Depots. The cost of such shifting shall be borne by the Authority or by the entity owning such utility, if the Authority so directs, and in the event of any delay in shifting thereof, the Operator shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay on the part of the entity owning such electric lines, water pipes or telephone cables, as the case may be.

11.3 New utilities and transport systems

- 11.3.1 The Operator shall allow, subject to such conditions as the Authority may specify, access to, and use of the Depot Sites for laying telephone lines, water pipes, electric cables or other public utilities. Where such access or use causes any financial loss to the Operator, it may require the user of the Depot Site to pay compensation or damages as per Applicable Laws. For the avoidance of doubt, it is agreed that use of the Depot Site under this Clause shall not in any manner relieve the Operator of its obligation to maintain the Maintenance Depot in accordance with this Agreement and any damage caused by such use shall be restored forthwith.

ARTICLE 12
CONSTRUCTION OF THE MAINTENANCE DEPOTS

12.1 Development of Site

The Authority shall, at its own cost and expense, provide, or cause to be provided road connection between the boundary of the Maintenance Depot(s) and the nearest major road, no later than the [1st (first) anniversary] of the Appointed Date.

12.2 Obligations prior to commencement of construction

Prior to commencement of Construction Works, the Operator shall:

- (a) submit to the Authority its detailed design, construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for completion of the Maintenance Depots in accordance with the Maintenance Depot Completion Schedule as set forth in Schedule-E;
- (b) appoint its representative duly authorised to deal with the Authority in respect of all matters under or arising out of or relating to this Agreement;
- (c) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, the Applicable Laws and Applicable Permits; and
- (d) make its own arrangements for quarrying of materials needed for the Maintenance Depot under and in accordance with the Applicable Laws and Applicable Permits.

12.3 Maintenance during Construction Period

During the Construction Period, the Operator shall maintain, at its cost, the existing roads along the alignment of the Maintenance Depots so that their traffic worthiness and safety are at no time materially inferior as compared to their condition 7 (seven) days prior to the date of this Agreement, and shall undertake the necessary repair and maintenance works for this purpose; provided that the Operator may, at its cost, interrupt and divert the flow of traffic if such interruption and diversion is necessary for the efficient progress of Construction Works and conforms to Good Industry Practice. For the avoidance of doubt, it is agreed that the Operator shall at all times be responsible for ensuring safe operation of the existing roads.

12.4 Drawings

In respect of the Operator's obligations relating to the Drawings of the Maintenance Depot as set forth in Schedule-F, the following shall apply:

- (a) The Operator shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Maintenance Depot Completion Schedule, 3 (three) copies each of all Drawings to the Authority for review.

- (b) By submitting the Drawings for review to the Authority, the Operator shall be deemed to have represented that it has determined and verified that the design and engineering, including the field construction criteria related thereto, are in conformity with the Scope of the Project, Specifications and Standards, Applicable Laws and Good Industry Practice.
- (c) Within 15 (fifteen) days of the receipt of the Drawings, the Authority shall review the same and convey its observations to the Operator with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards. The Operator shall not be obliged to await the observations of the Authority on the Drawings submitted pursuant hereto beyond the said 15 (fifteen) days period and may begin or continue Construction Works at its own discretion and risk.
- (d) If the aforesaid observations of the Authority indicate that the Drawings are not in conformity with the Scope of the Project or the Specifications and Standards, such Drawings shall be revised by the Operator and resubmitted to the Authority for review. The Authority shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings.
- (e) No review and/or observation of the Authority and/or its failure to review and/or convey its observations on any Drawings shall relieve the Operator of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner.
- (f) Within 90 (ninety) days of COD, the Operator shall furnish to the Authority a complete set of as-built Drawings, in 2 (two) hard copies and in its editable digital format or in such other medium and manner as may be acceptable to the Authority, reflecting the Maintenance Depots as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Maintenance Depots and setback lines, if any, of the buildings and structures.

12.5 Completion of the Maintenance Depots

- 12.5.1 On or after the Appointed Date, the Operator shall undertake construction of the Maintenance Depots as specified in Schedule-E, and in conformity with the Specifications and Standards set forth in Schedule-B. The [180] day from the Appointed Date shall be the scheduled date for completion of the Maintenance Depots (the “**Scheduled Maintenance Depot Completion Date**”) and the Operator agrees and undertakes that the Maintenance Depot shall be completed on or before the Scheduled Maintenance Depot Completion Date. [For the avoidance of doubt, it is agreed that the Scheduled Maintenance Depot Completion Schedule and Scheduled Maintenance Depot Completion Date shall not apply to Real Estate Development.]
- 12.5.2 The Operator shall construct the Maintenance Depot in accordance with the Maintenance Depot Completion Schedule set forth in Schedule-E. In the event that the Operator fails to achieve any Project Milestone within a period of 90 (ninety) days from the date set forth for such Project Milestone in Schedule-E, unless such failure has occurred due to Force Majeure or for reasons attributable to the Authority, it shall pay Damages to the Authority in a sum

calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until such Project Milestone is achieved; provided that if any or all Project Milestones or the Maintenance Depot Scheduled Completion Date are extended in accordance with the provisions of this Agreement, the dates set forth in Schedule-E shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule-E has been amended as above; provided further that in the event Maintenance Depot Completion is achieved on or before the Scheduled Maintenance Depot Completion Date, the Damages paid under this Clause 12.5.2 shall be refunded by the Authority to the Operator, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 12.5.2 shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

12.5.3 In the event that the Maintenance Depot is not completed and Maintenance Depot Completion does not occur within [270 (two hundred and seventy) days] from the Scheduled Maintenance Depot Completion Date, unless the delay is on account of reasons attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate this Agreement.

[12.6 Construction of Funded Works

12.6.1 The Authority acknowledges, agrees and undertakes that it shall, in accordance with the provisions of this Clause 12.6, reimburse the capital costs incurred by the Operator for and in respect of the construction works referred to in Clause 12.6.2 (the “**Funded Works**”).

12.6.2 The Parties acknowledge and agree that the lump sum costs of all construction works comprising Funded Works, as specified in Schedule-A, shall be deemed to be Rs. {***} crore (Rupees [•]). The Parties further agree that the amount specified hereinabove shall be modified to the extent of variation in WPI occurring between the Bid Date and the Appointed Date, and the amount so revised shall be due and payable to the Operator. The Parties also acknowledge that the aforesaid costs of Funded Works have not been included in the figure specified in the definition of Total Project Cost.

12.6.3 The Operator acknowledges and agrees that the capital cost of each of the Funded Works shall be deemed to be equal to the lump sum amount specified in Schedule-A and the aggregate thereof shall not exceed the amount specified in Clause 12.6.2. The Operator further agrees and undertakes that any expenditure in excess thereof shall, save and except where such excess is on account of Force Majeure, Change of Scope or Change in Law, as the case may, be borne entirely and solely by the Operator. For the avoidance of doubt, the Parties expressly agree that any additional costs incurred by the Operator on account of Force Majeure, Change of Scope or Change in Law, as the case may be, shall be reimbursed forthwith by the Authority.

12.6.4 Without prejudice to the provisions of Clauses 12.6.2 and 12.6.3, the Authority shall pay to the Operator, in 4 (four) equal instalments, the lump sum amount due and payable for each of the Funded Works, upon the Operator completing about 30% (thirty per cent), 60% (sixty per cent), 80% (eighty per cent) and 100% (one hundred per cent) of the respective Funded Works. For the avoidance of doubt, the Parties agree that the provisions of this Clause 12.6 shall be applied individually, and not collectively, to each of the Funded Works.

12.6.5 All Funded Works shall be constructed by the Operator as if they are Construction Works forming part of the Project, and the provisions of this Agreement shall apply *mutatis mutandis* to such Funded Works, save and except as otherwise provided in this Clause 12.6.

12.6.6 In the event of Termination occurring prior to completion of Funded Works, the Authority shall pay to the Operator a sum equal to: (a) 75% (seventy five per cent) of the fair value of the Funded Works undertaken until the Transfer Date if such Termination occurs on account of a Operator Default or a Non-Political Event, or (b) 110% (one hundred and ten per cent) of such fair value if Termination occurs on account of an Authority Default, a Political Event or an Indirect Political Event. The Parties further agree that any amount paid by the Authority to the Operator in pursuance of the provisions of Clauses 12.6.4 shall also be deducted from the amount payable hereunder.]

**ARTICLE 13
PROCUREMENT OF BUSES**

13.1 Standards and Specifications

The Operator shall procure and deploy Buses in accordance with the specifications and standards of Buses provided in Schedule-B.

13.2 Ownership of Buses

The Operator agrees that it shall be solely responsible for procurement of Buses. Subject to the terms of this Agreement, the Parties agree that during the Contract Period, ownership of Buses shall remain with the Operator and the Operator shall cause all Buses to be registered in the name of the Operator and the Authority shall not exercise any right, title, or interest over any of the Buses, subject to the terms of this Agreement.

13.3 Procurement of Buses

The Operator shall procure Buses as per the Procurement Schedule provided in Schedule-G hereto and shall ensure readiness of Buses for commencement of Services (the “**Scheduled Commencement of Services**”) in accordance with Article 14. The Operator further agrees that prior to procurement of Buses, it shall procure a Prototype Bus for the approval of the Authority in accordance with Clause 13.4.

13.4 Prototype

13.4.1 The Operator shall, no later than 90 (ninety) days from the Appointed Date, provide to the Authority [5 (five)] copies of the Designs and Drawings of the Prototypes, as specified in Schedule-F. Provided that the Operator may, share only the details of the layout of the Prototype and not share any propriety information forming part of Designs and Drawings of the Prototype.

13.4.2 The Authority shall depute a team of experts for undertaking a review of the Designs and Drawings and for submitting a report (the “**Design Report**”) to the Authority within [15 (fifteen) days] from the date of receiving the Designs and Drawings. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that any failure or omission of the Authority to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such Designs and Drawings by the Authority.

13.4.3 Pursuant to the Design Report or otherwise, the Operator shall carry out such modifications in the designs as may be necessary for conforming with the Specifications and Standards.

13.4.4 The Authority expressly agrees that it shall, subject to the provisions of this Agreement and Applicable Laws, maintain the confidentiality of Designs and Drawings provided to it by the Operator and shall endeavour to protect the Intellectual Property rights of the Operator, if any, therein.

13.5 Tests at Manufacturer's Plant

- 13.5.1 Prior to supply of a sample Bus that conforms to the Specifications and Standards (the “**Prototype**”), the Operator shall carry out, or cause to be carried out, at its own cost and expense, all Tests in accordance with Schedule-H and such other tests that the Operator may consider necessary to demonstrate that the Prototype complies in all respects with the Specifications and Standards. The Operator shall provide to the Authority forthwith, a copy of the Operator's report on each test containing the results of such test and the action, if any, that it proposes to take for compliance with the Specifications and Standards.
- 13.5.2 The Operator shall, with at least [4 (four)] weeks' notice to the Authority, convey the date, schedule and type of tests that shall be conducted on the Prototype at the manufacturer's plant and the Authority shall have the right, but not the obligation, to nominate its representative to witness the tests. It is clarified that all costs incurred on account of the visit of Authority's representatives to the manufacturer's plant shall be borne by the Operator.
- 13.5.3 The Authority's Representative shall make a report forthwith on the tests witnessed by it and provide a copy thereof to the Parties for review. The Operator shall, prior to dispatch of the Prototype for delivery to the Authority, procure that defects and deficiencies, if any, are rectified and the Prototype conforms with the Specifications and Standards.
- 13.5.4 In the event of failure of any Test specified in Clause 13.5.1, the Operator shall rectify the defect and conduct repeat Tests, and the procedure specified in this Clause 13.2 shall apply *mutatis mutandis* to such repeat Tests.

13.6 Supply of Prototype

- 13.6.1 The Operator shall, no later than [180 (one hundred and eighty)] days from the Appointed Date, procure a Prototype and demonstrate to the Authority, tests and trials to be conducted in accordance with the provisions of Clause 13.4.
- 13.6.2 In the event that the Operator fails to procure the Prototype within the period specified in Clause 13.4.1, the Authority may recover from the Operator an amount equal to [0.5% (zero point five per cent)] of the Performance Security as Damages for each and every [week], or part thereof, by which the delivery of the Prototype is delayed; provided that such Damages shall not exceed [10% (ten per cent)] of the Performance Security .

13.7 Acceptance of Prototypes

- 13.7.1 The Authority shall, no later than [30 (thirty)] days after successful completion of the Tests, communicate its acceptance of the Prototype to the Operator.
- 13.7.2 Prior to accepting the delivery of Prototype, the Authority may inspect the Prototype in accordance with the provisions of Clause 13.4.
- 13.7.3 The Parties expressly agree that conducting Tests by the Authority shall not relieve or absolve the Operator of its obligations and liabilities under this Agreement in any manner whatsoever.

13.8 Procurement of Buses

Upon approval of the Prototype Bus in accordance with the provision of Clause 13.7, the operator shall procure the remaining Buses in accordance with the provisions of Schedule -G and shall comply with timelines specified therein. The operator agrees that the Buses shall include the same specifications and standards as the approved Prototype provided in this Article 13.

13.9 Delay in Procurement

13.9.1 In the event the Operator is unable to procure any Bus as per this Article 13, for reasons not attributable to the Authority or due to a Force Majeure Event, the Operator shall pay Damages at the rate of [0.1 % of the Performance Security] for each day of delay for each Bus (whose procurement is delayed) till the date of procurement of such Bus.

13.9.2 If the procurement of any Bus is delayed by a period exceeding [60 (sixty) days] as provided in the Procurement Schedule or if the Damages payable by the Operator for such delay in procurement of Buses amounts to [10% (percent)] of the Performance Security, notwithstanding anything provided in this Agreement, it shall be regarded as an Operator Event of Default.

13.9.3 The Damages payable by the Operator shall become due and payable within [7 (seven)] days of receipt of notice in this regard from the Authority.

13.10 Readiness for Commencement of Service

13.10.1 The Operator agrees that it shall undertake such activities as required under Applicable Law, Applicable Permits and Good Industry Practice for achieving Readiness for Commencement of Services. Without limiting the generality of the foregoing, the such activities shall include:

- (a) Joint inspection of Buses with the Authority;
- (b) Certificate of Registration;
- (c) Certificate of Fitness;
- (d) Payment of taxes;
- (e) Insurance of Buses as specified in Article 25; and
- (f) Any other readiness related activity to ensure roadworthiness of the Buses.

13.10.2 The Operator shall achieve Readiness for Commencement of Service for each Lot of Buses procured by it in accordance with Article 14, no later than [45 (forty five)] days from the date of procurement of such Lot of Buses, or any extended period as may be agreed upon by the Parties.

13.11 Damage due to accident

- 13.11.1 The Operator shall be liable for any damage to the Bus on account of accidents. The Operator agrees that it shall undertake repair and rectification of such damaged Bus such that the Bus conforms to the Specifications and Standards, to the satisfaction of the Authority.
- 13.11.2 The Operator agrees that the Authority shall not be responsible for any liability arising out of any civil or criminal proceedings instituted by affected parties, as a result of such accident of the Bus and the Operator agrees that it shall keep the Authority indemnified against any third-party claims arising from such accidents.
- 13.11.3 The Operator shall notify the relevant Government Instrumentalities and the Authority of any accidents verbally, within [1 (one)] hour of its occurrence followed by a written notice and in the event, such accident involves any fatality, the Operator shall intimate such accident verbally within 5 (five) minutes of the occurrence of such accident, followed by a written notice. Where any persons involved in the accident have suffered injuries, the Operator shall co-ordinate with the relevant Government Instrumentalities to ensure timely medical help and treatment. The Authority shall provide reasonable assistance support to the Operator on best efforts basis.
- 13.11.4 In the event of an accident of a Bus leading to its complete destruction, such that the Bus cannot be repaired and operated in normal circumstances, and is rendered inoperable, the Operator shall replace such damaged Bus with a new Bus of such make and model which meets the Specifications and Standards and as acceptable to the Authority. The Operator agrees that any Bus brought as a replacement to a damaged Bus in accordance with this Clause 13.11.4 shall be used in the Service for the remaining Contract Period.

ARTICLE 14
ENTRY INTO COMMERCIAL SERVICE

14.1 Inspection by the Authority

- 14.1.1 The Authority may inspect each Bus or any Lot of Buses, in accordance with the provisions of this Clause 14.1, prior to putting such Bus into operation.
- 14.1.2 The Operator shall notify the Authority, no later than [45 (forty five) days] prior to the date of delivery of the Buses, its delivery schedule. The Authority may, in its discretion, nominate its representative to carry out an inspection on the scheduled date and time.
- 14.1.3 The Operator shall provide the assistance necessary for the Authority Representative to perform the inspection in accordance with the provisions of this Clause 14.1. For the avoidance of doubt, the Parties expressly agree that such inspection shall be completed within a period of [72 (seventy two)] hours from the time when a Bus is made available for inspection and upon expiry thereof, the Bus shall, subject to satisfactory completion of the safety inspection under Clause 14.4, be deemed to have been approved by the Authority.
- 14.1.4 The Authority Representative shall submit an inspection report for each Bus specifying the defects and deficiencies that shall be rectified by the Operator in conformity with the Specifications and Standards (the “**Punch List**”). The Operator shall, no later than [30] days, rectify each item in the Punch List and notify the Authority of the same. The Authority may, in its discretion, inspect the Bus within [30] days thereof and in the event that any defect or deficiency specified in the Punch List shall have remained without rectification thereof, the Operator shall pay to the Authority as Damages, 0.01% (per cent) of the Performance Security for each day of delay until all items of the Punch List are rectified.

14.2 Safety Inspection

- 14.2.1 The inspection specified in Clause 14.2, shall include a safety inspection in accordance with the provisions of Article 18. In the event that the Authority Representative concludes that the Bus does not conform with the Specifications and Standards, and is, therefore, not safe for entry into service, he shall convey to the Parties forthwith, a report stating in detail the reasons for his findings. The Operator shall, notwithstanding anything to the contrary contained in this Article 14, withdraw the Bus for rectification thereof and present it to the Authority for inspection after the defects or deficiencies have been rectified.
- 14.2.2 The Project shall be deemed to be complete when the Completion Certificate for the Maintenance Depot and the Buses is issued under the provisions of Clause 13.10 and accordingly, the commercial operation date of the Project shall be the date on which such Completion Certificate is issued (“**COD**”), provided, however, that the entry of Project or part thereof into commercial service shall always be subject to compliance with the provisions of Clause 18.3.

14.3 Damages for delay

Subject to the provisions of Clause 12.5, if COD does not occur prior to the 91st (ninety first) day after the Scheduled Maintenance Depot Completion Date, unless the delay is on account of reasons solely attributable to the Authority or due to Force Majeure, the Operator shall pay Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until COD is achieved.

**ARTICLE 15
CHANGE OF SCOPE**

15.1 Change of Scope

- 15.1.1 The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of upgraded technology or additional works and services in the Buses or at the Maintenance Depots, which are not included in the Scope of the Agreement as contemplated by this Agreement (the “**Change of Scope**”). Any such Change of Scope shall be made in accordance with the provisions of this Article 15 and the costs thereof shall be expended by the Operator and reimbursed to it by the Authority in accordance with this Article 15.
- 15.1.2 If the Operator determines at any time that a Change of Scope is necessary for providing safer and improved Buses, including upgradation of any technology thereof, it shall by notice in writing require the Authority to consider such Change of Scope. The Authority shall, within [30 (thirty)] days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings therefor in accordance with this Article 15 or inform the Operator in writing of its reasons for not accepting such Change of Scope or for accepting such Change of Scope without any payment obligations hereunder, as the case may be.

15.2 Procedure for Change of Scope

- 15.2.1 In the event of the Authority determining that a Change of Scope is necessary, it shall issue to the Operator a notice specifying in reasonable detail the works and services contemplated thereunder (the “**Change of Scope Notice**”).
- 15.2.2 Upon receipt of a Change of Scope Notice, the Operator shall, with due diligence, provide to the Authority such information as is necessary, together with preliminary Documentation in support of:
- (a) the impact, if any, which the Change of Scope is likely to have on the Maintenance Completion Schedule if the works or services are required to be carried out during the Construction Period; and
 - (b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including a detailed breakdown by work classifications specifying the material and labour costs calculated in accordance with Good Industry Practice.
- 15.2.3 Upon receipt of information set forth in Clause 15.2.2, if the Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Operator, and the Parties shall thereupon make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an agreement, the Authority shall issue an order (the “**Change of Scope Order**”) requiring the Operator to proceed with the performance thereof. In the event that the Parties are unable to agree, the Authority may, by issuing a Change of Scope Order,

require the Operator to proceed with the performance thereof pending resolution of the Dispute.

- 15.2.4 The provisions of this Agreement, insofar as they relate to Tests, shall apply *mutatis mutandis* to any modifications in the Buses undertaken by the Operator under this Article 15.

15.3 Payment for Change of Scope

- 15.3.1 Within [15 (fifteen)] days of issuing a Change of Scope Order relating to Maintenance Depots, the Authority shall make a part payment to the Operator in a sum equal to [20% (twenty per cent)] of the cost of Change of Scope as agreed hereunder upon furnishing of a bank guarantee by the Operator for an equivalent amount and for a period of [180 (one hundred and eighty)] days, substantially in the form specified in Schedule-D. The Operator shall, after commencement of work, present to the Authority bills for payment in respect of the works and services in progress or completed works and services, as the case may be, supported by such Documentation as is reasonably sufficient for the Authority to determine the accuracy thereof. Within [30 (thirty)] days of receipt of such bills, the Authority shall disburse to the Operator such amounts as are reasonable and after making a proportionate deduction for the advance payment made hereunder, and in the event of any Dispute, final adjustments thereto shall be made under and in accordance with the Dispute Resolution Procedure.

- 15.3.2 Notwithstanding anything to the contrary contained in Clause 15.3.1, all costs arising out of any Change of Scope Order shall be borne by the Operator, subject to an aggregate ceiling of 0.25% (zero point two five per cent) of the Total Project Cost. Any costs in excess of the ceiling shall be reimbursed by the Authority in accordance with Clause 15.3.1.

15.4 Restrictions on certain works

- 15.4.1 Notwithstanding anything to the contrary contained in this Article 15, the Authority shall not require the Operator to undertake any works or services if such works or services are likely to delay completion of the Maintenance Depots; provided that in the event that the Authority considers such works or services to be essential, it may issue a Change of Scope Order, subject to the condition that the works forming part of or affected by such Order shall not be reckoned for purposes of determining completion of the Maintenance Depots.

- 15.4.2 Notwithstanding anything to the contrary contained in this Article 15, the cumulative costs relating to all the Change of Scope Orders for provision of works and services in the Maintenance Depots shall not exceed [5% (five percent) of the total project cost] during the Contract Period.

ARTICLE 16
OPERATION OF BUSES

16.1 Operations of Buses

- 16.1.1 The Operator shall Operate Buses in accordance with the provisions of this Agreement and shall comply with the Operation Standards as provided in Schedule-I of this Agreement.
- 16.1.2 In addition to the Applicable Permits, the Operator shall ensure that it procures and maintains a valid Certificate of Fitness and pollution control certificate from the relevant Government Instrumentalities for all the Buses throughout the Contract Period in accordance with Applicable Law.
- 16.1.3 In the event the Operator fails to ensure the security of the Buses and there is any theft of or damage to any component of the Bus including but not limited to any component, spare parts, hardware, software, instruments etc., the Operator shall reinstall or replace, as the case may be, such Bus component, spare, parts, hardware, software, instrument(s) etc. of the same or equivalent quality and specification, after giving prior written notice to the Authority.
- 16.1.4 The Operator shall, if required, provide and Buses for operating additional Buses. The Parties agree that the maximum number of additional Buses which may be made operational under this sub-clause 16.1.4 shall be subject to [25%(twenty five percent)] of the Buses for the first year from the Appointed Date and [50% (fifty percent)] over the Contract Period. Notwithstanding the foregoing, the Parties agree that provision of additional Buses shall be subject to adequate availability of space and infrastructure (in the form of parking space at the Maintenance Depot, Charging Infrastructure etc.) for parking, maintenance and cleaning and charging of Buses.
- 16.1.5 The Operator shall ensure that the Buses are in accordance with the Specifications and Standards, provide adequate staff including Drivers, and equipped with fully functional mounted devices as specified in this Agreement.

16.2 Maintenance Depot

- 16.2.1 The Operator shall use the Maintenance Depots, only for the purposes specified in this Agreement.
- 16.2.2 The Operator shall ensure that the Maintenance Depot is adequately staffed with skilled staff, equipped with requisite equipment, plant & machinery and stocked with consumables, so as to ensure compliance with O&M Standards provided in this Agreement.

16.3 Operation Manual

The Operator shall prepare an operation manual (the “**Operation Manual**”) for the operation of Buses in conformity with Good Industry Practice and the provisions of this Article 16. The Operator shall provide 10 (ten) copies of a provisional operation manual (the “**Provisional Operation Manual**”) to the Authority no later than [30] days from the Appointed Date. The

Authority may review the Provisional Operation Manual and convey its comments to the Operator within a period of [15] days from the date of receipt thereof. The Operator shall revise the Provisional Operation Manual, as may be necessary, and provide [10] copies of the Operation Manual, accompanied by an electronic copy thereof, no later than the [60] days from the Appointed Date. The Operation Manual shall be revised and updated once every year and the provisions of this Clause 16.3 shall apply, *mutatis mutandis*, to such revision. For the avoidance of doubt, the Parties expressly agree that until the Operation Manual is provided hereunder, the Provisional Operation Manual shall apply.

16.4 Routes and Schedules

- 16.4.1 The Parties agree that the Authority shall have the exclusive right to determine Routes, frequency and schedules of the Buses as part of Deployment Plan through the Contract Period. The Authority shall provide the routes for Operation as specified in Schedule-J (the “**Operational Routes**”). The Operator shall only ply Buses on the Operational Routes, unless directed otherwise by the Authority. For the avoidance of doubt, it is clarified that the Authority may amend the Operational Routes with prior notice to the Operator. Provided further that if the Authority amends the Operational Routes pursuant to this Clause 16.4.1, there shall be no reduction in the Annual Assured Bus Kilometres.
- 16.4.2 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 Deployment Plan or without specific instructions of the Authority in relation thereof, it shall be liable for payment of Damages at the rate of [0.01]% of the Performance Security.
- 16.4.3 The Authority may after due notification to the Operator, change the route(s)/ frequency/ schedule of the Buses due to any reason whatsoever including but not limited to passenger feedback, special circumstances, festivals and seasonal requirements. In case the Authority makes any such change(s), it shall notify the Operator in writing [5 (five)] days prior to implementation of such change.
- 16.4.4 Unless directed by the Authority, the Operator shall maintain the frequency of the Buses as specified in the Deployment Plan.
- 16.4.5 The actual hours of operations in a day are specified in the Deployment Plan. The Parties agree that the hours of operation may be segregated into peak hours and off peak hours of operation and the Authority shall
- 16.4.6 In the event there is a need for change in route of Bus, the Operator shall inform the control centre for monitoring of all activities (“**Control Centre**”) about it and the same shall be tallied with the change in route length measured by ITS (“**Intelligent Transport Systems**”) or Odometer reading at the end point of the route and the distance so measured shall be reckoned for the purpose of making payment to the Operator.

16.5 Deployment Plan

- 16.5.1 The Authority shall develop a Deployment Plan containing details including but not limited to number and type of Buses, details of the assured availability during the Contract Period,

routes, schedules of Buses including description of Bus Stops, frequency and table of schedule providing Bus headways, based on peak and off peak hour (the “**Deployment Plan**”), more particularly specified in Schedule-J.

- 16.5.2 The Operator shall operate the Buses in accordance with the Deployment Plan, and shall at all times ensure that the required frequency of Buses is maintained as specified under the Deployment Plan or as per the instructions of the Authority issued from time to time.
- 16.5.3 The Operator shall make available Buses at prescribed locations as per the Deployment Plan.
- 16.5.4 The Authority reserves the right to make changes to the Deployment Plan from time to time with prior notification, of at least [5 (five)] days, of such change to the Operator.
- 16.5.5 The Authority may review the Deployment Plan if there is delay in completing Bus trips for a continuous period of [1 (one)] month.
- 16.5.6 The Operator and its employees shall always extend courtesy while interacting with public.
- 16.5.7 Notwithstanding anything to the contrary contained herein, the Parties agree that any amendment to the Operational Routes or the Deployment Plan shall not reduce the Annual Assured Bus Kilometres.

16.6 Incidents En-Route

- 16.6.1 In case of breakdown of a Bus during normal course of Operations, the Operator shall immediately inform the Control Centre and its maintenance team whereupon the Operator shall ensure speedy tow-away of the affected Bus within [{2 (two) hours}] of breakdown. The Operator shall immediately provide a replacement Bus to complete the route after such Bus failure, failing which it will be deemed as an Operator Event of Default and the Operator shall be liable to pay Damages at the rate of [0.01]% of the Performance Security.
- 16.6.2 The Operator shall ensure regular communication with Buses throughout the Operation Period by making use of relevant technology as specified in this Agreement, more specifically provided in Clause 19.7.
- 16.6.3 In an unforeseen event involving unruly behavior by passengers or vandalism in or involving the Bus, the Operator shall forthwith intimate the Authority. If the Bus in question is not in a condition to complete the route or go back to the Bus Depot, then the Operator shall arrange to tow-away such Bus within [{1 (one) to 3 (three) hours}] of such occurrence, failing which Operator shall be liable to pay Damages at the rate of [0.01]% of the Performance Security.
- 16.6.4 The Operator shall, provide first aid to injured on-site and also co-ordinate with the relevant Government Authorities including but not limited to the police. to ensure timely medical help to the injured passengers.
- 16.6.5 If required, the Operator shall extend all cooperation to the Authority including but not limited to filing complaints to the police and or any other investigation undertaken in relation there.

16.7 Excuse from Performance of Obligations

The Operator shall not be considered in breach of its obligations under this Contract if any Bus is not available for Operation on account of event of a Force Majeure Event or breach of any obligation by the Authority. Notwithstanding the foregoing, the Operator agrees that it shall keep the unaffected Buses available for Operations.

16.8 Advertising on Buses and Maintenance Depots

16.8.1 Subject to Applicable Law, the Operator may display advertisements on the Buses and at the Maintenance Depot.

16.8.2 The Operator shall display advertisements on the Buses and Maintenance Depot in accordance with any instructions issued by the Authority in regard thereto, and provisions of Applicable Laws.

16.8.3 The Operator shall at all times ensure that no part of the Buses including but not limited to the external and internal colour, body of the Buses or any part thereof are damaged due to advertisement stickers or any other form of display material. The Operator shall ensure that the advertisements are displayed in such a manner that it does not obstruct partially or completely, the visibility from inside and outside of the Buses.

16.8.4 Placement of Advertisement

(a) The Operator may place the advertisement inside and outside the Buses at designated slots described, such that it does not obstruct any safety, advisory or other mandatory information;

(b) The Operator may place the advertisement on the boundary wall of the Maintenance Depot or any other slot identified by the Authority.

16.8.5 The Operator shall be entitled to appropriate entire revenue generated from the display of advertisements on the Buses and at the Maintenance Depot.

16.9 User Fare

16.9.1 On and from the COD till the Transfer Date, the Authority or a third party nominated by the Authority (**Authority Nominated Personnel**) shall have the right to demand, collect and appropriate User Fare from the Users in accordance with this Agreement.

16.9.2 The Authority or Authority Nominated Personnel shall, in accordance with Clause 16.9.1 above, provide Conductors for collection of ticket revenue, every day prior to commencement of operations for the day, either at the Maintenance Depot or at a specified location and on the time decided by the Authority. In the event the Conductor does not report on time or remains absent, the Operator shall immediately inform the Authority's Representative or the representative of the Third Party engaged by the Authority, as the case may be, who shall provide a replacement.

16.9.3 The Operator acknowledges and agrees that upon payment of User Fare to the Authority or the Authority Nominated Personnel, any User shall be entitled to use the Buses and the Operator shall not place, or cause to be placed, any restriction on such use, except to the extent specified in any Applicable Law, Applicable Permits or the provisions of this Agreement. It is clarified that the Authority or Authority Nominated Personnel shall collect User Fare from passengers prior to boarding the Bus and the Operator shall have the right to refuse entry to passengers refusing payment of the User Fare.

ARTICLE 17
MAINTENANCE OF BUSES

17.1 Maintenance Obligations

17.1.1 The Operator shall maintain all Buses in accordance with the provisions of this Article 17, the Specifications and Standards, the Maintenance Manual and the Maintenance Requirements (the “**Maintenance Obligations**”).

17.1.2 The Parties agree that for discharging the Maintenance Obligations hereunder, the Operator shall provide its staff, movable equipment, Spares and Consumables, workshop, office space etc. The Parties further agree that the workshop space to be provided hereunder by the Operator for discharging the Maintenance Obligations of the Operator shall be no less than [100 m (hundred metres) long and 20 m (twenty metres) wide], within the Maintenance Depot.

17.2 Maintenance Manual

The Operator shall prepare a repair and maintenance manual (the “**Maintenance Manual**”) for the maintenance of Buses in conformity with Good Industry Practice and the provisions of this Article 17. The Operator shall provide 10 (ten) copies of a provisional maintenance manual (the “**Provisional Maintenance Manual**”) to the Authority no later than [90 days] from the Appointed Date. The Authority may review the Provisional Maintenance Manual and convey its comments to the Operator within a period of [15] days from the date of receipt thereof. The Operator shall revise the Provisional Maintenance Manual, as may be necessary, and provide [50] copies of the Maintenance Manual, accompanied by an electronic copy thereof, no later than the [120] days from the Appointed Date. The Maintenance Manual shall be revised and updated once every year and the provisions of this Clause 17.2 shall apply, *mutatis mutandis*, to such revision. For the avoidance of doubt, the Parties expressly agree that until the Maintenance Manual is provided hereunder, the Provisional Maintenance Manual shall apply.

17.3 Spares and Consumables

17.3.1 During the Contract Period, the Operator shall, at its own cost and expense, replace and install materials which get consumed or wear out beyond serviceable limits in the normal course of operation of a Bus, including oils, [lubricants], brake blocks and pads, rubber parts and hoses, fuses, light fittings, bulbs, seats, curtains, filters, look out glass, bearings and insulators (the “**Consumables**”). Save and except as provided in this Agreement, the Consumables shall be replaced or installed, as the case may be, by the Operator when a Bus is brought to a Maintenance Depot in accordance with the provisions of this Agreement.

17.3.2 During the Maintenance Period, the Operator shall, at its own cost and expense, replace any part or equipment of a Bus, which may be defective, damaged or worn out, by a substitute thereof (the “**Spares**”) for the efficient operation and maintenance of a Bus.

17.3.3 The Parties expressly agree that the Operator shall, supply and install doors, window panes, seats, [gear case], axle-boxes, brake gear components, wind shield, and under-gear

pipings/cablings at its own cost and expense; provided, however, that if such supply and installation have arisen on account of negligence of Authority staff, accidents, vandalism, arson, riots or natural calamities.

- 17.3.4 The Operator shall maintain a sufficient inventory of Consumables and Spares for timely repair and maintenance of Buses in conformity with its Maintenance Obligations and shall ensure that upon Termination, hand over such spares and consumables to the Authority with adequate inventory for a period of 6 (six) months.

17.4 Maintenance Requirements

The Operator shall procure that at all times during the Contract Period, each and every Bus conforms to the maintenance requirements set forth in Schedule-I (the “**Maintenance Requirements**”).

17.5 Damages for breach of Maintenance Obligations

- 17.5.1 In the event that the Operator fails to repair or rectify any defect or deficiency in a Bus, as set forth in the Maintenance Requirements and within the period specified therein, it shall be deemed to be in breach of this Agreement and the Authority shall be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at the rate of 0.01% of the Performance Security. Recovery of such Damages shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof. For the avoidance of doubt, the Parties agree that the Damages specified in this Clause 17.5.1 shall not be due and payable for and in respect of any day that includes a Non-Available Hour.

- 17.5.2 The Damages set forth in Clause 17.5.1 may be assessed and specified forthwith by the Authority; provided that the Authority may, in its discretion, demand a smaller sum as Damages, if in its opinion, the breach has been cured promptly and the Operator is otherwise in compliance with its Maintenance Obligations. The Operator shall pay such Damages forthwith and in the event that it contests such Damages, the Dispute Resolution Procedure shall apply.

17.6 De-commissioning due to Emergency

- 17.6.1 If, in the reasonable opinion of the Authority, there exists an Emergency which warrants de-commissioning of a Bus, the Authority shall be entitled to de-commission the Bus for so long as such Emergency and the consequences thereof warrant; provided that such de-commissioning and particulars thereof shall be notified by the Authority to the Operator without any delay, and the Operator shall diligently carry out and abide by any reasonable directions that the Authority may give for dealing with such Emergency.

- 17.6.2 The Operator shall re-commission the Bus as quickly as practicable after the circumstances leading to its de-commissioning have ceased to exist or have so abated as to enable the Operator to re-commission the Bus and shall notify the Authority of the same without any delay.

17.7 Authority's right to take remedial measures

In the event the Operator does not maintain and/or repair the Bus in conformity with the provisions of this Agreement and the Maintenance Manual, and fails to commence remedial works within [15 (fifteen)] days of receipt of a notice in this regard from the Authority, the Authority shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Operator, and to recover its cost from the Operator. In addition to recovery of the aforesaid cost, a sum equal to [20% (twenty per cent)] of such cost shall be paid by the Operator to the Authority as Damages. The Parties agree that the Authority shall not in any manner be liable for any damage to, or deterioration in, a Bus occurring on account of the remedial measures taken hereunder.

17.8 Overriding powers of the Authority

- 17.8.1 If in the reasonable opinion of the Authority, the Operator is in material breach of its obligations under this Agreement and, in particular, the Maintenance Obligations, and such breach is causing or is likely to cause material hardship to the Authority or render the use of a Bus unsafe for operation, the Authority may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice, require the Operator to take reasonable measures immediately for rectifying or removing such hardship or unsafe condition, as the case may be.
- 17.8.2 In the event that the Operator, upon notice under the provisions of this Clause 17.8, fails to rectify or remove any hardship or unsafe condition affecting the operation of any Bus, within [15 (fifteen)] days from the date of the notice, the Authority may exercise overriding powers under this Clause 17.8 and take over the performance of any or all the obligations of the Operator to the extent deemed necessary by it for rectifying or removing such hardship or unsafe situation; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that for any costs and expenses incurred by the Authority in discharge of such obligations, the Authority shall be entitled to recover them from the Operator in accordance with the provisions of Clause 17.7 along with the Damages specified therein.
- 17.8.3 In the event of a national emergency, civil commotion or any such other event, the Authority may take over the performance of any or all the rights or obligations of the Operator to the extent deemed necessary by it, and exercise such control over the Buses and Maintenance Depots or give such directions to the Operator as may be deemed necessary; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority. It is agreed that the Operator shall comply with such instructions as the Authority may issue in pursuance of the provisions of this Clause 17.8, and shall provide assistance and cooperation to the Authority, on a best effort basis, for performance of its obligations hereunder.

17.9 Restoration of loss or damage to the Buses

Save and except as otherwise expressly provided in this Agreement, in the event that a Bus or any part thereof suffers any loss or damage during the Contract Period from any cause whatsoever, the Operator shall, at its cost and expense, rectify and remedy such loss or damage forthwith so that the Bus conforms to the provisions of this Agreement.

17.10 Modifications to the Buses

The Operator shall not carry out any material modifications to a Bus save and except where such modifications are necessary for the Bus to operate in conformity with the Specifications and Standards, Maintenance Obligations, Good Industry Practice and Applicable Laws; provided that the Operator shall notify the Authority of the proposed modifications along with particulars thereof at least [15 (fifteen)] days before commencing work on such modifications and shall reasonably consider any suggestions that the Authority may make within [15 (fifteen)] days of receiving the Operator's proposal. For the avoidance of doubt, all modifications made hereunder shall comply with the Specifications and Standards, Applicable Laws, Good Industry Practice and the provisions of this Agreement.

17.11 Operation Assistance

17.11.1 The Operator shall operate the Buses in accordance with Applicable Laws and Good Industry Practice.

17.11.2 The Operator agrees that it shall, for guidance of the operating staff of the Authority, provide an operation manual (the "**Operation Manual**") for Buses. The Operator shall provide [50 (fifty)] copies of a provisional operation manual (the "**Provisional Operation Manual**") to the Authority along with the delivery of the Prototypes hereunder. The Authority may review the Provisional Operation Manual and convey its comments to the Operator within a period of [15] from the date of receipt thereof. The Operator shall revise the Provisional Operation Manual, as may be necessary, and provide [50] copies of the Operation Manual, in English and Hindi, no later than the [180] days from the Appointed Date. The Operation Manual shall be revised and updated once every year and the provisions of this Clause 17.11.2 shall apply, *mutatis mutandis*, to such revision.

17.11.3 The Operation Manual shall include:

- (a) instructions to operating staff for operation of the Bus;
- (b) instructions for troubleshooting;
- (c) do's and don'ts for operating staff;
- (d) safety precautions to be taken by the operating staff;
- (e) rating and layout of equipment;
- (f) operating limits of installed systems; and

- (g) control and safety features of the Buses.

17.12 Excuse from performance of obligations

The Operator shall not be considered in breach of its obligations regarding availability of the Buses under this Agreement if any Bus is not available for operation on account of any of the following:

- (a) an event of Force Majeure;
- (b) measures taken to ensure the safe operation of Buses except when unsafe conditions occurred because of failure of the Operator to perform its obligations under this Agreement; or
- (c) compliance with a request from the Authority or the directions of any Government Instrumentality,

provided, that any such non-availability and particulars thereof shall be notified by the Operator to the Authority without any delay. Notwithstanding the foregoing, the Operator shall keep every unaffected Bus available for operations.

17.13 Warranties for defects and deficiencies

17.13.1 The Operator warrants that:

- (a) all equipment, supplies, plant and machinery at the Maintenance Depots as well as components, parts and systems forming part of a complete Bus including the Spares and Consumables shall be new and of utility-grade quality and in full conformity with the Specifications and Standards, Designs and Drawings, Applicable Permits, Applicable Laws and the other requirements of the Agreement, of suitable quality and fit for the purpose for which they are intended and be free from defects, deficiencies and defective workmanship;
- (b) all Buses shall be free from defects, shall comply with all Applicable Laws and Good Industry Practice and will be capable of operating in the manner intended and contemplated in the Specifications and Standards, Designs and Drawings, Applicable Permits, Applicable Laws and the Agreement;
- (c) the manufacturing, assembly and supply of the Buses shall be performed in accordance with the standards of professional care, skill, diligence and competence generally accepted in the international independent manufacturing industry applicable to engineering and manufacturing and project management practices for manufacturing projects of similar size and type as the Project, when operated in accordance with Good Industry Practice; and
- (d) the Buses shall be capable of performing and would continue to perform as per this Agreement.

17.14 Maintenance Depots

17.14.1 For discharging its Maintenance Obligations under and in accordance with the provisions of this Agreement, the Operator shall build and operate maintenance depots in accordance with the provisions of this Article 17 (the “**Maintenance Depots**”).

17.14.2 The land required for each Maintenance Depot, shall be provided by the Authority to the Operator in accordance with the provisions of Article 10.

17.14.3 The Maintenance Depots shall have provisions for repair and maintenance of at least [50] Buses at a time and parking facility for the entire Fleet of Buses.

17.14.4 The Authority shall provide [440 KV (forty four kilo volt), 3-phase] connection for charging of Buses. Subject to Clause 5.2, supply of electricity and water at the Maintenance Depots shall be procured by the Operator at its own expense and the Operator shall provide for a sub-station for step-up and step-down of power within the Maintenance Depots. It is clarified that the distribution of power for the purpose of charging Buses shall be arranged by the Operator and it shall procure Applicable Permits for the same.

17.14.5 The Operator agrees and undertakes to set up and operationalise, subject to the provisions of Clause 17.14.2, each of the Maintenance Depots on or prior to the date specified in Clause 17.14.7, and in the event of delay for any reason except if solely on account of Force Majeure or breach of this Agreement by the Authority, the Operator shall pay Damages to the Authority in a sum equal to [0.01%] of the Performance Security for each day of delay in setting up and operationalising a Maintenance Depot, and if such delay exceeds [100] days, the Authority shall be entitled to terminate this Agreement forthwith.

17.14.6 Maintenance Depots shall be set up by the Operator on the land to be provided by the Authority at {***} and {***} in accordance with the provisions of Article 10 (the “**Maintenance Depots**”).

17.14.7 The Operator shall set up Maintenance Depots at {***} and {***}, no later than {***}.

17.14.8 The Operator shall be responsible, at its own cost and expense, for construction, operation and maintenance of all infrastructure inside the Maintenance Depots.

17.15 Maintenance facilities

17.15.1 The Operator shall, at each Maintenance Depot, install and operate the maintenance facilities and equipment necessary for performing its Maintenance Obligations under and in accordance with this Agreement. Such maintenance facilities and equipment shall include:

- (a) [Bus washing plant;
- (b) portable lifting jacks;
- (c) measuring and recording devices;

- (d) special tools, jigs & fixtures;
- (e) paint shop;
- (f) wheel repair shop;
- (g) Wi-Fi data retrieval and diagnostic system facilities; and
- (h) hardware (2 (two) desktop computers) and software for the Maintenance Management Information System (the “**MMIS**”).]

17.15.2 The Parties agree that the Maintenance Depots may be set up and operationalised under this Clause 17.14 by procuring the maintenance facilities and equipment in a phased manner; provided, however, that all the facilities and equipment specified in this Clause 17.14 shall be installed and operationalised no later than [90 (ninety) days] after the respective dates specified in Clause 17.1.7.

ARTICLE 18 SAFETY REQUIREMENTS

18.1 Safety Requirements

The Operator shall develop, implement and administer a safety programme for providing a safe environment on or about the Buses and Maintenance Depots, and shall comply with the safety requirements set forth in this Article 18 and Schedule-K (the “**Safety Requirements**”).

18.2 Guiding principles

18.2.1 Safety Requirements aim at reduction in injuries, loss of human life and damage to property resulting from accidents on account of the Buses or in the Maintenance Depots, irrespective of the person(s) at fault.

18.2.2 Safety Requirements shall apply to all phases of construction, operation and maintenance with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.

18.3 Obligations of the Operator

18.3.1 The Operator shall abide by the following to ensure safety of the Buses and Maintenance Depots, human life and property:

- (a) instructions issued by the Authority;
- (b) applicable Laws and Applicable Permits;
- (c) provisions of this Agreement;
- (d) relevant standards/guidelines contained in internationally accepted codes; and
- (e) good Industry Practice.

18.3.2 The Operator shall impart safety training to its employees and shall at all times be responsible for observance of safety procedures by its staff, Contractors and agents.

18.3.3 The Operator shall be responsible for undertaking all the measures under its control to ensure safe operation of Buses.

18.3.4 The Operator agrees that the Authority shall be entitled to inspect any Bus or Maintenance Depot to verify adherence to Safety Requirements and the Operator shall be obliged to facilitate such inspection and implement the corrective measures identified in such inspection.

18.4 Safety measures during construction

The Operator shall, during construction of the Maintenance Depots, provide an environment for procuring the safety of human life and property in accordance with Applicable Laws and Good Industry Practice.

18.5 Annual Safety Report

- 18.5.1 The Operator shall submit to the Authority before the [31st (thirty first)] May of each Accounting Year, an annual report in [10 (ten)] copies containing, without limitation, a detailed listing and analysis of all accidents occurring on account of the Buses or in the Maintenance Depots during the preceding Accounting Year and the measures taken by the Operator for averting or minimizing such accidents in future (“**Annual Safety Report**”).
- 18.5.2 Once in every Accounting Year, a safety audit shall be carried out by the Authority. It shall review and analyse the Annual Safety Report and accident data of the preceding Accounting Year, and undertake an inspection of the Buses and Maintenance Depots. The Authority shall provide a safety report recommending specific improvements, if any, required to be made in the Buses and Maintenance Depots. Such recommendations shall be implemented by the Operator in accordance with Safety Requirements, Specifications and Standards and Applicable Laws.

ARTICLE 19
MONITORING OF OPERATION AND MAINTENANCE

19.1 Monthly status reports

19.1.1 During the Contract Period, the Operator shall, no later than [7 (seven)] days after the end of each month, furnish to the Authority a monthly report stating in reasonable detail the maintenance services performed by the Operator on the Buses and the defects and deficiencies that require rectification. The report shall also include Key Performance Indicators achieved by the Buses and the compliance or otherwise with the Maintenance Requirements, Maintenance Manual and Operation Manual. The Operator shall promptly give such other relevant information as may be required by the Authority.

19.1.2 The monthly report specified in Clause 19.1.1 shall also include a summary of the key operational hurdles and deliverables expected in the succeeding month along with strategies for addressing the same and for otherwise improving the Operator's operational performance.

19.2 Reports of unusual occurrence

The Operator shall, prior to the close of each day, send to the Authority, by facsimile or e-mail, a report stating the failures, accidents and unusual occurrences relating to the Buses. A weekly and monthly summary of such reports shall also be sent within [3 (three)] days of the closing of each week and month, as the case may be. For the purposes of this Clause 19.2, unusual occurrences on a Bus shall include:

- (a) failure of a Bus;
- (b) accidents involving a Bus; and
- (c) trouble on a Bus during operation.

19.3 Inspection

The Authority shall be entitled to inspect the Buses after any maintenance for evaluating the compliance of Buses with the Maintenance Obligations. It shall make a report of such inspection (the "**Maintenance Inspection Report**") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Maintenance Obligations and notify the Operator of the same for taking remedial measures in accordance with the provisions of Clause 19.5. For the avoidance of doubt, any inspection undertaken after a Bus is declared available shall be deemed to form part of Available Hours under the provisions of Clause 17.15.

19.4 Tests

For determining that the maintenance of Bus conforms to the Maintenance Obligations, the Authority may require the Operator to carry out, or cause to be carried out, the tests specified by it in accordance with Good Industry Practice. The Operator shall, with due diligence, carry out or cause to be carried out all such tests in accordance with the instructions of the Authority and furnish the results of such tests to the Authority within [15 (fifteen)] days of

such tests being conducted. One half of the costs incurred on such tests shall be reimbursed by the Authority to the Operator. Provided, however, that the Authority shall not bear any costs hereunder for and in respect of Tests which have failed.

19.5 Remedial measures

19.5.1 The Operator shall repair or rectify the defects or deficiencies, if any, set forth in the Maintenance Inspection Report or in the test results referred to in Clause 19.3 and furnish a report in respect thereof to the Authority within [15 (fifteen)] days of receiving the Maintenance Inspection Report or the test results, as the case may be.

19.5.2 The Authority shall require the Operator to carry out or cause to be carried out tests, at the cost of the Operator, to determine whether the remedial measures have brought the Buses into compliance with the Maintenance Obligations and Safety Requirements, and the procedure set forth in this Clause 19.5 shall be repeated until the maintenance of Buses conforms to the Maintenance Obligations and Safety Requirements. In the event that remedial measures are not completed by the Operator in conformity with the provisions of this Agreement, the Authority shall be entitled to recover Damages from the Operator at the rate of [0.01]% of the Performance Security.

19.6 Responsibility of the Operator

19.6.1 It is expressly agreed between the Parties that any inspection carried out by the Authority or the submission of any Maintenance Inspection Report by the Authority as per the provisions of this Article 19 shall not relieve or absolve the Operator of its obligations and liabilities hereunder in any manner whatsoever.

19.6.2 It is further agreed that the Operator shall be solely responsible for adherence to the Key Performance Indicators specified in Article 20.

19.7 Real Time Data Access

The Operator agrees that it shall provide for real time data monitoring and provide the Authority access to the raw feed of the monitoring system pertaining to the performance of the Operator under this Contract as generated by ITS. The Operator shall install the data monitoring system as provided in Schedule-Q hereto. The Operator further agrees to install on board devices to enable the Authority to access real time location and status of the Buses. The Operator agrees that failure to provide access to the monitoring the daily raw feed and the on board device data, then it shall be deemed to be an Operator Event of Default.

ARTICLE 20
KEY PERFORMANCE INDICATORS

20.1 Key Performance Indicators

Without prejudice to the obligations specified in this Agreement, the Operator shall operate and maintain every Bus such that it achieves the performance indicators comprising Reliability, Operation, Punctuality, Frequency, Safety, upkeep of Bus and conformity with ISO certification, as specified in this Article 20, Good Industry Practice and Applicable Laws (the “**Key Performance Indicators**”).

20.2 Reliability

20.2.1 The Parties agree that the average reliability of all Buses in the Fleet shall be measured on a quarterly basis in terms of the number of Breakdowns per [10,000 (ten thousand)] kilometres travelled by the Buses (the “**Reliability**”).

20.2.2 The Reliability hereunder shall be equal to the quotient of the cumulative distance travelled by all Buses divided by the aggregate number of Breakdown of all such Buses multiplied by [10,000 (ten thousand)].

20.2.3 The Operator agrees that the Reliability for the Buses determined in accordance with Clause 20.2.2 shall be equal to or more than [1 (one)].

20.3 Operation of Buses

20.3.1 The Operator shall at all times procure that, save and except any damage caused by theft, arson or vandalism:

- (a) there are adequate lighting arrangements inside the Buses, in conformity with the Specifications and Standards;
- (b) the temperature inside the Buses can be maintained in accordance with Maintenance Requirements;
- (c) the Buses are clean, hygienic and free of odour;
- (d) seats, windows, doors and all fixtures in the Buses are operational; and
- (e) all bus information systems and lighting systems function efficiently, and their availability is no less than [98% (ninety eight per cent)] in a month.

20.4 Punctuality

20.4.1 Punctuality shall be measured on a quarterly basis in terms of the percentage of on-time start of trips to the total number of trips operated on a daily basis (“**Start Punctuality**”). The total number of trips starting/arriving late during the month will be recorded and subtracted from the number of trips operated to arrive at the on-time trips operated figures separately in each case.

- 20.4.2 The Operator agrees that the Punctuality for arrival at the respective destination shall be measured on a quarterly basis in terms of the percentage of trips with on-time arrival at destination to the total number of trips operated on a daily basis (“**Arrival Punctuality**”).
- 20.4.3 The Parties agree that the Operator may exercise a relaxation equivalent to [5 (five)] minutes, for start of the bus schedule, and [10% (ten percent)] of the subsequent scheduled trip time (subject to a maximum of [15 (fifteen) minutes]) for start of subsequent schedules and arrival of trips.
- 20.4.4 Subject to the provisions of Clause 20.4.3, the Operator agrees that the Start Punctuality determined in accordance with Clause 20.4.2 shall be equal to or more than [90% (ninety percent)] and the Arrival Punctuality shall be equal to or more than [80% (eighty percent)] respectively.

20.5 Frequency

- 20.5.1 The frequency of operation of Buses shall be measured on a quarterly basis in terms of percentage of the cumulative trips travelled by all Buses to the aggregate number of scheduled trips (“**Trip Frequency**”) and a percentage of the cumulative Bus Kms operated to the aggregate scheduled Bus Kms (“**Bus Kms Frequency**”), respectively.
- 20.5.2 The Operator agrees that the Trip Frequency and the Bus Kms Frequency, as the case may be, determined in accordance with Clause 20.5.1 shall be equal to or more than [94% (ninety four percent)].
- 20.5.3 The Buses shall be operated continuously such that the first Bus in each direction shall depart no later than [0500 hours] and the last Bus shall terminate not earlier than [2330 hours] at the frequency specified in the Deployment Plan and this Agreement; provided that on Sundays the duration of services may be reduced by [4 (four)] hours.
- 20.5.4 The Buses in each direction shall be operated such that the difference between arrival time of two Buses at any bus stop shall not exceed [10 (ten)] minutes; provided that such difference may be increased, subject to a maximum of [15 (fifteen)] minutes, depending upon the number of Users in the respective hour.
- 20.5.5 The average speed of Bus movement from the beginning point to the termination point during any hour of the day, including stops, shall not be less than [15 (fifteen)] kilometres per hour. For the avoidance of doubt, stops at the bus stop shall not be less than [30 (thirty)] seconds each.

20.6 Safety of Operations

- 20.6.1 The Parties agree that the Safety of Buses in the Fleet shall be measured in terms of inverse of number of accidents per [1,00,000 Kms (One lakh kilometres)] (the “**General Safety**”) and the number of fatalities per [10,00,000 Kms (Ten lakh kilometres)] (the “**Severe Safety**”), respectively. The General Safety and Severe Safety shall be calculated in terms of cumulative Bus Kms operated divided by number of accidents multiplied by [1,00,000 (One lakh)] and cumulative Bus Kms operated divided by number of fatalities multiplied by [10,00,000 (Ten lakh)], respectively.

20.6.2 The Operator agrees that the General Safety and the Severe Safety, as the case may be, determined in accordance with Clause 20.6.1 shall be equal to or more than [1 (one)].

20.7 Certification

20.7.1 The Operator shall, prior to 1st Anniversary of the COD, achieve and thereafter maintain throughout the Contract Period, [ISO 9000:2005, ISO 14000:2004, ISO 18000:2007 and ISO 50000:2011] certification or a substitute thereof for the Maintenance Depots, and shall provide certified copies thereof to the Authority forthwith.

20.7.2 In the event of default in obtaining the certification specified in Clause 20.7.1, the Operator shall, within [15 (fifteen)] days thereof, submit to the Authority an action plan that sets out the actions proposed to be taken by the Operator for rectifying its deficiencies and obtaining such certification for the Maintenance Depots.

20.7.3 If the period of default in obtaining the ISO certification under this Clause 20.7 shall exceed a continuous period of [15 (fifteen)] months, the Operator shall pay Damages to the Authority in an amount equal to [5% (five per cent)] of the Performance Security.

20.8 Monthly Report

The Operator shall, no later than [7 (seven)] days after the end of each month, furnish to the Authority a report stating the Key Performance Indicators of each Bus as measured on a daily basis. The Operator shall promptly give such other relevant information as may be required by the Authority.

20.9 Passenger Charter

The Operator shall publish and implement a charter articulating the rights and expectations of Users (the “**Passenger Charter**”) substantially in the form specified in Schedule-N. The Operator shall at all times be accountable and liable to Users in accordance with the provisions of the Passenger Charter and Applicable Laws.

20.10 Damages for failure to achieve key performance indicators

The Operator shall ensure and procure compliance of each of the Key Performance Indicators specified in Article 20 and for repeated shortfall in performance during a quarter, as may be determined by the Authority for reasons to be recorded in writing based on passenger feedback and inspections by the Authority, it shall pay Damages equal to [0.1% (zero point one per cent)] of the Performance Security for such shortfall in any such performance indicator.

20.11 Incentive for exceeding to achieve key performance indicators

The Operator shall ensure and procure compliance of each of the Key Performance Indicators specified in Article 20 and for repeated increase in performance during a quarter, as may be determined by the Authority for reasons to be recorded in writing based on passenger feedback and inspections by the Authority, it shall pay incentive equal to [0.05% (zero point zero five per cent)] of the Performance Security for achievement in any such performance indicator.

Part IV
Financial Covenants

ARTICLE 21
FINANCIAL CLOSE

21.1 Financial Close

- 21.1.1 The Operator hereby agrees and undertakes that it shall achieve Financial Close within 180 (one hundred and eighty) days from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding [120 (one hundred and twenty)] days, subject to payment of Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day of delay, and for a further period not exceeding [80 (eighty)] days, subject to payment of Damages at the rate specified in Clause 4.3; provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 180 (one hundred and eighty) days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Close has occurred solely as a result of any default or delay by the Authority in procuring satisfaction of the Conditions Precedent specified in Clause 4.1.2 or due to Force Majeure. For the avoidance of doubt, the Damages payable hereunder by the Operator shall be in addition to the Damages, if any, due and payable under the provisions of Clause 4.3.
- 21.1.2 The Operator shall, upon occurrence of Financial Close, notify the Authority forthwith, and shall have provided to the Authority, at least 2 (two) days prior to the Financial Close, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Operator, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders.

21.2 Termination due to failure to achieve Financial Close

- 21.2.1 Notwithstanding anything to the contrary contained in this Agreement, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 21.1.1 or the extended period provided thereunder, all rights, privileges, claims and entitlements of the Operator under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Operator, and the Agreement shall be deemed to have been terminated by mutual agreement of the Parties. For the avoidance of doubt, it is agreed that in the event the Parties hereto have, by mutual consent, determined the Appointed Date to precede the Financial Close, the provisions of this Clause 21.2.1 shall not apply.
- 21.2.2 Upon Termination under Clause 21.2.1, the Government shall be entitled to encash the Bid Security and appropriate the proceeds thereof as Damages; provided, however, if Financial Close has not occurred solely as a result of the Government being in default of any of its obligations under Clause 4.1.2, it shall, upon Termination, return the Bid Security forthwith along with the Damages due and payable under Clause 4.2. For the avoidance of doubt, it is expressly agreed that if the Bid Security shall have been substituted by Performance Security, the Government shall be entitled to encash therefrom an amount equal to Bid Security.

ARTICLE 22 FEE

22.1 Fee

22.1.1 In consideration for undertaking the Project, the Authority shall pay the Operator, based on the total distance travelled by each Bus, Operated by the Operator (“**Bus Kilometres**”) in fulfilment of the Operators obligations under this Agreement (“**Fee**”).

22.1.2 The Fee shall be fixed except where varied or adjusted in accordance with this Article 21.

22.1.3 The Parties agree that the Bus Kilometre shall comprise:

- (a) Distance travelled by a Bus assigned on a particular Route as per the Deployment Plan;
- (b) Distance travelled by a Bus from the Maintenance Depot to the first point of loading passengers at the commencement of its service on a Day;
- (c) Distance travelled by a Bus from its last Bus Stop as per the Deployment Plan to the Maintenance Depot at the end of the day’s service; and
- (d) Distance travelled by a Bus without passengers which is outside the Deployment Plan but approved by the Authority for meeting specific requirements.

22.1.4 The Operator agrees and acknowledges that a Bus Kilometre for the purpose of payment of Fee, shall not include any Kilometre travelled by the Bus to any maintenance facilities other than the Maintenance Depot or for any travel not authorized by the Authority.

22.1.5 The Operator shall compute and provide to the Authority, for every [month], the total number of kilometres that a Bus has travelled for the period being reckoned for the purpose of raising invoice. Such calculation shall be made using the ITS to be installed by the Operator and as approved by the Authority and calibrated with the supervision of the Authority’s Representative using Odometer Reading of each Bus. In the event the Odometer for any Bus is non-functional or does not provide accurate reading, the Fee for such Bus shall be based on the Bus Kilometre for the respective Bus for the preceding working day, multiplied with the Per Kilometre Fee (“**PK Fee**”).

22.2 Basis of Payment

The Operator shall be paid for Bus Kilometre plied by the total number of Buses operational for that particular day, at PK Fee quoted by the Operator in its Bid.

22.3 Payment of Fee

22.3.1 The Operator shall submit an invoice in respect of the Bus Kilometres plied by each Bus put into Commercial Operation every [15 (fifteen)] days. The invoice shall also include any cost or Damages or any other charges that the Operator is entitled to recover from the Authority in terms of this Agreement (hereinafter together referred as “**Invoice Amount**”);

22.3.2 The Authority shall within a period of [15 (fifteen) days] from receipt of the invoice, subject to verification of the invoice against the records that it has in relation to the Bus Service, make the payments. All payments shall be made by the Authority to the Operator after making any tax deductions at source under Applicable Law.

22.3.3 The payment for Bus Kilometre up to Annual Assured Bus Kilometre per Bus deployed shall be calculated as:

$$\text{Fee} = \text{PK Fee} \times \text{Bus Kilometre} \times n$$

where n is the number of Buses

22.4 Annual Assured Kilometre

22.4.1 The Authority agrees that the Deployment Plan shall ensure the average Bus Kilometres scheduled per Bus in a continuous period of [12 (twelve)] calendar months, commencing from the Commercial Operation Date of the respective Buses, will be no less than {**** } (the “**Annual Assured Bus Kilometre**”).

22.4.2 In the event the Authority is unable to demand from the Operator Bus Kilometre up to Annual Assured Bus Kilometre, the Authority will pay to the Operator, in addition to the payments made for Bus Service based on invoices presented by the Operator, an amount (the “**Annual Assured Payment Amount**”).

22.4.3 The Authority shall make the payments to the Operator within the period specified in Clause 22.3.2. In case of any delay in making the Payment of the Fee to the Operator, the Authority shall pay Damages at the rate of [3% (three percent) above the Bank Rate] per annum calculated for each day’s delay in making the payment subject to maximum of [1 (one)] month of period from the date they become payable to the Operator. It is clarified that any delay of a period exceeding [30 (thirty)] days shall be regarded as an Authority Default.

22.5 Revision of Fee

22.5.1 The Parties agree that the Fee shall be revised every [6 (six)] months on the basis of variation in electricity tariff for the Charging Infrastructure and CPIIW and WPI in accordance with the terms of this Agreement (“**Fee Revision**”).

22.5.2 The Operator shall submit to the Authority, no later than [30 (thirty)] days prior to the expiry of the aforesaid period of [6 (six)] months, a statement of the input cost of the electricity consumed at the Charging Infrastructure, as provided in Clause 5.12, in the format provided in Schedule-T along with copies of electricity bills clearly segregating the consumption of electricity for the Charging Infrastructure.

22.5.3 The Parties agree that in addition to the provisions of Clause 22.5.2, the Operator shall be entitled to a revision in the PK Fee, to reflect the variation in CPIIW and WPI occurring between the Base Index Date and the Reference Index Date for the relevant Year (the “**Indexed Price**”).

22.5.4 In the event that the CPIIW and WPI varies by more than [4% (four per cent)] between the Reference Index Date for any Year and the last date preceding any month of that Year, the Indexed Price shall be revised to reflect such variation at the commencement of that month, and such Indexed Price shall be the PK Fee until its revision for the following month or Year, as the case may be, in accordance with the provisions of this Clause 22.5.3.

22.5.5 The Parties agree that the formula for revision of fee shall be:

(a) For the 1st revision after COD:

$$\text{Indexed Fee} = \text{Fee} * [1 + (.2 * \text{CPI IW}) + (0.6 * .4 * \text{WPI}) + (.2 * (\text{price per kWh of electricity on the date of submission of the statement} - \text{price per kWh of electricity on the Base Index Date}) / \text{price per kWh of electricity on the Base Index Date}) / 100]$$

(b) For subsequent revisions:

Indexed Fee = Fee * [1 + (.2 * CPI IW) + (0.6 * .4 * WPI) + (.2 * (price per kWh of electricity on the date of submission of the statement - price per kWh of electricity on the preceding Fee Revision Date) / price per kWh of electricity on the preceding Fee Revision Date) / 100]

22.5.6 Notwithstanding the provisions of Clause 22.5, the Parties agree that the Operator shall be entitled to a revision in Fee in accordance with this Clause 22.5 only if (i) the price per kWh of electricity consumed for the Charging Infrastructure varies by [10% (ten percent)]; and (ii) the CPIIW and WPI varies by more than [4%] within a period of [6 (six)] months from the Fee Revision Date in accordance with provisions of Clause 22.5.1.

22.5.7 The Parties agree that the Fee shall stand revised pursuant to any amendment in accordance with this Clause 22.5 and shall become the base Fee payable to the Operator under this Agreement. For the avoidance of doubt, it is clarified that in the event of any dispute or difference in calculation of the consumption of electricity or the CPIIW and WPI hereunder, the Dispute Resolution Procedure shall apply.

ARTICLE 23
TRAINING AND DEPUTATION OF GOVERNMENT EMPLOYEES

23.1 Training

If the Operator requests the Authority for engaging the Authority's employees and the Authority agrees to such request in accordance with Clause 6.1.2(f), the Operator shall provide training to the staff of the Authority in accordance with the provisions of this Article 23 (the "**Training Obligations**").

23.2 Content and duration of training

23.2.1 The content of training shall comprise transfer of knowledge and skills required for operation and maintenance of Buses and Maintenance Depots, as the case may be, and shall be developed by the Operator in consultation with the Authority.

23.2.2 The training specified in this Clause 23.2 shall include on-the-job training at the Maintenance Depots and the Operator shall provide capacity building workshops [and simulation training] to all Drivers.

23.2.3 The duration of training courses shall normally be for a minimum period of [6 (six)] days and a maximum of [24 (twenty-four)] days.

23.2.4 The number of trainees participating in training at any time shall normally be a minimum of [10 (ten)] and a maximum of [20 (twenty)].

23.3 Location of training

23.3.1 Training courses, as may be required by the Authority prior to the Commercial Operation Date, shall be conducted by the Operator at the Maintenance Depots or a location nominated by the Authority.

23.3.2 The Operator shall procure that the following minimum facilities shall be installed and operated at the training premises:

- (a) air-conditioned lecture halls; and
- (b) any other facilities and infrastructure required for conducting the training in accordance with the provisions of this Agreement.

23.3.3 The driving training simulator to be provided by the Operator shall be a computer controlled visual system showing the road and signals ahead and interfaced with the driver's controls. The simulator shall include:

- (a) A driver's desk mounted within a motion simulated driving cab;
- (b) a driver instructor's console including a steering wheel, [gear transmission], for inputting information and observing the driver's technique along with printing facilities for recording the proceedings;

- (c) adequate margin in design of software and hardware to accommodate minor changes/addition of features in future, if required;
- (d) a design that shall accommodate road/signalling features of the section through video generated graphics for at least [10 kms (5 kms in each direction)]; and
- (e) other features in accordance with Good Industry Practice.

23.3.4 A computer based training (CBT) module to be provided by the Operator shall simulate fault finding steps required to be taken by maintenance staff in accordance with Good Industry Practice.

23.4 Annual training programme

The Operator shall prepare and conduct an annual training programme in consultation with the Authority and convey the same to the Authority, at least [3 (three)] months prior to the commencement of an Accounting Year.

23.5 Costs of training

The Operator shall bear the cost of training, including the faculty and training material.

23.6 Deputation

23.6.1 The Authority may, in accordance with the provisions of this Article 23, and at the request of the Operator, second its maintenance staff on deputation to the Operator for performing its Maintenance Obligations.

23.6.2 The tenure of deputation under this Clause 23.6 shall be for a minimum period of 2 (two) years and a maximum of 7 (seven) years.

23.6.3 Save and except as otherwise provided herein, the conditions of service of the staff on deputation with the Operator, including their promotions and emoluments, shall be governed by the applicable rules of the Authority.

23.7 Terms of deputation

23.7.1 The Authority shall pay the salary and allowances to the staff seconded to the Operator as though such staff was still on the rolls of the Authority.

23.7.2 The Operator shall reimburse to the Authority the salary, allowances and bonus paid by the Authority to the staff on deputation; provided that the medical expenses, if any, shall be borne solely by the Authority.

23.7.3 The Operator shall pay to each staff on deputation, a deputation-cum-performance allowance, in accordance with the applicable rules of the Authority. Travel allowance of such staff shall be paid by the Operator in accordance with its norms. No other incentive or payment shall be made by the Operator to the staff.

23.7.4 The Operator may make available to the staff on deputation, facilities including canteen, rest rooms, personal protective equipment, uniform, conveyance, recreational facilities and housing. [It is clarified that staff on deputation shall be entitled to avail leave as per the leave policy of the Authority and that the Operator shall not be excused from performance of its obligations under this Agreement on account of any leave obtained by the staff on deputation if such leave is as per the entitlement of such staff.]

ARTICLE 24
TRANSFER OF MAINTENANCE DEPOTS

24.1 Transfer of Maintenance Depots

24.1.1 The Maintenance Depots shall, in accordance with the provisions of this Agreement, be transferred to the Authority upon Termination of this Agreement. The Parties expressly agree that for and in respect of the transfers hereunder, the provisions of Article 33 shall apply *mutatis mutandis*.

24.1.2 Upon transfer of Maintenance Depots hereunder, all equipment, machinery, building, structures, hardware, software and other assets comprising the Maintenance Depots shall vest in the Authority without any Encumbrance.

24.2 Provision of Spares upon Termination

24.2.1 The Operator shall provide to the Authority, free of charge, an inventory of Spares along with the Maintenance Depots transferred under this Article 24. The inventory shall comprise of Spares equivalent to one-half of the average annual consumption of Spares in the Buses and at the Maintenance Depots during the preceding [3 (three)] Years. For this purpose, the Operator shall compute the total consumption of each Spare, during the preceding [3 (three)] Years and divide the same by [3 (three)] for arriving at the average annual consumption, and all fractions shall be rounded off to the nearest whole number.

24.2.2 Without prejudice to the provisions of Clause 24.2.1, the Authority may, in its discretion, require the Operator to provide an additional inventory of Spares, equivalent in all respects to the inventory of Spares specified in Clause 24.2.1, or such proportion thereof as the Parties may by mutual agreement determine.

24.2.3 All Spares provided by the Operator under this Clause 24.2 shall carry a warranty of [30 (thirty)] months from their delivery or [24 (twenty four)] months from the date of its repair or replacement whichever is earlier, as the case may be, free of cost to the Authority. The terms of such warranty shall be determined in accordance with Good Industry Practice.

ARTICLE 25 INSURANCE

25.1 Insurance during Agreement Period

The Operator shall effect and maintain at its own cost, during the Agreement Period, such insurances for such maximum sums as may be required under this Agreement, Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice. The Operator shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Operator during the Contract Period. The Operator shall procure that in each insurance policy, the Authority shall be a co-insured.

25.2 Insurance Cover

Without prejudice to the provisions contained in Clause 25.1, the Operator shall, during the Agreement Period, procure and maintain Insurance Cover including but not limited to the following:

- (a) loss, damage or destruction of the Maintenance Depots, Buses and charging/swapping infrastructure;
- (b) comprehensive third party liability insurance for life, goods or property, including injury to or death of personnel of the Authority or others, arising from any accident at the Maintenance Depots or otherwise, caused by a Bus on account of any negligence of the Operator or a defect or deficiency in a Bus;
- (c) the Operator's general liability arising out of the Agreement;
- (d) workmen's compensation insurance; and
- (e) any other insurance that may be necessary to protect the Operator and its employees, including all Force Majeure Events that are insurable and not otherwise covered in items (a) to (d) above.

25.3 Notice to the Authority

No later than [45 (forty five)] days prior to Appointed Date, the Operator shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 25. Within [30 (thirty)] days of receipt of such notice, the Authority may require the Operator to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

25.4 Evidence of Insurance Cover

All insurances obtained by the Operator in accordance with this Article 25 shall be maintained with insurers on terms consistent with Good Industry Practice. Within [15 (fifteen)] days of obtaining any insurance cover, the Operator shall furnish to the Authority, notarised true

copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least [45 (forty five)] days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Operator to the Authority.

25.5 Remedy for failure to insure

If the Operator fails to effect and keep in force all insurances for which it is responsible pursuant hereto, the Authority shall have the option to either keep in force any such insurances, and pay such premia and recover the costs thereof from the Operator, [or in the event of computation of a Termination Payment, treat an amount equal to the Insurance Cover as deemed to have been received by the Operator.]

25.6 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Operator pursuant to this Article 25 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, *inter alia*, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

25.7 Operator's waiver

The Operator hereby further releases, assigns and waives any and all rights of subrogation or recovery against, *inter alia*, the Authority and its assigns, undertakings and their subsidiaries, affiliates, employees, successors, insurers and underwriters, which the Operator may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Operator pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

25.8 Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Operator, and it shall apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Buses or Maintenance Depots.

25.9 Compliance with conditions of insurance policies

The Operator expressly acknowledges and undertakes to fully indemnify the Authority from and against all losses and claims arising from the Operator's failure to comply with conditions imposed by the insurance policies effected in accordance with this Agreement.

ARTICLE 26 ACCOUNTS AND AUDIT

26.1 Audited accounts

- 26.1.1 The Operator shall maintain books of accounts recording all its receipts, income, expenditure, payments, assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Operator shall provide [2 (two)] copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditors, within [90 (ninety)] days of the close of its accounting year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Authority shall have the right to inspect the records of the Operator during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Authority for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.
- 26.1.2 The Operator shall, within [30 (thirty)] days of the close of each quarter of its accounting year, furnish to the Authority its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange.
- 26.1.3 On or before the expiry of [2 (two)] months after its accounting year, the Operator shall provide to the Authority, for that accounting year, a statement duly audited by its Statutory Auditors giving summarised information on (a) the bills raised by the Operator for payment by the Authority, (b) the payments received and other revenues derived from the Authority, and (c) such other information as the Authority may reasonably require.

26.2 Appointment of auditors

- 26.2.1 The Operator shall appoint, and have during the subsistence of this Agreement as its Statutory Auditors, a firm chosen by it from the mutually agreed list of [3 (three)] reputable firms of chartered accountants (the “**Panel of Chartered Accountants**”), such list to be prepared substantially in accordance with the criteria set forth in Schedule-R. All fees and expenses of the Statutory Auditors shall be borne by the Operator.
- 26.2.2 The Operator may terminate the appointment of its Statutory Auditors after a notice of [45 (forty five)] days to the Authority, subject to the replacement Statutory Auditors being appointed from the Panel of Chartered Accountants.
- 26.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at anytime, another firm (the “**Additional Auditors**”) from the Panel of Chartered Accountants to audit and verify all those matters, expenses, costs, realisations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

26.3 Certification of claims by Statutory Auditors

Any claim or document provided by the Operator to the Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors.

26.4 Set-off

In the event any amount is due and payable by the Authority to the Operator, it may set-off any sums payable to it by the Operator and pay the balance remaining forthwith.

26.5 Dispute resolution

In the event of there being any difference between the findings of the Additional Auditors and the certification provided by the Statutory Auditors, such Auditors shall meet to resolve the differences and if they are unable to resolve the same, such Dispute shall be resolved by the Authority by recourse to the Dispute Resolution Procedure.

ARTICLE 27
ESCROW ACCOUNT

27.1 Escrow Account

- 27.1.1 The Authority shall prior to the Appointed Date open and establish an account (“**Escrow Account**”) with a Bank (“**Escrow Bank**”) in accordance with this Contract read with the Escrow Agreement.
- 27.1.2 For the purpose of opening and operating an Escrow Account, the Authority shall enter into an agreement with the Operator and the Escrow Bank (“ **Escrow Agreement**”) in accordance with the format provided in Schedule M to this Contract. The Escrow Agreement shall remain in full force and effect until the Escrow Account is not discharged in accordance with the terms contained thereof.
- 27.1.3 The Authority shall at all times throughout the Contract Period maintain in the Escrow Account, a balance of at least an amount equivalent to {2 (two)} months’ estimated Fee payable to the Operator as a revolving fund and for this purpose, the Authority shall replenish with its own resources, any deficit that may arise in maintaining such balance of funds.

27.2 Deposit in Escrow Account

- 27.2.1 The Authority shall deposit or cause to be deposited the following inflows and receipts into the Escrow Account:
- (a) All the Fee due and payable to the Operator subject to and in accordance with Article 22;
 - (b) [any deposits by the Authority to maintain an amount equivalent to {2 (two)} month’s estimated Fee in the Escrow Account;]
 - (c) all payments by the Authority including insurance claims, if any, received;
 - (d) Dues towards Termination Payment to the Operator; and
 - (e) any other revenues or capital receipts from or in respect of the Project
- 27.2.2 The Operator shall deposit or cause to be deposited the following in the Escrow Account:
- (a) all funds constituting the Financial Package;
 - (b) all the revenues generated and all the income accruing from the Project including but not limited to the, advertising revenue [and proceeds from the Real Estate Development], rentals, deposits, capital receipts or insurance claims;
 - (c) all payments to the Authority towards Damages.

Provided that the Senior Lenders may make direct disbursements to the Contractor in accordance with the express provisions contained in this behalf in the Financing Agreements.

27.3 Withdrawal During Agreement Period

- 27.3.1 The Operator shall, at the time of opening the Escrow Account, give irrevocable instructions, by way of an Escrow Agreement, to the Escrow Bank instructing, *inter alia*, that deposits in the Escrow Account shall be appropriated in the following order every month, or at shorter

intervals as necessary, and if not due in a month then appropriated proportionately in such month and retained in the Escrow Account and paid out therefrom in the month when due::

- (a) all taxes due and payable by the Operator for and in respect of the Project;
- (b) all payments relating to construction of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
- (c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
- (d) O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of this Agreement, and certified by the Authority as due and payable to it;
- (e) monthly proportionate provision of Debt Service due in an Accounting Year;
- (f) all payments and Damages certified by the Authority as due and payable to it by the Operator;
- (g) monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
- (h) any reserve requirements set forth in the Financing Agreements; and
- (i) balance, if any, in accordance with the instructions of the Operator.

27.3.2 The Operator shall not in any manner modify the order of payment specified in Clause 27.3.1, except with the prior written approval of the Authority.

27.4 Withdrawal Upon Termination

27.4.1 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 in the following order.

- (a) all taxes due and payable by the Operator for and in respect of the Project;
- (b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- (c) all payments and Damages certified by the Authority as due and payable to it by the Operator;
- (d) retention and payments relating to the liability for defects and deficiencies set forth in Article 37;
- (e) outstanding Debt Service including the balance of Debt Due;
- (f) outstanding Subordinated Debt;
- (g) incurred or accrued O&M Expenses;
- (h) any payments due and payable to the Authority;
- (i) any other payments required to be made under this Agreement; and
- (j) balance, if any, in accordance with the instructions of the Operator:

Provided that no appropriations shall be made under Sub-clause (i) of this Clause 27.4.2 until a Vesting Certificate has been issued by the Authority under the provisions of Article 27. The provisions of this Article 27 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 27.4.1 have been discharged

ARTICLE 28
TRAFFIC REGULATION AND SECURITY

28.1 Traffic regulation by the Operator

- 28.1.1 The Operator shall, in consultation with the Authority, regulate the traffic on the Buses in accordance with Applicable Laws [and subject to the supervision and control of the Authority or a substitute thereof empowered in this behalf under the Applicable Laws].
- 28.1.2 The Operator shall, in consultation with the Authority, evolve and publicise a system based on Good Industry Practice such that no User or category of Users is discriminated against or unduly favoured, as the case may be, in the use of the Buses.
- 28.1.3 The Operator shall have the right and obligation to manage, operate and regulate the Buses on a common carrier basis providing non-discriminatory services to all persons.

28.2 Security

- 28.2.1 The Operator acknowledges and agrees that unless otherwise specified in this Agreement it shall, at its own cost and expense, provide or cause to be provided security within the Buses for the prevention of terrorism, hijacking, sabotage and/or similar acts or occurrences; provided that the Authority and the Operator may at any time mutually enter into an agreement to jointly provide security services in the Buses.
- 28.2.2 The Operator shall abide by and implement any instructions of the Authority for enhancing the security within the Buses. The Operator shall not be entitled to any compensation for disruption of its operations or loss or damage resulting from the Authority's actions or the actions of any organisation authorised by the Authority other than those resulting from wilful or grossly negligent acts or omissions of such organisation. The Authority agrees that it shall cause the relevant organisations to take such actions as reasonably deemed necessary by them, without unduly or unreasonably disrupting the operations of the Buses or interfering with the exercise of rights or fulfilment of obligations by the Operator under this Agreement. The Operator agrees that it shall extend its full support and cooperation to the Authority and to the other organisations authorised by the Authority in the discharge of their obligations thereunder.
- 28.2.3 Subject to the rights of the Operator under this Clause 28.2.3, the Authority or any agency duly authorised by it shall be entitled to inspect and search all Buses and to search any person or vehicle entering the Site or departing there from, without unduly or unreasonably disrupting the operations of the Buses.
- 28.2.4 The Authority agrees that it shall, at the request of the Operator, procure and provide the services of security forces of the Authority on a best effort basis.
- 28.2.5 The Authority shall ensure and procure that the personnel of the Operator and all its contractors, suppliers, sub-contractors and agents and the Users of the Buses are allowed free ingress and egress from the limits of the Buses without any unreasonable interference by the personnel of the Authority, including the security personnel employed by or on behalf of the Authority.

Part V
Force Majeure and Termination

ARTICLE 29
FORCE MAJEURE

29.1 Force Majeure

As used in this Agreement, the expression “**Force Majeure**” or “**Force Majeure Event**” shall mean, save and except as expressly provided otherwise, occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 29.2, 29.3 and 29.4, respectively, 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 (a) is beyond the reasonable control of the Affected Party, and (b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (c) has Material Adverse Effect on the Affected Party.

29.2 Non-Political Event

A Non-Political Event shall mean one or more of the following acts or events:

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Depot Sites);
- (b) strikes or boycotts (other than those involving the Operator, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period of [24 (twenty four)] hours and an aggregate period exceeding [7 (seven)] days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 29.3;
- (c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Operator by or on behalf of such Contractor;
- (d) any delay or failure of an overseas Contractor to deliver the Buses or equipment in India if such delay or failure is caused outside India by any event specified in Sub-clause (a) above and which does not result in any offsetting compensation being payable to the Operator by or on behalf of such Contractor;
- (e) any judgement or order of any court of competent jurisdiction or statutory authority made against the Operator in any proceedings for reasons other than (i) failure of the Operator to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority;
- (f) the discovery of geological conditions, toxic contamination or archaeological remains on the Site or the Depot Sites that could not reasonably have been expected to be discovered through a site inspection; or

- (g) any event or circumstances of a nature analogous to any of the foregoing.

29.3 Indirect Political Event

An Indirect Political Event shall mean one or more of the following acts or events:

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the construction or operation of the Project to be financially unviable or otherwise not feasible;
- (c) industry-wide or State-wide strikes or industrial action for a continuous period of [24 (twenty-four)] hours and exceeding an aggregate period of [7 (seven)] days in an Accounting Year;
- (d) any civil commotion, boycott or political agitation which prevents production and assembly of Buses or fulfilment of Maintenance Obligations by the Operator for an aggregate period exceeding [15 (fifteen)] days in an Accounting Year;
- (e) failure of the Authority to permit the Operator to continue its construction works, with or without modifications, in the event of stoppage of such works after discovery of any geological or archaeological finds or for any other reason;
- (f) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Operator by or on behalf of such Contractor;
- (g) any Indirect Political Event that causes a Non-Political Event; or
- (h) any event or circumstances of a nature analogous to any of the foregoing.

29.4 Political Event

A Political Event shall mean one or more of the following acts or events by or on account of any Government Instrumentality:

- (a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 36 and its effect, in financial terms, exceeds the sum specified in Clause 36.1;
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Operator or of the Contractors;
- (c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection

certificate, consent, approval or exemption required by the Operator or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Operator's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;

- (d) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Operator by or on behalf of such Contractor; or
- (e) any event or circumstance of a nature analogous to any of the foregoing.

29.5 Duty to report Force Majeure Event

29.5.1 Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:

- (a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 29 with evidence in support thereof;
- (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim.

29.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than [7 (seven)] days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

29.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular [(and not less than weekly)] reports containing information as required by Clause 30.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

29.6 Effect of Force Majeure Event on the Contract

29.6.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 4.1 for fulfilment of Conditions Precedent and for achieving the Appointed Date shall be extended by a period equal in length to the duration of the Force Majeure Event.

29.6.2 At any time after the Appointed Date, if any Force Majeure Event occurs, the Contract Period shall be extended by a period, equal in length to the period during which the Operator was prevented from performing its obligations.

29.7 Allocation of costs arising out of Force Majeure

29.7.1 Upon occurrence of any Force Majeure Event prior to the Appointed Date, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.

29.7.2 Upon occurrence of a Force Majeure Event after the Appointed Date, the costs incurred and attributable to such event and directly relating to the Project (the “**Force Majeure Costs**”) shall be allocated and paid as follows:

- (a) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;
- (b) upon occurrence of an Indirect Political Event, all Force Majeure Costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event, shall be borne by the Operator, and to the extent Force Majeure Costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Authority to the Operator; and
- (c) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Authority to the Operator.

For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, O&M Expenses, any increase in the cost of Construction Works on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include loss of income or debt repayment obligations and for determining such costs, information contained in the Financial Package may be relied upon to the extent that such information is relevant.

29.7.3 Save and except as expressly provided in this Article 29, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

29.8 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of [180 (one hundred and eighty)] days or more within a continuous period of [365 (three hundred and sixty five)] days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 29, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant [15 (fifteen)] days time to make a representation, and may

after the expiry of such [15 (fifteen)] days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

29.9 Termination Payment for Force Majeure Event

29.9.1 If Termination is on account of a Non-Political Event, the Authority shall make a Termination Payment to the Operator in an amount equal to 90% (ninety per cent) of the Debt Due less Insurance Cover.

29.9.2 If Termination is on account of an Indirect Political Event, the Authority shall make a Termination Payment to the Operator in an amount equal to:

- (a) Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due;
- (b) 110% (one hundred and ten per cent) of the Adjusted Equity; and
- (c) an amount equivalent to the Additional Termination Payment less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in computation of the amount payable hereunder.

29.9.3 If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Operator in an amount that would be payable under Clause 32.3 as if it were an Authority Default.

29.10 Dispute resolution

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure; provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

29.11 Excuse from performance of obligations

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

- (a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- (b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and

- (c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

29.11.2 The Parties agree that the Operator shall develop alternate or standby arrangements for provision of goods and services in accordance with Good Industry Practice and failure on this account shall not excuse the Operator from performance of its obligations hereunder.

ARTICLE 30
COMPENSATION FOR BREACH OF AGREEMENT

30.1 Compensation for default by the Operator

In the event of the Operator being in material default or breach of this Agreement, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material default or breach, within [30 (thirty)] days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 30.1 for any default or breach in respect of which Damages are expressly specified and payable under this Agreement.

30.2 Compensation for default by the Authority

In the event of the Authority being in material default or breach of this Agreement at any time after the Appointed Date, it shall pay to the Operator by way of compensation, all direct costs suffered or incurred by the Operator as a consequence of such material default or breach within [30 (thirty)] days of receipt of the demand supported by necessary particulars thereof; provided that no such compensation shall be payable for any material breach or default in respect of which Damages have been expressly specified in this Agreement. For the avoidance of doubt, compensation payable may include interest payments on debt, O&M Expenses, any increase in capital costs on account of inflation and all other costs directly attributable to such material default but shall not include loss of income or debt repayment obligations or other consequential losses.

30.3 Extension of Contract Period

Subject to the provisions of Clause 30.5, in the event that a material default or breach of this Agreement set forth in Clause 30.2 causes delay in achieving COD, the Authority shall, in addition to payment of compensation under Clause 30.2, extend the Contract Period, such extension being equal in duration to the period by which COD was delayed.

30.4 Compensation to be in addition

Compensation payable under this Article 30 shall be in addition to, and without prejudice to, the other rights and remedies of the Parties under this Agreement including Termination thereof.

30.5 Mitigation of costs and damage

The affected Party shall make all reasonable efforts to mitigate or limit the costs and damage arising out of or as a result of breach of Agreement by the other Party.

ARTICLE 31
SUSPENSION OF OPERATOR'S RIGHTS

31.1 Suspension upon Operator Default

Upon occurrence of an Operator Default, the Authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (a) suspend all rights of the Operator under this Agreement including the Operator's right to receive Fee, and other payments pursuant hereto, and (b) exercise such rights itself and perform the obligations hereunder or authorise any other person to exercise or perform the same on its behalf during such suspension (the "**Suspension**"). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Operator and may extend up to a period not exceeding [180 (one hundred and eighty)] days from the date of issue of such notice.

31.2 Authority to act on behalf of Operator

31.2.1 During the period of Suspension, the Authority may, at its option and at the risk and cost of the Operator, remedy and rectify the cause of Suspension. The Authority shall be entitled to make deductions from the Fee for meeting the costs incurred by it for remedying and rectifying the cause of Suspension, and for defraying the expenses on operation and maintenance of Buses.

31.2.2 During the period of Suspension hereunder, all assets and liabilities in relation to the operation and maintenance of Buses, including the Maintenance Depots, shall continue to vest in the Operator in accordance with the provisions of this Agreement and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Operator under and in accordance with this Agreement, shall be deemed to have been done or taken for and on behalf of the Operator and the Operator undertakes to indemnify the Authority for all costs incurred during such period. The Operator hereby licenses and sub-licenses respectively, the Authority or any other person authorised by it under Clause 31.1 to use during Suspension, all Intellectual Property belonging to or licensed to the Operator for and in respect of operation and maintenance of Buses.

31.3 Revocation of Suspension

31.3.1 In the event that the Authority shall have rectified or removed the cause of Suspension within a period not exceeding [90 (ninety)] days from the date of Suspension, it shall revoke the Suspension forthwith and restore all rights of the Operator under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Authority may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

31.3.2 Upon the Operator having cured the Operator Default within a period not exceeding [90 (ninety)] days from the date of Suspension, the Authority shall revoke the Suspension forthwith and restore all rights of the Operator under this Agreement. For the avoidance of doubt, the Authority shall provide access to the Maintenance Depots and Buses, as the case may be, to enable the Operator to cure the Operator Default hereunder.

31.4 Termination

- 31.4.1 At any time during the period of Suspension under this Article 31, the Operator may by notice require the Authority to revoke the Suspension and issue a Termination Notice. The Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 32 as if it is an Operator Default under Clause 32.1.
- 31.4.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within [180 (one hundred and eighty)] days from the date of Suspension hereunder, the Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by the Authority upon occurrence of an Operator Default.

ARTICLE 32 TERMINATION

32.1 Termination for Operator Default

32.1.1 Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Operator fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of [120 (one hundred and twenty)] days, the Operator shall be deemed to be in default of this Agreement (the “**Operator Default**”), unless the default has occurred as a result of any breach of this Agreement by the Authority or due to Force Majeure. The defaults referred to herein shall mean and include the following:

- (a) The Performance Security has been encashed and appropriated in accordance with Clause 9.2, and the Operator fails to replenish or provide fresh Performance Security, within a Cure Period of [30 (thirty)] days;
- (b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, the Operator fails to cure, within a Cure Period of [120 (one hundred and twenty)] days, the Operator Default for which whole or part of the Performance Security was appropriated;
- (c) the Operator fails to supply the Prototypes within the period specified in Clause 13.6;
- (d) the Operator is in material breach of the Operation Obligations, Maintenance Obligations or the Safety Requirements, as the case may be;
- (e) the Operator has failed to make any payment to the Authority within the period specified in this Agreement;
- (f) a material breach of any of the Project Agreements by the Operator has caused a Material Adverse Effect;
- (g) the Operator creates any Encumbrance in breach of this Agreement;
- (h) the Operator repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (i) a Change in Ownership has occurred in breach of the provisions of Clause 5.3;
- (j) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Operator under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Operator, and such transfer causes a Material Adverse Effect;
- (k) an execution levied on any of the assets of the Operator has caused a Material Adverse Effect;

- (l) the Operator is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Operator or for the whole or material part of its assets that has a material bearing on the Project;
- (m) the Operator has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;
- (n) a resolution for winding up of the Operator is passed, or any petition/ application for winding up of the Operator or a corporate insolvency resolution process is admitted by a tribunal or court of competent jurisdiction and a provisional liquidator, receiver or an interim resolution professional is appointed and such order has not been set aside within [90 (ninety)] days of the date thereof or the Operator is ordered to be liquidated or wound up by a tribunal or court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Operator are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Operator under this Agreement and the Project Agreements; and provided that:
 - (i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
 - (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Operator as at the Appointed Date; and
 - (iii) each of the Project Agreements remains in full force and effect.
- (o) any representation or warranty of the Operator herein contained which is, as of the date hereof, found to be materially false or the Operator is at any time hereafter found to be in breach thereof;
- (p) the Operator submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;
- (q) the Operator has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement;
- (r) the Operator issues a Termination Notice in violation of the provisions of this Agreement; or
- (s) the Operator commits a default in complying with any other provision of this Agreement if such default causes a Material Adverse Effect on the Authority and the Operator fails to cure such default in a Cure Period of [•] days.

32.1.2 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of an Operator 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 to the Operator to make a representation, and may after the expiry of such [15 (fifteen)] days, whether or not it is in receipt of such representation, issue the Termination Notice subject to the provisions of Clause 31.4.4.

32.1.3 The Authority shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 31.4.4 to inform the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Operator in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement:

Provided that the Lenders' Representative may, instead of exercising the Senior Lenders' right of substitution, procure that the default specified in the notice is cured within the aforesaid period of 180 (one hundred and eighty) days, and upon such curing thereof, the Authority shall withdraw its notice referred to above and restore all the rights of the Operator:

Provided further that upon written request from the Lenders' Representative and the Operator, the Government shall extend the aforesaid period of 180 (one hundred and eighty) days by such further period not exceeding 90 (ninety) days, as the Authority may deem appropriate.

32.2 Termination for Authority Default

32.2.1 In the event that any of the defaults specified below shall have occurred, and the Authority fails to cure such default within a Cure Period of [90] days or such longer period as has been expressly provided in this Agreement, the Authority shall be deemed to be in default of this Agreement (the "**Authority Default**") unless the default has occurred as a result of any breach of this Agreement by the Operator or due to Force Majeure. The defaults referred to herein shall mean and include the following:

- (a) the Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Operator;
- (b) the Authority has failed to make any payment to the Operator within the period specified in this Agreement; or
- (c) the Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

32.2.2 Without prejudice to any other right or remedy which the Operator may have under this Agreement, upon occurrence of a Authority 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 the Termination Notice and grant [15 (fifteen)] days to the Authority to make a representation, and may after the expiry of such [15 (fifteen)] days, whether or not it is in receipt of such representation, issue the Termination Notice.

32.3 Termination Payment

32.3.1 Upon Termination on account of an Operator Default during the Contract Period, the Authority shall pay to the Operator, by way of Termination Payment, an amount equal to:

- (a) 90% (ninety per cent) of the Debt Due less Insurance Cover; and
- (b) 70% (seventy per cent) of the amount representing the Additional Termination Payment:

Provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due.

For the avoidance of doubt, the Operator hereby acknowledges that no Termination Payment shall be due or payable on account of an Operator Default occurring prior to COD.

32.3.2 Upon Termination on account of an Authority Default, the Authority shall pay to the Operator, by way of Termination Payment, an amount equal to:

- (a) Debt Due;
- (b) 150% (one hundred and fifty per cent) of the Adjusted Equity; and
- [(c) 115% (one hundred and fifteen per cent) of the amount representing the Additional Termination Payment.]

32.3.3 Termination Payment shall become due and payable to the Operator within [60 (sixty)] days of a demand being made by the Operator to the Authority with the necessary particulars, and in the event of any delay, the Authority shall pay interest at a rate equal to [3% (three per cent)] above the Bank Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed [90 (ninety)] days; provided further that liability of the Authority to make the Termination Payment hereof is subject to the fulfilment of the Divestment Requirements in accordance with the provisions of Article 33 of this Agreement. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.

32.3.4 Upon Termination on expiry of the Agreement Period by efflux of time, no Termination Payment shall be due and payable to the Operator; provided that in the event any assets and equipment at the Maintenance Depots, essential for the efficient, economic and safe operation

of the Buses, shall have been acquired and installed after the [7th] anniversary of the Appointed Date, with prior written consent of the Authority, which consent shall not be unreasonably denied, a Termination Payment equal to [80% (eighty percent)] of the Adjusted Depreciated Value of such assets and equipment shall be deemed to be Debt Due for the purposes of Termination Payment.

32.3.5 The Operator expressly agrees that Termination Payment under this Article 32 shall constitute a full and final settlement of all claims of the Operator on account of Termination of this Agreement for any reason whatsoever and that the Operator or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

32.4 Certain limitations on Termination Payment

32.4.1 Termination Payment, not being Additional Termination Payment, due and payable under this Agreement shall be limited to the Debt Due and Adjusted Equity, as the case may be, which form part of the Total Project Cost in accordance with the provisions of this Agreement; provided that the amount payable in respect of any Debt Due expressed in foreign currency shall be computed at the Reference Exchange Rate for conversion into the relevant foreign currency as on the date of Termination Payment. For the avoidance of doubt, it is agreed that within a period of 60 (sixty) days from COD, the Operator shall notify to the Authority, the Total Project Cost as on COD and its disaggregation between Debt Due and Equity, and only the amounts so conveyed shall form the basis of computing Termination Payment, and it is further agreed that in the event such disaggregation is not notified to the Authority, Equity shall be deemed to be the amount arrived at by subtracting Debt Due from Total Project Cost.

[32.4.2 Additional Termination Payment due and payable in respect of Real Estate Development forming part of Specified Assets shall be limited to the lowest of:

- (a) Adjusted Depreciated Value thereof;
- (b) the replacement value thereof, as assessed by an Approved Valuer, who shall be selected and appointed by the Authority, within 15 (fifteen) days of Termination, for submitting his assessment within 30 (thirty) days of his appointment hereunder; and
- (c) [40% (forty per cent)] of the sum of Total Project Cost, if any.]]

32.5 Other rights and obligations of the Authority

Upon Termination for any reason whatsoever, the Authority shall:

- (a) take possession and control of the Buses and Maintenance Depots forthwith;
- (b) take possession and control of all materials, stores, implements, plants and equipment on or about the Maintenance Depots;
- (c) be entitled to restrain the Operator and any person claiming through or under the Operator from entering upon the Maintenance Depots or any part of the Authority premises;

- (d) require the Operator to comply with the Divestment Requirements set forth in Clause 33.1; and
- (e) succeed upon election by the Authority, without the necessity of any further action by the Operator, to the interests of the Operator under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Operator. For the avoidance of doubt, the Operator acknowledges and agrees that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Operator and such Contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

32.6 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 32.3.6, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

ARTICLE 33
DIVESTMENT OF RIGHTS AND INTEREST

33.1 Divestment requirements upon expiry of the Agreement Period

33.1.1 Upon expiry of the Contract Period, the Operator shall comply with and conform to the following divestment requirements (the “**Divestment Requirements**”), no later than [15 (fifteen)] days from the date of expiry of the Agreement Period:

- (a) deliver forthwith the actual or constructive possession of the Maintenance Depots along with the infrastructure therein, free and clear of all Encumbrances;
- (b) cure all the equipment at the Maintenance Depots of any defect or deficiency such that it can continue to be used efficiently and economically in accordance with Good Industry Practice;
- (c) deliver and transfer relevant records, reports and Intellectual Property pertaining to the Maintenance Depots including all software and manuals pertaining thereto, and complete ‘as built’ Drawings as on the Transfer Date so as to enable the Authority to operate and maintain the Buses and Maintenance Depots, and execute such deeds of conveyance, documents and other writings as the Authority may reasonably require in connection therewith. For the avoidance of doubt, the Operator represents and warrants that the Intellectual Property shall be adequate and complete for the operation and maintenance of the Bus and shall be assigned or licensed to the Authority free of any Encumbrance;
- (d) transfer and/or deliver all Applicable Permits in respect of the Maintenance Depots and Depot Sites to the extent permissible under Applicable Laws;
- (d) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Operator in respect of the outstanding insurance claims to the extent due and payable to the Authority;
- (f) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Operator in the Maintenance Depots; and
- (g) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Operator in the Maintenance Depots and Insurance Cover, free from all Encumbrances, absolutely unto the Authority or to its nominee.

33.2 Inspection and cure

Not earlier than [90 (ninety)] days prior to expiry but not later than [15 (fifteen)] days prior to the effective date of such expiry, the Authority shall verify, after giving due notice to the Operator specifying the time, date and place of such verification and/or inspection, compliance by the Operator with the Maintenance Obligations, and if required, cause

appropriate tests to be carried out at the Operator's cost for this purpose. The Operator shall at its own cost and expense, cure defaults if any, in the Maintenance Obligations and the provisions of Article 32 shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this Article 33.

33.3 Cooperation and assistance on transfer of Maintenance Depots

33.3.1 The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the assets specified in Clause 33.1.1 in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the users, other members of the public or the lawful occupiers of any part of the Depot Sites.

33.3.2 The Authority shall have the option to purchase or hire from the Operator at a fair market value and free from any Encumbrance all or any part of the plant and machinery used in connection with the Project but which does not form part of the assets specified in Clause 33.1.1 and is reasonably required in connection with operation of the Maintenance Depots. For the avoidance of doubt, in the event of dispute or difference relating to fair market value, the Dispute Resolution Procedure shall apply.

33.4 Divestment requirements upon Termination

33.4.1 Upon Termination, the Operator shall comply with and conform to the following divestment requirements (the "**Divestment Requirements**"), no later than [15 (fifteen)] days from the date of Termination:

- (a) deliver forthwith the actual or constructive possession of the Buses, free and clear of all Encumbrances;
- (b) cure all Buses of all defects and deficiencies so that the Buses are compliant with the Maintenance Obligations; provided that if such defects and deficiencies have arisen on account of accident, vandalism, arson, riot or natural calamity occurring no earlier than [120 (one hundred and twenty)] days prior to such Termination or expiry of the Agreement Period, the Authority shall grant to the Operator such additional time, not exceeding [240 (two hundred forty)] days, as may be reasonably required for repair and rectification thereof;
- (c) deliver and transfer relevant records, [Intellectual Property] and reports pertaining to the Buses including all software and manuals pertaining thereto, and complete 'as built' Drawings as on the Transfer Date so as to enable the Authority to operate and maintain the Buses, and execute such deeds of conveyance, documents and other writings as the Authority may reasonably require in connection therewith. [For the avoidance of doubt, the Operator represents and warrants that the Intellectual Property shall be adequate and complete for the operation and maintenance of the Bus and shall be assigned or licensed to the Authority free of any Encumbrance];
- (e) transfer and/or deliver all Applicable Permits in respect of the Buses, to the extent permissible under Applicable Laws;

- (f) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Operator in respect of the outstanding insurance claims to the extent due and payable to the Authority;
- (g) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Operator in the Buses; and
- (h) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Operator in the Buses free from all Encumbrances, absolutely unto the Authority or to its nominee.

33.4.2 Subject to the exercise by the Authority of its rights under this Agreement or any of the Project Agreements to perform or procure the performance by a third party of any of the obligations of the Operator, the Parties shall continue to perform their obligations under this Agreement notwithstanding the giving of any Termination Notice until the Termination of this Agreement becomes effective in accordance with its terms.

33.5 Inspection and cure

Not earlier than [90 (ninety)] days prior to Termination but not later than [15 (fifteen)] days prior to the effective date of such Termination, the Authority shall verify, after giving due notice to the Operator specifying the time, date and place of such verification and/or inspection, compliance by the Operator with the Maintenance Obligations, and if required, cause appropriate tests to be carried out at the Operator's cost for this purpose. The Operator shall at its own cost and expense, cure defaults if any, in the Maintenance Obligations and the provisions of Article 32 shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this Article 33.

33.6 Vesting Certificate

The divestment of all rights, title and interest in the assets specified in Clause 33.1.1 shall be deemed to be complete on the date on which all of the Divestment Requirements have been fulfilled, and the Authority shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Schedule-P (the "**Vesting Certificate**"), which will have the effect of constituting evidence of divestment by the Operator of all of its rights, title and interest in such assets, and their vesting in the Authority pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Authority or its nominee on, or in respect of, the Buses and Maintenance Depots on the footing that all Divestment Requirements have been complied with by the Operator.

33.7 Divestment costs etc.

33.7.1 Upon expiry of the Contract Period, the Parties shall bear and pay equally, all costs incidental to divestment of all of the rights, title and interest of the Operator in the d Maintenance Depots in favour of the Authority.

- 33.7.2 In the event of Termination attributable to the Operator, it shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Operator in the Buses and Maintenance Depots in favour of the Authority upon such Termination.
- 33.7.3 In the event of Termination attributable to the Authority, it shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Operator in the Buses and Maintenance Depots in favour of the Authority upon such Termination.
- 33.7.4 In the event of any dispute relating to matters covered by and under this Article 33, the Dispute Resolution Procedure shall apply.

ARTICLE 34
DEFECTS LIABILITY AFTER TERMINATION

34.1 Liability for defects after Termination

The Operator shall be responsible for all defects and deficiencies in the Buses and Maintenance Depot for a period of [180 (one hundred and eighty)] days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Authority in the Buses during the aforesaid period. In the event that the Operator fails to repair or rectify such defect or deficiency within a period of [15 (fifteen)] days from the date of notice issued by the Authority in this behalf, the Authority shall be entitled to get the same repaired or rectified at the Operator's risk and cost so as to make the Buses conform to the Maintenance Obligations. All costs incurred by the Authority hereunder shall be reimbursed by the Operator to the Authority within [15 (fifteen)] days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover the same from the Escrow Account.

34.2 Retention in Escrow Account

- 34.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 34.2.3, a sum equal to [10% (ten per cent)] of the total Fee in respect of the Accounting Year immediately preceding the Transfer Date shall be retained by the Authority for a period of [150 (one hundred and fifty)] days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of Clause 34.1.
- 34.2.2 Without prejudice to the provisions of Clause 34.2.1, the Authority shall carry out an inspection of the Buses and Maintenance Depots at any time between [180 (one hundred and eighty)] and [15 (fifteen)] days prior to the Termination and if it determines that the status of the Buses is such that a sum larger than the amount stipulated in Clause 34.2.1 should be retained by the Authority and for a period longer than the aforesaid [180 (one hundred and eighty)] days, the amount so determined, subject to a ceiling equivalent to twice the amount specified in Clause 34.2.1 shall be retained by the Authority for a period not exceeding [240 (two hundred and forty)] days.
- 34.2.3 The Operator may, for the performance of its obligations under this Article 34, provide to the Authority a guarantee from a Bank for a sum equivalent to the amount determined under Clause 34.2.1 or 34.2.2, as the case may be, and for the period specified therein, substantially in the form set forth in Schedule-D (the "**Performance Security**"), to be modified, *mutatis mutandis*, for this purpose, and the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the required amounts from the Performance Guarantee for undertaking the repairs or rectification at the Operator's risk and cost in accordance with the provisions of this Article 34. Upon furnishing of a Performance Guarantee under this Clause 34.2.3, the retention of funds in terms of Clause 34.2.1 or 34.2.2, as the case may be, shall be dispensed with.

Part VI
Other Provisions

ARTICLE 35
ASSIGNMENT AND CHARGES

35.1 Restrictions on assignment and charges

35.1.1 Subject to Clause 35.2, this Agreement shall not be assigned by the Operator to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

35.1.2 Subject to the provisions of Clause 35.2, the Operator shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Operator is a party except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

35.2 Permitted assignment and charges

The restraints set forth in Clause 35.1 shall not apply to:

- (a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Operator;
- (b) mortgages/pledges/hypothecation of goods/assets, and their related documents of title, arising or created in the ordinary course of business of the Operator, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Project;
- (c) assignment of rights, interest and obligations of the Operator to or in favour of the Lenders' Representative as nominee and for the benefit the Senior Lenders, to the extent covered by an in accordance with the Substitution Agreement as security for financing provided by the Senior Lenders under the Financing Agreements; and
- (d) liens or encumbrances required by any Applicable Law.

35.3 Substitution Agreement

35.3.1 The Lenders' Representative, on behalf of Senior Lenders, may exercise the right to substitute the Operator pursuant to the agreement for substitution of the Operator (the "**Substitution Agreement**") to be entered into amongst the Operator, the Authority and the Lenders' Representative, on behalf of Senior Lenders, substantially in the form set forth in Schedule-S.

35.3.2 Upon substitution of the Operator under and in accordance with the Substitution Agreement, the Nominated Company substituting the Operator shall be deemed to be the Operator under this Agreement and shall enjoy all rights and be responsible for all obligations of the Operator under this Agreement as if it were the Operator; provided that where the Operator is in breach of this Agreement on the date of such substitution, the Authority shall by notice grant a Cure Period of [120 (one hundred and twenty)] days to the Operator for curing such breach.

35.4 Assignment by the Government

Notwithstanding anything to the contrary contained in this Agreement, the Authority may, after giving 60 (sixty) days' notice to the Operator, assign and/ or transfer any of its rights and benefits and/or obligations under this Agreement to an assignee who is, in the reasonable opinion of the Authority, capable of fulfilling all of the Authority's then outstanding obligations under this Agreement.

ARTICLE 36 CHANGE IN LAW

36.1 Increase in costs

If as a result of Change in Law, the Operator suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds Rs. [2 crore (Rupees two crore)] in any Accounting Year, the Operator may so notify the Authority and propose amendments to this Agreement so as to place the Operator in the same financial position as it would have enjoyed had there been no such Change in Law resulting in increased cost, reduction in return or other financial burden as aforesaid. Upon notice by the Operator, the Parties shall meet, as soon as reasonably practicable but no later than [30 (thirty)] days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within [90 (ninety)] days of the aforesaid notice, the Operator may by notice require the Authority to pay an amount that would place the Operator in the same financial position that it would have enjoyed had there been no such Change in Law, and within [15 (fifteen)] days of receipt of such notice, along with particulars thereof, the Authority shall pay the amount specified therein; provided that if the Authority shall dispute such claim of the Operator, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 36.1 shall be restricted to changes in law directly affecting the Operator's costs of performing its obligations under this Agreement.

36.2 Reduction in costs

If as a result of Change in Law, the Operator benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds Rs. [2 crore (Rupees two crore)] in any Accounting Year, the Authority may so notify the Operator and propose amendments to this Agreement so as to place the Operator in the same financial position as it would have enjoyed had there been no such Change in Law resulting in decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Authority, the Parties shall meet, as soon as reasonably practicable but no later than [30 (thirty)] days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within [90 (ninety)] days of the aforesaid notice, the Authority may by notice require the Operator to pay an amount that would place the Operator in the same financial position that it would have enjoyed had there been no such Change in Law, and within [15 (fifteen)] days of receipt of such notice, along with particulars thereof, the Operator shall pay the amount specified therein to the Authority; provided that if the Operator shall dispute such claim of the Authority, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 36.2 shall be restricted to changes in law directly affecting the Operator's costs of performing its obligations under this Agreement.

36.3 Protection of NPV

Pursuant to the provisions of Clauses 38.1 and 38.2 and for the purposes of placing the Operator in the same financial position as it would have enjoyed had there been no Change in Law affecting the costs, returns or other financial burden or gains, the Parties shall endeavour to establish a net present value (the “NPV”) of the net cash flow and make necessary adjustments in costs, revenues, compensation or other relevant parameters, as the case may be, to procure that the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred. For the avoidance of doubt, the Parties expressly agree that for determination of NPV, the discount rate to be used shall be equal to the weighted average rate of interest at which the Operator has raised its debt under its Financing Agreements.

36.4 Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash compensation under this Article 36 shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than [1 (one)] year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than [2 (two)] years from the close of such Accounting Year.

ARTICLE 37
LIABILITY AND INDEMNITY

37.1 General indemnity

37.1.1 The Operator shall indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Authority Instrumentalities and Authority owned and/or controlled entities/enterprises, (the “**Authority Indemnified Persons**”) against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Operator of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of goods and services by the Operator to the Authority or to any person or from any negligence of the Operator under contract or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Authority Indemnified Persons.

37.1.2 The Authority shall indemnify, defend, save and hold harmless the Operator against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of (a) defect in title and/or the rights of the Authority in the land comprised in the Site and Depot Sites, and/or (b) breach by the Authority of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Operator of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement and/or breach of its statutory duty on the part of the Operator, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the Operator.

37.2 Indemnity by the Operator

37.2.1 Without limiting the generality of Clause 37.1, the Operator shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

- (a) failure of the Operator to comply with Applicable Laws and Applicable Permits;
- (b) payment of taxes required to be made by the Operator in respect of the income or other taxes of the Operator’s contractors, suppliers and representatives; or
- (c) non-payment of amounts due as a result of materials or services furnished to the Operator or any of its contractors which are payable by the Operator or any of its contractors.

37.2.2 Without limiting the generality of the provisions of this Article 37, the Operator shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign

patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Operator or by the Operator's Contractors in performing the Operator's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Operator shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Maintenance Depots or Buses, as the case may be, or any part thereof or comprised therein, are held to constitute an infringement and their use is permanently enjoined, the Operator shall promptly make every reasonable effort to secure for the Authority a licence, at no cost to the Authority, authorising continued use of the infringing work. If the Operator is unable to secure such licence within a reasonable time, the Operator shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that they become non-infringing.

37.3 Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 37 (the "**Indemnified Party**") it shall notify the other Party (the "**Indemnifying Party**") within [15 (fifteen)] days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

37.4 Defence of claims

37.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 37, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

37.4.2 If the Indemnifying Party has exercised its rights under Clause 37.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the

prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

37.4.3 If the Indemnifying Party exercises its rights under Clause 37.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

- (a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party;
- (b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action;
- (c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or
- (d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
 - (i) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
 - (ii) that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

Provided that if Sub-clauses (b), (c) or (d) of this Clause 37.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

37.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 37, 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 Agreement.

37.6 Limitation of Liability

37.6.1 Notwithstanding anything to the contrary in this Agreement, the liability of one Party towards the other Party for any damages or compensation of any nature whatsoever under this Agreement, save and except Termination Payment, shall not exceed Rs. [300 crore (Rupees three hundred crore)]. For the avoidance of doubt, the limitation hereunder shall not apply to any or all liabilities in respect of third parties.

37.6.2 Except as otherwise provided in this Agreement, neither Party shall be liable to the other Party for any loss of profit or for any other indirect or consequential damages or losses that may be suffered in connection with this Agreement.

37.7 Survival on Termination

The provisions of this Article 37 shall survive Termination.

ARTICLE 38
RIGHTS AND TITLE OVER SITES

38.1 Operator's rights

For the purpose of this Agreement, the Operator shall have rights to the use of the Depot Sites as sole licensee, subject to and in accordance with this Agreement, and to this end, it may regulate the entry and use of the Depot Sites by third parties in accordance with and subject to the provisions of this Agreement.

38.2 Access rights of the Authority and others

38.2.1 The Operator shall allow free access to the Depot Sites at all times for the authorised representatives of the Authority and for the persons duly authorised by any Government Instrumentality to inspect the Maintenance Depots, and to investigate any matter within their authority, and upon reasonable notice, the Operator shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

38.2.2 The Operator shall, for the purpose of operation and maintenance of any utility allow free access to the Depot Sites, as the case may be, at all times for the authorised persons and vehicles of the controlling body of such utility.

38.3 Property taxes

38.3.1 All property taxes on the Depot Sites shall be payable by the Authority as owner of the Depot Sites; provided, however, that any such taxes payable by the Operator under Applicable Laws for use of the Depot Sites shall not be reimbursed or payable by the Authority. For the avoidance of doubt, the Parties agree that stamp duties, if any, due and payable on the grant of licence comprising this Agreement shall be paid by the Authority. Provided, however, that the Authority may require the Operator to pay such stamp duties, which shall be reimbursed by the Authority to the Operator within [15 (fifteen)] days of receiving the demand therefor.

38.4 Restriction on sub-letting

The Operator shall not sublicense or sublet the whole or any part of Depot Sites, save and except as may be expressly set forth in this Agreement; provided that nothing contained herein shall be construed or interpreted as restricting the right of the Operator to appoint Contractors for the performance of its obligations hereunder including for operation and maintenance of all or any part of the Depot Sites.

ARTICLE 39 DISPUTE RESOLUTION

39.1 Dispute resolution

- 39.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 39.2.
- 39.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

39.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon a mutually accepted person to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by such person or without the intervention of such person, either Party may require such Dispute to be referred to the [Chairman of ***] and the Chairman of the Board of Directors of the Operator for amicable settlement, and upon such reference, the said persons shall meet no later than [7 (seven)] days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the [7 (seven)] day period or the Dispute is not amicably settled within [15 (fifteen)] days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within [30 (thirty)] days of the notice in writing referred to in Clause 39.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 39.3.

39.3 Arbitration

- 39.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 39.2, shall be finally decided by reference to arbitration by an arbitral tribunal constituted in accordance with Clause 39.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “**Rules**”), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration Act. The place of such arbitration shall be Delhi, and the language of arbitration proceedings shall be English.
- 39.3.2 There shall be an arbitral tribunal comprising 3 (three) arbitrators, of whom each Party shall select 1 (one), and the third arbitrator shall be appointed by the 2 (two) arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.
- 39.3.3 The arbitral tribunal shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Article 39 shall be final and binding on the Parties as from the

date it is made, and the Operator and the Authority agree and undertake to carry out such Award without delay.

39.3.4 The Operator and the Authority agree that an Award may be enforced against the Operator and/or the Authority, as the case may be, and their respective assets wherever situated.

39.3.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

39.4 Adjudication by a tribunal

In the event of constitution of a statutory tribunal or other forum with powers to adjudicate upon disputes between the Operator and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 39.3, be adjudicated upon by such tribunal or other forum in accordance with Applicable Laws and all references to Dispute Resolution Procedure shall be construed accordingly.

ARTICLE 40 DISCLOSURE

40.1 Disclosure of Specified Documents

The Operator shall make available for inspection by any person, copies of this Agreement, the Maintenance Manual, the Safety Requirements and the Manual of Specifications and Standards (hereinafter collectively referred to as the “**Specified Documents**”), free of charge, during normal business hours on all working days at the Operator’s Registered Office. The Operator shall prominently display at the Maintenance Depots, public notices stating the availability of the Specified Documents for such inspection, and shall make copies of the same available to any person upon payment of copying charges on a ‘no profit no loss’ basis.

40.2 Disclosure of Documents relating to safety

The Operator shall make available for inspection by any person copies of all Documents and data relating to safety of the Buses, free of charge, during normal business hours on all working days, at the Operator’s Registered Office. The Operator shall make copies of the same available to any person upon payment of copying charges on a ‘no profit no loss’ basis.

40.3 Withholding disclosure of Protected Documents

Notwithstanding the provisions of Clauses 42.1 and 42.2, the Authority shall be entitled to direct the Operator, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Clauses.

Explanation:

The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Clauses 42.1 and 42.2, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.

ARTICLE 41
REDRESSAL OF COMPLAINTS

41.1 Complaint Register

- 41.1.1 The Operator shall keep one register (the “**Complaint Register**”) in every Bus for recording of complaints by passengers and another for recording of complaints by drivers and maintenance staff.
- 41.1.2 The Complaint Register shall be securely bound and each page thereof shall be duly numbered. It shall have appropriate columns including the complaint number, date, substance of the complaint and the action taken by the Operator.
- 41.1.3 Without prejudice to the provisions of Clauses 41.1.1 and 41.1.2, the Authority may, in consultation with the Operator, specify the procedure for making complaints in electronic form and for responses thereto.

41.2 Redressal of complaints

- 41.2.1 The Operator shall inspect the Complaint Register of every Bus before undertaking any Maintenance, as the case may be, and take prompt and reasonable action for redressal of each complaint. The action taken shall be briefly recorded by the Operator in the Complaint Register.
- 41.2.2 In the event that a complaint shall require an urgent response from the Operator, the Driver of Buses or any maintenance staff of the Authority, as the case may be, shall inform the Maintenance Depot or the Operational Control Centre forthwith and upon receiving such complaint, the Operator shall despatch its Prompt Response Team and take such other action as may be necessary.

ARTICLE 42
MISCELLANEOUS

42.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts at Delhi shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

42.2 Waiver of immunity

Each Party unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

42.3 Depreciation

For the purposes of depreciation under Applicable Laws, the property representing the capital investment made by the Operator in the Maintenance Depots shall be deemed to be acquired and owned by the Operator. For the avoidance of doubt, the Authority shall not in any manner be liable in respect of any claims for depreciation to be made by the Operator under Applicable Laws.

42.4 Delayed payments

- 42.4.1 The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within [30 (thirty)] days of receiving a demand along with the necessary particulars. Unless otherwise specified in this Agreement, in the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to [3% (three per cent)] above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

42.4.2 Unless otherwise specified, any interest payable under this Agreement shall accrue on a daily outstanding basis and shall be compounded on the basis of quarterly rests.

42.5 Waiver

42.5.1 Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

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

42.6 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

- (a) no review, comment or approval by the Authority of any Project Agreement, Document or Drawing submitted by the Operator nor any observation or inspection of the construction, operation or maintenance of the Project and Buses nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Operator from its obligations, duties and liabilities under this Agreement, Applicable Laws and Applicable Permits; and
- (b) the Authority shall not be liable to the Operator by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.

42.7 Exclusion of implied warranties etc.

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by either Party not contained in a binding legal agreement executed by both Parties.

42.8 Survival

42.8.1 Termination shall:

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

42.8.2 All rights and obligations surviving Termination shall only survive for a period of [3 (three)] years following the date of such Termination; provided, however, that all obligations of the Operator in relation to licensing, sub-licensing, assignment or transfer of the specified Intellectual Property to the Authority shall survive the Termination in perpetuity.

42.9 Entire Agreement

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn. For the avoidance of doubt, the Parties hereto agree that any obligations of the Operator arising from the Request for Qualification or Request for Proposals, as the case may be, shall be deemed to form part of this Agreement and treated as such.

42.10 Severability

If for any reason whatsoever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement or otherwise.

42.11 No partnership

This Agreement shall not be interpreted or construed to create an association or partnership between the Parties, or to impose any partnership obligation or liability upon either Party, and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

42.12 Third parties

This Agreement is intended solely for the benefit of the Parties, and their respective successors and permitted assigns, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement.

42.13 Successors and assigns

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns.

42.14 Notices

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall:

- (a) in the case of the Operator, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Operator may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside Delhi may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number as the Operator may from time to time designate by notice to the Authority;

{Attention:
Designation:
Address:
Fax No:
Email: }

- (b) in the case of the Authority, be given by facsimile or e-mail and by letter delivered by hand at the address given below and addressed to the person named below with a copy delivered to the Authority Representative or such other person as the Authority may from time to time designate by notice to the Operator; provided that if the Operator does not have an office in Delhi it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier;

{Name:
Designation:
Address:
Fax No:
Email: }; and

- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been

delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

42.15 Language

All notices required to be given by one Party to the other Party and all other communications, Documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

42.16 Counterparts

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

ARTICLE 43 DEFINITIONS

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

“**Accounting Year**” means the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year;

“**Additional Auditors**” shall have the meaning ascribed to it in Clause 26.2.3;

“**Adjusted Depreciated Value**” means the amount arrived at after adjusting the depreciated book value of an asset (as stated in the books of account of the Operator) to reflect the variation occurring in WPI between the date of procurement thereof and the Transfer Date;

“**Adjusted Equity**” means the Equity funded in Indian Rupees and adjusted on the first day of the current month (the “**Reference Date**”), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in WPI, and for any Reference Date occurring:

- (a) on or before COD, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and the Reference Date;
- (b) from COD and until the 4th (fourth) anniversary thereof, an amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the “**Base Adjusted Equity**”) and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following COD to the extent of variation in WPI occurring between COD and the Reference Date; and
- (c) after the 4th (fourth) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.56% (zero point five six per cent)³ thereof at the commencement of each month following the 4th (fourth) anniversary of COD and the amount so arrived at shall be revised to the extent of variation in WPI occurring between COD and the Reference Date;

For the avoidance of doubt, the Adjusted Equity shall, in the event of Termination, be computed as on the Reference Date immediately preceding the Transfer Date; provided that no reduction in the Adjusted Equity shall be made for a period equal to the duration, if any, for which the Contract Period is extended, but the revision on account of WPI shall continue to be made;

“**Affected Party**” shall have the meaning as set forth in Clause 29.1;

“**Agreement**” or “**Supply-cum-Operation and Maintenance Agreement**” means this Agreement, its Recitals, the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;

“**Annual Assured Bus Kilometers**” shall have the meaning ascribed to it in Clause 22.4.2;

³ This number shall be substituted in each case by the figure arrived at upon dividing 100 by the number of months comprising the Contract Period. For example, the figure for a 15 year Contract Period shall be $100/180=0.555$ rounded off to two decimal points i.e. 0.56.

“**Annual Assured Payment Amount**” shall have the meaning ascribed to it in Clause 23.4.3;

“**Annual Safety Report**” shall have the meaning ascribed to it in Clause 18.5.1;

“**Applicable Laws**” means all laws, brought into force and effect by GOI or the State Government including rules, regulations and notifications made thereunder, and judgements, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement;

“**Applicable Permits**” means all clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the construction, operation and maintenance of the Buses and Maintenance Depots, as the case may be, during the subsistence of this Agreement;

“**Appointed Date**” means the date on which Financial Close is achieved and all the Condition Precedents are satisfied or waived, as the case may be, in accordance with the provisions of this Agreement, and such date shall be the date of commencement of the Contract Period;

“**Arbitration Act**” means the Arbitration and Conciliation Act, 1996 and shall include modifications to or any re-enactment thereof, as in force from time to time;

“**Associate**” or “**Affiliate**” means, in relation to either Party {and/or Consortium Members}, a person who controls, is controlled by, or is under the common control with such Party {or Consortium Member} (as used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise);

“**Authority Default**” shall have the meaning set forth in Clause 32.2.1;

“**Authority Nominated Personnel**” means any person authorized by the Authority to collect User Fare from passengers for using the Bus Service;

“**Authority Representative**” means such person or persons as may be authorised in writing by the Authority to act on its behalf under this Agreement and shall include any person or persons having authority to exercise any rights or perform and fulfil any obligations of the Authority under this Agreement;

“**BOOT**” or “**Build, Own, Operate and Transfer**” shall have the meaning as set forth in Recital (G);

“**Bank**” means a nationalised bank or a scheduled bank incorporated in India and having a minimum net worth of Rs. 1,000 crore (Rupees one thousand crore). For the avoidance of doubt, scheduled bank shall mean a bank as defined under section 2(e) of the Reserve Bank of India Act, 1934;

“**Bank Rate**” means the rate of interest specified by the Reserve Bank of India from time to time in pursuance of section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect;

“**Base Index Date**” means the last date of the month which shall have closed no later than 30 (thirty) days prior to the Bid Date;

“**Bid**” means the documents in their entirety comprised in the bid submitted by the {selected bidder/Consortium} in response to the Request for Proposals in accordance with the provisions thereof and “**Bids**” shall mean the bids submitted by any and all pre-qualified bidders;

“**Bid Date**” means the last date on which the Bid may have been submitted in accordance with the provisions of the Request for Proposals;

“**Bid Security**” means the security provided by the Operator to the Authority along with the Bid in accordance with the Request for Proposals, and which is to remain in force until substituted by the Performance Security;

“**Breakdown**” means the mechanical failure of a bus that prevents the bus from being operation or impedes the operation so much that it is impossible or dangerous to operate;

“**Bus**” means bus complying with Standards and Specifications as detailed in Schedule B, procured by the Operator as per the Procurement Schedule, for the purposes of Project;

“**Bus Kilometre**” means kilometres travelled by each Bus, as per this Agreement or as directed/approved by the Authority;

“**Bus Stop**” means designated stops as per Schedule [•] along the routes from where passengers board and alight the Bus;

“**CPIIW**” means the Consumer Price Index for Industrial Workers published by Labour Bureau, Government of India and shall include any index which substitutes the CPIIW, and any reference to CPIIW shall, unless the context otherwise requires, be construed as a reference to the CPIIW published for the period ending with the preceding month;

“**Change in Law**” means the occurrence of any of the following after the Bid Date:

- (a) the enactment of any new Indian law;
- (b) the repeal, modification or re-enactment of any existing Indian law;
- (c) the commencement of any Indian law, which has not entered into effect until the Bid Date;
- (d) a change in the interpretation or application of any Indian law, by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the Bid Date; or
- (e) any change in the rates of any of the Taxes that have a direct effect on the Agreement;

[**“Change in Ownership”** means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares or a fresh issue of any of the foregoing, that causes the aggregate holding of the {Selected Bidder/Consortium Members}, together with {its/their} Associates in the total Equity to decline below (i) 51% (fifty one per cent) thereof till the COD and (ii) 26% (twenty six per cent) thereof, or such lower proportion as may be permitted by the Authority during the remaining Contract Period; provided that any material variation (as compared to the representations made by or on behalf of the Operator during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its application or Bid, as the case may be,) in the proportion of the equity holding of {the Selected Bidder/ Lead Member} to the total Equity, if it occurs prior to COD, shall constitute Change in Ownership. Any direct and/or indirect transfer of legal or beneficial ownership of any shares, or securities convertible into shares, (i) such that the Consortium Members cease to collectively hold a minimum of 51% (fifty one per cent) of the subscribed and paid-up Equity of the Operator, (ii) the Lead Member cease to hold a minimum of 38% (thirty eight per cent) of such Equity, or (iii) by any Consortium Member whose technical and/or financial capacity was evaluated for the purposes of pre-qualification and short-listing in response to the Request for Qualification, that results, or may result, in such member ceasing to hold Equity less than; (a) 26% (twenty six per cent) of the Equity; or (b) 5% (five per cent) of the total project cost, till the expiry of COD, shall constitute a Change in Ownership;]

“Change of Scope” shall have the meaning as set forth in Clause 15.1;

“Change of Scope Order” shall have the meaning set forth in Clause 15.2;

“Charging Infrastructure” means the infrastructure including the equipment installed by the Operator for the sole purpose of charging Buses at the Maintenance Depots;

“Control Centre” shall have the meaning as set forth in Clause 16.4.6;

“Conditions Precedent” shall have the meaning as set forth in Clause 4.1.1;

{**“Consortium”** shall have the meaning as set forth in Recital (B);}

{**“Consortium Member”** means a company specified in Recital (B) as a member of the Consortium;}

“Consumables” shall have the meaning as set forth in Clause 17.3.1;

“Construction Period” means the period beginning from the Appointed Date and ending on COD;

“Construction Works” means all works and things necessary to complete the Maintenance Depots in accordance with this Agreement;

“Contract” shall have the meaning as set forth in Clause 3.1.1

“Contractor” means the person or persons, as the case may be, with whom the Operator has entered into any of the construction contracts, the O&M Contract any other material contract for construction, operation and/or maintenance of the Maintenance Depots or the Buses, as the case may be, or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Operator;

“**Cure Period**” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall:

- (a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;
- (b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and
- (c) not in any way be extended by any period of Suspension under this Agreement;

provided that if the cure of any breach by the Operator requires any reasonable action by the Operator that must be approved by the Authority hereunder, the applicable Cure Period shall be extended by the period taken by the Authority to accord its approval;

“**Damages**” shall have the meaning as set forth in Sub-clause (y) of Clause 1.2.1;

“**Debt Due**” means the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date:

- (a) the principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost (the “principal”) but excluding any part of the principal that had fallen due for repayment [two years] prior to the Transfer Date;
- (b) all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in Sub-clause (a) above until the Transfer Date but excluding (i) any interest, fees or charges that had fallen due one year prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Senior Lender, and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Authority Default; and
- (c) any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost;

provided that if all or any part of the Debt Due is convertible into Equity at the option of Senior Lenders and/or the Operator, it shall for the purposes of this Agreement be deemed to be Debt Due even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

“**Debt Service**” means the sum of all payments on account of principal, interest, financing fees and charges due and payable in an Accounting Year to the Senior Lenders under the Financing Agreements;

“**Depot Sites**” shall have the meaning as set forth in Article 10;

“**Designs**” or “**Drawings**” means all of the drawings, designs, calculations and documents pertaining to the Buses as set forth in Schedule-F;

“**Dispute**” shall have the meaning as set forth in Clause 39.1.1;

“**Dispute Resolution Procedure**” means the procedure for resolution of Disputes as set forth in Article 39;

“**Divestment Requirements**” means the obligations of the Operator for and in respect of Termination as set forth in Clause 33.1.1;

“**Document**” or “**Documentation**” means documentation in printed or written form, or in tapes, discs, drawings, computer programmes, writings, reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form;

“**Emergency**” means a condition or situation that is likely to endanger the security of the individuals on or about the Maintenance Depots or Buses, as the case may be, or which poses an immediate threat of material damage to any of the Project Assets;

“**Encumbrances**” means, in relation to the Depot Sites Maintenance Depots or Buses and [Real Estate Development], as the case may be, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Maintenance Depots, or Buses, as the case may be, where applicable herein;

“**Equity**” means the sum expressed in Indian Rupees representing the paid up equity share capital of the Operator for meeting the equity component of the Total Project Cost, and for the purposes of this Agreement shall include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Operator, and any interest-free funds advanced by any shareholder of the Operator for meeting such equity component.

“**Escrow Account**” means an Account which the Operator shall open and maintain with a Bank in which all inflows and outflows of cash on account of capital and revenue receipts and expenditures shall be credited and debited, as the case may be, in accordance with the provisions of this Agreement, and includes the Sub-Accounts of such Escrow Account;

“**Escrow Agreement**” shall have the meaning set forth in Clause 27.1.2;

“**Escrow Bank**” shall have the meaning set forth in Clause 27.1.1;

“**Escrow Default**” shall have the meaning set forth in Schedule-M;

“**Failure**” shall have the meaning set forth in Clause 17.12.2;

“**Fee**” shall have the meaning set forth in Clause 22.1;

“**Fee Revision**” shall have the meaning set forth in Clause 22.5.1;

“**Fee Revision Date**” means the date of Fee Revision in accordance with Clause 22.5;

“**Financial Close**” means the fulfilment of all conditions precedent to the initial availability of funds under the Financing Agreements;

“**Financial Model**” means the financial model adopted by Senior Lenders, setting forth the capital and operating costs of the Project and revenues therefrom on the basis of which financial viability of the Project has been determined by the Senior Lenders, and includes a description of the assumptions and parameters used for making calculations and projections therein;

“**Financial Package**” means the financing package indicating the total capital cost of the Project and the means of financing thereof, as set forth in the Financial Model and approved by the Senior Lenders, and includes Equity, all financial assistance specified in the Financing Agreements, Subordinated Debt, if any;

“**Financing Agreements**” means the agreements executed by the Operator in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the Total Project Cost, and includes amendments or modifications made in accordance with Clause 5.2.3;

“**Force Majeure**” or “**Force Majeure Event**” shall have the meaning ascribed to it in Clause 29.1;

“**GOI**” means the Government of India;

“**Good Industry Practice**” means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Operator in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;

“**Government Instrumentality**” means any department, division or sub-division of the Government of India or the State Government and includes any commission, board, authority, agency or municipal and other local authority or statutory body, including Panchayat, under the control of the Government of India or the State Government, as the case may be, and having jurisdiction over all or any part of the Buses or Maintenance Depots as the case may be, or the performance of all or any of the services or obligations of the Operator under or pursuant to this Agreement;

“**Guaranteed Safety**” shall have the meaning as set forth in Clause 20.6.3;

“**Guaranteed Reliability**” shall have the meaning as set forth in Clause 20.4.4;

“**Indemnified Party**” means the Party entitled to the benefit of an indemnity pursuant to Article 37;

“**Indemnifying Party**” means the Party obligated to indemnify the other Party pursuant to Article 37;

“**Indirect Political Event**” shall have the meaning as set forth in Clause 29.3;

“Insurance Cover” means the aggregate of the maximum sums insured under the insurances taken out by the Operator pursuant to Article 25, and includes all insurances required to be taken out by the Operator under Clause 25.2 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

“Intellectual Property” means all patents, trade marks, service marks, logos, get-up, trade names, internet domain names, rights in designs, blue prints, programmes and manuals, drawings, copyright (including rights in computer software), database rights, semi-conductor, topography rights, geographical indicators, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world;

“Invoice Amount” shall have the meaning as set forth in Clause 22.3.1;

“Key Performance Indicators” shall have the meaning as set forth in Clause 20.1;

“LOA” or **“Letter of Award”** means the letter of award referred to in Recital (D);

“Lead Member” shall mean the lead member of the Consortium, and in the event there is no Consortium, the Selected Bidder;

“Lenders’ Representative” means the person duly authorised by the Senior Lenders to act for and on behalf of the Senior Lenders with regard to matters arising out of or in relation to this Agreement, and includes his successors, assigns and substitutes;

“Licensed Premises” shall have the meaning set forth in Clause 10.2.2;

“Maintenance Depots” shall have the meaning as set forth in Clause 17.14;

“Maintenance Depot Completion Date” means the date on which the Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of Article 14;

“Maintenance Depot Completion Schedule” means the Project Milestones set forth in Schedule-E for completion of the Maintenance Depots on or before the Scheduled Maintenance Depot Completion Date;

“Maintenance Inspection Report” shall have the meaning as set forth in Clause 19.3;

“Maintenance Manual” shall have the meaning ascribed to it in Clause 17.2;

“Maintenance Obligations” shall have the meaning as set forth in Clause 17.1.1;

“Maintenance Requirements” shall have the meaning as set forth in Clause 17.4;

“Material Adverse Effect” means a material adverse effect of any act or event on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to either Party;

“**Non-Political Event**” shall have the meaning as set forth in Clause 29.2;

“**O&M**” means operation and maintenance of the Buses and includes all matters connected with or incidental to such maintenance, and provision of services and facilities in accordance with the provisions of this Agreement;

“**O&M Contract**” means the maintenance contract that may be entered into between the Operator and the O&M Contractor for performance of all or any of the O&M obligations;

“**O&M Contractor**” means the person, if any, with whom the Operator has entered into an O&M Contract for discharging O&M obligations for and on behalf of the Operator;

“**O&M Expenses**” means expenses incurred by or on behalf of the Operator or by the Authority, as the case may be, for all O&M including (a) cost of salaries and other compensation to employees, (b) cost of materials, supplies, utilities and other services, (c) premia for insurance, (d) all taxes, duties, cess and fees due and payable for O&M, (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs, (f) payments required to be made under any other contract in connection with or incidental to O&M, and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement;

“**Operation Manual**” shall have the meaning as set forth in Clause 17.21.2;

“**Operational Route**” shall have the meaning as set forth in Clause 17.14;

“**Operator Default**” shall have the meaning as set forth in Clause 32.1.1;

“**Panel of Chartered Accountants**” shall have the meaning set forth in Clause 26.2;

“**Parties**” means the parties to this Agreement collectively and “**Party**” shall mean any of the parties to this Agreement individually;

“**Performance Security**” shall have the meaning as set forth in Clause 9.1.1;

“**PHPDT**” or “**Peak Hour Peak Direction Traffic**” means the maximum number of Users commuting through the entire length of the busiest section of a Route consisting of [5 (five)] successive bus stops on a Route during a Peak Hour in the direction which is carrying a higher volume of traffic;

“**PK Fee**” shall have the meaning as set forth in Clause 22.1.5

“**PKM**” or “**Passenger Kilometres**” means the cumulative distance travelled by Users on the Buses in a day;

“**Political Event**” shall have the meaning as set forth in Clause 29.3;

“**Project**” means the supply, operation and maintenance of Buses and the construction, operation and maintenance of the Maintenance Depots in accordance with the provisions of this Agreement, and includes all works, services and equipment relating to or in respect of the Scope of the Agreement [and shall include Real Estate Development];

“Project Agreements” means this Agreement, construction contracts, [O&M Contract], [all agreements relating to Real Estate Development] and any other material agreements or contracts that may be entered into by the Operator with any person in connection with matters relating to, arising out of or incidental to this Agreement, but does not include any agreement for procurement of components, sub-systems for the Buses and goods and services for the Maintenance Depots;

“Project Assets” means all physical and other assets relating to and forming part of the Depot Sites and Maintenance Depots, including:

- (a) rights over the Depot Sites in the form of licence, Right of Way or otherwise;
- (b) tangible assets such as civil works and equipment including foundations, embankments, electrical systems, communication systems and administrative offices;
- (c) all rights of the Operator under the Project Agreements;
- (d) financial assets, such as receivables, security deposits etc.;
- (e) insurance proceeds; and
- (f) Applicable Permits and authorisations relating to or in respect of the Project;

“Project Milestones” means the project milestones set forth in Schedule-E;

“Prompt Response Teams” or **“PR Teams”** shall have the meaning as set forth in Clause 17.14.1;

“Prototypes” shall have the meaning as set forth in Clause 13.5.1;

“Punch List” shall have the meaning set forth in Clause 14.1.4;

“Re.”, **“Rs.”** or **“Rupees”** or **“Indian Rupees”** means the lawful currency of the Republic of India;

“Real Estate Development” shall have the meaning set forth in Clause 3.1.3;

“Reliability” shall have the meaning as set forth in Clause 20.2.1;

“Reliability Measurement Unit” shall have the meaning as set forth in Clause 20.4.2;

“Reference Exchange Rate” means, in respect of any one currency that is to be converted into another currency in accordance with the provisions of this Agreement, the exchange rate as of 12.00 (twelve) noon on the relevant date quoted in Delhi by the State Bank of India, and in the absence of such rate, the average of similar rates quoted in Delhi by the Bank of India and the Bank of Baroda;

“Reference Index Date” for and in respect of a Year, means the last date of the month which shall have closed no later than 30 (thirty) days prior to commencement of that Year;

“Request for Proposals” or **“RFP”** shall have the meaning as set forth in Recital (C);

“Request for Qualification” or **“RFQ”** shall have the meaning as set forth in Recital (B);

“**Right of Way**” means the constructive possession of the Depot Sites, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for construction, operation and maintenance of the Maintenance Depots [and Real Estate Development], in accordance with this Agreement;

“**Safety**” shall have the meaning as set forth in Clause 20.6.1

“**Safety Measurement Unit**” shall have the meaning as set forth in Clause 20.6.2

“**Safety Requirements**” shall have the meaning as set forth in Clause 18.1;

“**Scheduled Maintenance Depot Completion Date**” shall have the meaning set forth in Clause 12.5.1;

“**Scope of the Project**” shall have the meaning as set forth in Clause 2.1;

“**Selected Bidder**” shall have the meaning as set forth in Recital (D);

“**Senior Lenders**” means the financial institutions, banks, multilateral lending agencies, trusts, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Operator under any of the Financing Agreements for meeting all or any part of the Total Project Cost and who hold *pari passu* charge on the assets, rights, title and interests of the Operator;

“**Site**” shall have the meaning set forth in Clause 10.1;

“**Spares**” shall have the meaning as set forth in Clause 17.3.2;

“**Specifications and Standards**” means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Buses and Maintenance Depots, as set forth in Schedule-B, and any modifications thereof, or additions thereto, as included in the design and engineering for the Buses submitted by the Operator to, and expressly approved by, the Authority;

[“**Specified Assets**” means and includes all or any of the following:

- (a) all buildings and immovable fixtures or structures forming part of Real Estate Development;
- (b) such of the Project Assets which are constructed, acquired or installed after the [5th (fifth)] anniversary of COD, but before the [10th (tenth)] anniversary thereof; and but shall in no case include land;]

“**State**” means the States of India, including a Union Territory, where the Buses are operated and the Maintenance Depots are located and “**State Government**” means the governments of those States;

“**Statutory Auditors**” means a reputable firm of chartered accountants acting as the statutory auditors of the Operator under the provisions of the Companies Act, 2013 including any re-enactment or amendment thereof, for the time being in force;

“**Subordinated Debt**” means the aggregate of the following sums expressed in Indian Rupees or in the currency of debt, as the case may be, outstanding as on the Transfer Date:

- (a) the principal amount of debt provided by lenders or the Operator’s shareholders for meeting the Total Project Cost and subordinated to the financial assistance provided by the Senior Lenders; and
- (b) all accrued interest on the debt referred to in Sub-clause (a) above but restricted to the lesser of actual interest rate and a rate equal to 5% (five per cent) above the Bank Rate in case of loans expressed in Indian Rupees and lesser of the actual interest rate and six-month LIBOR (London Inter Bank Offer Rate) plus 2% (two per cent) in case of loans expressed in foreign currency, but does not include any interest that had fallen due one year prior to the Transfer Date;

provided that if all or any part of the Subordinated Debt is convertible into Equity at the option of the lenders and/or the Operator’s shareholders, it shall for the purposes of this Agreement be deemed to be Subordinated Debt even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

“**Suspension**” shall have the meaning as set forth in Clause 31.1;

“**Taxes**” means any Indian taxes including the goods and services tax, excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Project, which are charged, levied or imposed by any Authority Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

“**Termination**” means the expiry or termination of this Agreement;

“**Termination Notice**” means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;

“**Termination Payment**” means the amount payable by the Authority under and in accordance with the provisions of this Agreement, upon Termination and includes Additional Termination Payment. For the avoidance of doubt, it is expressly agreed that the amount payable shall be subject to the limitations specified in Clause 32.3;

“**Tests**” means the tests as set forth in Schedule-H to determine the conformity of Buses with the provisions of this Agreement;

“**Total Project Cost**” means the capital cost incurred on construction and financing of the Project, excluding Real Estate Development, and shall be limited to the lowest of:

- (a) the capital cost of the Project, as set forth in the Financial Package;
- (b) the actual capital cost of the Project upon completion; and
- (c) a sum of Rs. ***** crore (Rupees ***** crore);

provided that in the event of Termination, the Total Project Cost shall be deemed to be modified to the extent of variation in WPI or Reference Exchange Rate occurring in respect of Adjusted Equity and Debt Due, as the case may be, in accordance with the provisions of this Agreement; provided further that in the event WPI increases, on an average, by more than 6% (six per cent) per annum for the period between the date hereof and COD, the Parties shall meet, as soon as reasonably practicable, and agree upon revision of the amount hereinbefore specified such that the effect of increase in WPI, in excess of such 6% (six per cent), is reflected in the Total Project Cost. For the avoidance of doubt, it is agreed that Total Project Cost shall not include the cost of Specified Assets.

“**Training Obligations**” shall have the meaning as set forth in Clause 23.1;

“**Transfer Date**” means the date of completion of the Services under this Agreement or termination of the Agreement by a Termination Notice;

“**User**” means a person who uses or intends to use the Buses on payment of User Fare or in accordance with the provisions of this Agreement and Applicable Laws;

“**User Fare**” means the fare payable by users for traveling on the Bus;

“**Vesting Certificate**” shall have the meaning as set forth in Clause 33.6.

“**WPI**” means the Wholesale Price Index for all commodities as published by the Ministry of Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the WPI published for the period ending with the preceding month.

SCHEDULES

SCHEDULE-A
(See Clause 10.1)

SITE OF THE MAINTENANCE DEPOT

1 The Depot Site

- 1.1 Depot Site shall include the land described in Annex-I of this Schedule-A.
- 1.2 An inventory of the Site including the land, buildings, structures, road works, trees and any other immovable property on, or attached to the Site shall be prepared jointly by the Authority Representative and the Operator, and such inventory shall form part of the memorandum referred to in Clause 10.3.1 of the Agreement.

Annex - I

Site of the Depot

[•]

Note: Through suitable drawings and description in words, the land comprising the Site shall be specified briefly but precisely. In the event there are any buildings or structures on the Site, the same shall be marked in the drawings and briefly described in words.

**[Annex-II
Real Estate Development]**

Annex - III
Funded Works
[●]

SCHEDULE -B
(See Clause 12.5.1)

SPECIFICATIONS AND STANDARDS

1. The Operator shall comply with the Bus Specifications (including specifications for ITS) set forth in Annex - I of this Schedule - B for procurement of Buses.

2. Latest bus specifications, currently [Urban Bus Specifications - II issued by Ministry of Urban Development, GOI in April 2013, the AIS 052 – Bus Body Code issued by the Automotive Research Association of India (“ARAI”) in 2015, and the Central Motor Vehicles Rules, 1989], should be followed unless changes are specified in Annex - I to this schedule by the Authority.

Annex – I

1. Subject to the provisions of this Schedule, procurement of Bus shall conform to Applicable Laws and the latest bus specifications published by Ministry of Urban Development, GOI. An authenticated copy of the latest bus specifications has been provided to the Operator as part of the RFP.
2. Deviations from the aforesaid bus specifications shall be listed out here. Such deviations shall be specified only if they are considered essential in view of project-specific requirements.

SCHEDULE-C
(See Clause 4.1.3)

APPLICABLE PERMITS

I. The following permits shall be obtained by the Operator:

1. [For Buses

- (a) Commercial Vehicle Permit
- (b) Certificate of Registration of Buses
- (c) Certificate of Fitness
- (d) Pollution under Control Certification
- (e) Bus Insurance
- (f) Customs Clearance Certificate (if needed)

2. For Depot

- (a) Permits for Building Plan in accordance with the applicable State Act and by-laws
- (b) Fire safety clearance from Fire Department
- (c) Insurance for Depot, Electrical & Civil Infrastructure and other Authority owned assets
- (d) Customs Clearance Certificate for any testing or maintenance equipment (if needed)
- (e) Permission of State Government for extraction of boulders from quarry
- (f) Permission of Pollution Control Board for installation of crushers
- (g) Permission of State Government for drawing water from nearby river/reservoir (if needed)
- (h) Clearance of Pollution Control Board for installation of diesel generator sets
- (i) Permission of State Government for cutting of trees
- (j) License for use of explosives (if needed)
- (k) License from Inspector of factories or other competent authority for setting up of Batch Plant (if needed)
- (l) Clearance of Pollution Control Board for Asphalt Plant (if needed)
- (m) Any other permits or clearances required under Applicable Laws]

II. The following permits shall be procured by the Authority:

- [1. No Objection Certificate from State Transport Department or RTA or from State Transport Undertaking as applicable
- 2. Stage Carriage Permit
- 3. Conductor's License
- 4. Bus Permits
- 5. Fare Notification
- 6. Passenger Tax
- 7. Applicable Environment Clearance from State Government]

SCHEDULE-D
(See Clause 9.1)

PERFORMANCE SECURITY

Managing Director / Chief General Manager,
Department of Transport, Government of India,
New Delhi-110002

WHEREAS:

- A. **The Governor of [•]**, acting through {.....}, [•], and having its head office at IP Estate, New Delhi, Delhi - 110002 (hereinafter referred to as the “**Authority**” or, which expression shall, unless excluded by and/or repugnant to the context, mean and include its successors, legal representatives and permitted assigns) of the one part;

AND

{***** Limited}, having its registered office at {insert} represented through its ***** (hereinafter referred to as the “**Operator**”, which expression shall, unless it be repugnant or contrary to the subject or context thereof, be deemed to mean and include its legal representatives, successors and permitted assigns) of the other part.

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

- B. The Agreement requires the Operator to furnish a Performance Security to the Authority in a sum of Rs(Rupees in words only) (the “**Guarantee Amount**”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the term of the Agreement Period (as defined in the Agreement).
- C. We,through our Branch at.....(the “**Bank**”) have agreed to furnish this Bank Guarantee by way of Performance Security.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Operator’s obligations during the Agreement Period, under and in accordance with the Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Operator, such sum or sums up to an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Authority, under the hand of an Officer not below the rank of the(*name of the officer*), that the Operator has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Operator

is in default in due and faithful performance of its obligations during the Agreement Period under the Agreement and its decision that the Operator is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Operator, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Operator for any reason whatsoever.

3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Operator and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Operator before presenting to the Bank its demand under this Guarantee.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/ or performance of all or any of the obligations of the Operator contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Operator, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Operator or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Operator for the fulfilment, compliance and/or performance of all or any of the obligations of the Operator under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force until a period of [●] days beyond the Agreement Period and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, no later than [●] months from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
9. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be

deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.

10. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of [●] year and [●] months or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

Signed and sealed thisday of , 20..... at

SIGNED, SEALED AND DELIVERED

For and on behalf of the BANK by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

NOTES:

- i. The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.
- ii. The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

SCHEDULE -E
(See Clause 12.5.1)

COMPLETION SCHEDULE

1. Project Completion Schedule

During Construction Period, the Operator shall comply with the requirements set forth in this Schedule-E for each of the Project Milestones and Scheduled Completion Date (the “**Project Completion Schedule**”). Within 15 (fifteen) days of the date of each Project Milestone, the Operator shall notify the Authority of such compliance along with necessary particulars thereof.

2. [The completion timeline of the following essential components, *inter alia*, of construction of Maintenance Depot shall be periodically reviewed by the Authority:

- (a) Structural Work
- (b) Electrical Work
- (c) IT/Telecom system
- (d) Fire safety system
- (e) Water supply system
- (f) Drainage system]

3. Scheduled Completion Date

The Scheduled Completion Date shall occur on the [180th] day from the Appointed Date. On or before the Scheduled Completion Date, the Operator shall have completed the Maintenance Depot in accordance with this Agreement.

4. Extension of period

Upon extension of any or all of the aforesaid Project Milestones or the Scheduled Completion Date, as the case may be, under and in accordance with the provisions of this Agreement, the Project Completion Schedule shall be deemed to have been amended accordingly.

SCHEDULE-F

(See Clause 13.4)

DESIGN AND DRAWINGS

1 Designs and Drawings

- 1.1 In compliance of the obligations set forth in Clause 13.1 of this Agreement, the Operator shall furnish to the Authority, free of cost, all Designs and Drawings listed in Annex-I of this Schedule-F; provided that the Designs and Drawings relevant for design review by the Government as specified in Clause 13.1.2, shall be submitted prior to such review.
- 1.2 For the purposes hereof, Design shall mean and include plans and drawings of the Buses or sub-system or equipment thereof. Provided that the Operator may share only details regarding the layout of the bus and not any other propriety information.
- [1.3 All designs shall include maintenance and service manual of the respective sub-systems.
- 1.4 All designs and drawings shall be supplied in hard copy, in duplicate, and in electronic form. All drawings shall be provided in auto-cad format.
- 1.5 All designs and drawings shall conform to and refer to the relevant provisions in the Specifications and Standards.
- 1.6 All designs and drawings shall be in English.

2 Additional Designs and Drawings

If the Authority determines that for discharging its duties and functions under this Agreement, it requires any designs or drawings other than those listed in Annex – I, it may by notice require the Operator to prepare and furnish such designs and drawings forthwith. Upon receiving a requisition to this effect, the Operator shall promptly prepare and furnish such designs and drawings to the Authority, as if such designs and drawings formed part of Annex – I of this Schedule F.]

Annex – I
List of Designs and Drawings
[●]

1 Designs and Drawings

In compliance with the requirement under Article 13.4.1, the Operator shall provide the following Designs and Drawings:

- [(i) General schematic Drawings
- [(ii) Bus Offer drawing attached Layout
- [(iii) Front, Rear and both Side Views of the offered design of the Bus]

SCHEDULE-G

(See Clause 13.3)

PROCUREMENT SCHEDULE

Sr. No.	Lot No.	Type of Bus	Number of Buses	Expected date of receipt of Buses from the Appointed Date	Expected date of achieving Readiness for Commencement of Bus Service
	1			Appointed Date + <i>[insert number of days for delivery of 1st Lot of Buses]</i>	<i>Appointed Date + [insert number of days for delivery of 1st Lot of Buses] + [45 (forty five) days]</i>
	2			Appointed Date + [insert number of days for delivery of 2nd Lot of Buses]	Appointed Date + [insert number of days for delivery of 2nd Lot of Buses] + [45 (forty five) days]
	3			Appointed Date + [insert number of days for delivery of 3rd Lot of Buses]	Appointed Date + [insert number of days for delivery of 3rd Lot of Buses] + [45 (forty five) days]

SCHEDULE-H
(See Clause 13.5)

TESTS

1 Tests

- 1.1 Save and except as otherwise provided in this Agreement, the Operator shall conduct, or cause to be conducted, each of the Tests specified in this Schedule-H.
- 1.2 The Authority shall conduct, or cause to be conducted, adequate trial runs of Prototypes to determine their compliance with Specifications and Standards, requirements and Safety Requirements.
- 1.3 Tests to be conducted on the Prototype or its sub-systems, as the case may be, (the “**Type Tests**”) have been specified in Annex-I of this Schedule-H and routine tests to be carried out on all Buses (the “**Routine Tests**”) have been specified in Annex-II of this Schedule-H.
- 1.4 The Operator shall provide the results of all Tests to the Authority for review and comments, if any.

2 Schedule for Tests

- 2.1 The Operator shall, not later than [●] weeks prior to the likely date of conducting a Type Test, notify the Authority of its intent to conduct the Test and furnish particulars of the equipment and methodology forming part of the Test.
- 2.2 The Operator shall notify the Authority of its intent to conduct the Type Test, referred to in paragraph 2.1 above, at any time after [●] days from the date of such notice. The notice shall specify the place, date and time of such Test. Upon receipt of such notice, the Authority may, within [●] days of such notice, designate its representative to witness the Test. The Operator shall, whether or not an Authority Representative is designated, conduct the Test in accordance with Article 13 and this Schedule-H.
- 2.3 The Authority may at any time designate its representative to witness any Routine Test on a Bus and the Operator shall, upon receipt of a notice to this effect, undertake such Routine Test on a mutually agreed date, and in the presence of the Authority Representative.

3 Agency for conducting Tests

Save and except as otherwise specified, all Tests set forth in this Schedule-H shall be conducted by the Operator or such other agency or person as it may specify in consultation with the Authority.

4 Tests for Safety certification

Tests for determining the conformity of a Bus with the Safety Requirements shall be conducted in accordance with Good Industry Practice and in conformity with Applicable Laws.

5 Acceptance certificate

Upon successful completion of Tests, the Authority shall issue an Acceptance Certificate for the Prototype in accordance with the provisions of Article 13.

Annex - I
Type Tests
[●]

In addition to the standard Type Tests of ARAI, the following tests shall be conducted for the buses:

S. No.	Applicable Tests	Standard / Regulation
1	Gradeability	AIS 003 & AIS 049
2	Pass by noise	IS 3028 & AIS 049
3	Coast Down Test	IS 14785 & AIS 049
4	Brake, Base line (Part – 3)	IS 11852 & AIS 049
5	Brake static (Part - 4)	IS 11852 & AIS 049
6	Construction and Functional safety requirements	AIS 038
7	Electrical energy consumption	AIS 039
8	Range Test	AIS 040
9	Net Power and Max 30 min power test	AIS 041
10	Safety requirements of Traction batteries	AIS 048
11	EMC	AIS 004 (Part 3) & AIS 049

Annex - II

Routine Tests

[•]

[Routine Tests under this Agreement shall include the list of routine tests determined by Government Instrumentality including ARAI from time to time.]

SCHEDULE-I
(See Clause 16.1.1)

OPERATION AND MAINTENANCE REQUIREMENTS

Bus repair and maintenance generally calls for following activities amongst others at varying intervals / periodicity / Km operated by each bus, requirements varying with bus make, model, etc.:

- (a) Daily washing and cleaning of buses
- (b) Periodic inspections and rectifications as required.
- (c) Preventive Maintenance as prescribed by Bus Manufacturer in form of maintenance schedules at certain time intervals / Km plied- such maintenance generally varies with period / Km plied by various sub-systems of a Bus. As an example periodicity of some such maintenance schedules and main activities therein are illustrated as under:
 - (i) Daily maintenance - fuel, oils / lubricants, coolant, air pressure, air inflation, loose fasteners, fitments etc. - check, top up, tighten, as required.
 - (ii) Monthly / bi-monthly – [•] / [•] Km operation -All activities of earlier schedules and engine oil / engine filter change, checking for exhaust emission, tyre condition necessary for corrective / preventive actions, engine tuning, etc.
 - (iii) Quarterly – [•] Km operation - All activities of earlier schedules and brake system maintenance including but not limited to inspection, servicing, brake lining change / replacement, servicing of other brake system items, greasing etc.; vehicle electrical, lighting, alignment, etc.
 - (iv) Six monthly – [•] Km - All activities of above schedules, and activities related to steering, axles, transmission, tyres, drive line, etc.
 - (v) Yearly – [•] Km - All above activities and full checking / inspection of bus chassis, bus bodies and their fitments, and taking necessary corrective / preventive actions.
 - (vi) Bi-annual / annual -Certification of road worthiness of buses - Initial periodicity being after two years for up to certain age then annually.
 - (vii) Replacement of in-use bus aggregates at about Mean Time Between Failures (MTBF) to prevent failures and consequent costs and inconvenience.
- (d) Running repairs upon Driver complaints/ report etc.
- (e) Break down repairs on-site of Bus failures
- (f) Towing of failed Bus to a depot workshop and repairing the bus failures
- (g) Accidental vehicles' towing and or repairs
- (h) Preparation of buses for periodic roadworthiness certification which includes all types of denting / painting of bus bodies / bus body items and operational functionality of chassis

items and the bus as a whole.

- (i) Bus body and related items repairs / replacements etc. on the basis of periodic inspections / crew reports / general presentation aspects / operational problems reported by commuters / any other stake holders, etc.
- (j) Major repairs /calibrations of bus aggregates such as engines, gear box, rear axle etc.
- (k) Replacement of failed aggregates with new / serviceable ones.
- (l) Removal, dismantling, repairing, assembling and re-fitment of tyres and rims to buses.
- (m) Repair, replacement of electrical, electronic, ITS, lighting, etc. items, subsystems etc.
- (n) Removal, replacement of items failing due to operational wear and tear, such as brake and clutch lining, etc.
- (o) Repair / replacement of seats, upholstery; cleaning, dusting and washing upholstery.
- (p) Denting / painting of buses as per requirement.
- (q) Reconditioning of Bus aggregates such as engines, transmission, axles, steering system, electrical, etc.
- (r) Retrieval of spare parts during / for above processes,
- (s) Repair and re-treading of tyres / repair of tubes,
- (t) Major accidental repair of buses including chassis, bus body and related items
- (u) Acquisition, storage, inventory management, distribution, scrapping and disposal of spares / items / materials / vehicles etc.
- (v) Any other activity related to operation and maintenance of buses.
- (w) Infrastructure and other requirements for repair and maintenance functions of Bus
 - (i) Bus depot duly equipped with requisite plant and equipment, machinery, tools, jigs and fixtures, etc.
 - (ii) Other facilities as under:
 - (A) Washing facilities complete with washing machine, water storage and treatment facilities, etc.
 - (B) Charging infrastructure,
 - (C) Service pits / ramps etc.
 - (D) Painting facilities,

- (E) Welding - electric arc and oxy-acetylene gas based.
 - (F) Tyre repair facilities
 - (G) Air compressor and air inflation facilities,
 - (H) Utilities, administrative, accounts, stores, and other related facilities
 - (I) Breakdown van / recovery / towing vehicle etc.
- (iii) Control Centre facilities duly equipped with microprocessors, communications and other related facilities,
 - (iv) Trained staff for various trades and shifts of work
 - (v) Documents, schedules, manuals etc. for maintenance activities; specifications of spares, etc.

SCHEDULE-J
(See Clause 16.5)

DEPLOYMENT PLAN

The Deployment Plan should include list of Routes, frequencies, headway, number of Buses to be deployed on each Route, and any other information the Authority intends to include.⁴

Route Number	From	Via	To	Span of Operations	Number of Buses	Headway

Assured Fleet Availability of Buses

The following number of Buses shall operate on each respective route:

	Number of Buses Peak Requirement				Daily Scheduled Bus Kilometres		Number of Days/Nights		Total Scheduled Bus Kilometres	
	Morning	Midday	Evening	Night	Days	Nights	Days	Nights	Days	Nights
Mondays to Fridays										
Saturdays										
Sundays										
Public Holidays										
Total										
Total Scheduled Bus Kilometres										

Note 1: The number of Users in the Bus should not exceed 4 (four) persons during non-peak hours and 6 (six) persons during peak hours per square metre of the floor space available for use by passengers inside a Bus to ensure that the Operator can meet its KPIs accordingly.

SCHEDULE-K
(See Clause 18.1)

SAFETY REQUIREMENTS

1. General Safety Requirements

- 1.1 The Operator shall be responsible for all safety matters related to the performance of the Project and shall manage on behalf of the Authority all safety requirements related to the Bus Service in accordance with all Applicable Laws.
- 1.2 The Operator shall bear full responsibility for the safety of the Bus Services throughout the Contract Period in accordance with the Contract.
- 1.3 Without prejudice to the Operator's obligation to ensure the safety of the Bus Service, the Operator shall:
 - (a) comply with Applicable Laws;
 - (b) provide all appropriate measures in the providing Bus Service and maintenance of the Project Facilities to ensure, so far as reasonably practicable, the safety of all passengers, contractors, staff and the general public;
 - (c) consult with Authority and adopt the requirements of the emergency services;
 - (d) take particular care to ensure safety for all passengers at accesses and exits, while waiting, boarding or alighting and when moving along the Buses; and
 - (e) have due regard for the safety of third parties, in particular pedestrians and other road users, in the operation and maintenance of Project Facilities.

2. Safety Planning

- 2.1 The Operator shall participate in any safety and emergency planning forum together with relevant third parties, which shall include, as a minimum, the Authority and the emergency services. This forum will consider and agree the safety matters and safety risks presented by the Project, consult relevant internal and external stakeholders and examine these risks in a thorough manner and plan the appropriate contingencies.

3. Safety Management

- 3.1 The Operator shall develop safety procedures for the Project and shall implement the safety procedures throughout the Contract Period.

4. Applicable Laws

- 4.1 The Operator shall, after prior consultation with the Authority, implement all alterations to the Bus Service which are required by any Applicable Laws which comes into force after the Effective Date relating to safety.

4.2 The Operator shall comply and shall procure that Sub-Contractors shall comply with the requirements of all relevant Government Authorities

5. Response to Emergencies

5.1 The Operator shall react safely and quickly to emergencies in all aspects of the Project.

5.2 The Operator shall co-operate with relevant Fire Services, Police, and any other Government Instrumentalities wherever necessary.

5.3 The Operator shall develop an Emergency Management Plan that sets out its predetermined actions to providing a response to a major crisis or emergency occurring at Maintenance Depots, and en-Route Buses (“Emergency Management Plan”).

5.4 In developing the Emergency Management Plan, the Operator shall consult with all relevant Government Instrumentalities, emergency services and local authorities.

5.5 All personnel designated to carry out specific responsibilities under the Emergency Management Plan are expected to know and understand the policies and procedures outlined in the Plan. The response to any major crisis or disturbance shall always be conducted within the framework of the Plan.

5.6 The Operator shall ensure that all staff are given clear instructions in line with the Emergency Management Plan, including training to deliver public address announcements in a way that avoids causing alarm and that instils confidence in passengers that the matter is under control.

6. Reporting of Incidents

6.1 The Operator shall comply with all Applicable Laws relating to the reporting of accidents, incidents, fatalities, injuries, and dangerous occurrences. The Operator shall liaise with the Authority in relation to the reporting of any incident and the future measures to be taken to prevent the recurrence thereof.

SCHEDULE-L
(See Clause 17.1)

MAINTENANCE DEPOTS EQUIPMENT

Sr. No.	Equipment
A	
1.	Fully automatic three brushes bus washing machine with simultaneous chassis and wheel washing arrangement and complete with waste water treatment and recycling system.
2.	[Effluent Treatment Plant (ETP)]
3.	Heavy duty vacuum cleaner
4.	Fire safety equipment set
5.	Air compressor
6.	Paint booth complete with environment control, paint drying system, etc.
B	
7.	Lathe machine complete with general tools, jigs and fixtures
8.	Radial drilling machine
9.	Brake drum turning / re-boring machine
10.	Hydraulic press
11.	Brake efficiency assessment system
12.	Wheel alignment
13.	Head light beam aligner
C	
14.	Grease pump (Air operated)
15.	Hand held grease pump
16.	[Pneumatic combined waste oil extractor and dispenser]
D	
17.	Engine diagnostic system - complete with, sensors, microprocessor and diagnostics software
E	
18.	Pedestal mounted and portable digital, with auto cut-off, tire inflation system
19.	Nitrogen tire inflation
20.	Tire - wheel rim dismantling and assembling system / tyre changer
21.	Wheel balancing equipment

Sr. No.	Equipment
F	
22.	Simulators for Driver training
23.	Capacity building /training facilities and equipment
G	
24.	Auto electrical test bench
25.	AC gas charger with AC gas cylinders
26.	Battery charger auto cut-off system
27.	Battery tester
28.	Multi-function tester
H	
29.	Hydraulic jack
30.	Hydraulic pallet trolley
31.	Hydraulic engine lifting crane
32.	Battery operated forklift truck
33.	Break down relief van
I	
34.	Power cutter
35.	Pneumatic impact tools kit
36.	Portable electric welding machine
37.	Portable gas welding machine
38.	Full set of hand tools, including torque wrench, measuring instruments, gauges
39.	Riveting tools, hand drills, riveting guns / equipment
40.	Sheet metal / tubing / structural items cutting, forming facilities / equipment; plywood and upholstery cutting and fabrication facilities
J	
41.	Work benches, bench vices. Hand drills, jigs and fixtures, clamping devices,
42.	Commercial washing machine
43.	Washing pumps with guns
44.	Complete set of workmen cup boards, rest room facilities
45.	Office furniture, cup boards, all other office requirements
46.	All utilities- phones, fax, mobile phones, printers, etc. for workshop and other offices

Sr. No.	Equipment
47.	Vehicles for officers, checking, attending to alerts /emergencies
48.	Safety and security equipment / facilities
49.	Water cooler with water filter / purifier
50.	Tree plantation / landscaping
51.	Room air conditioners, desert coolers, heaters, fans in offices and workshop areas
52.	Depot yard lighting - high mast type, search lights, etc.
K	
53.	Storage facilities for: <ul style="list-style-type: none"> • new materials, spares, aggregates, tyres, oils and lubricants • repairable as above • scrapped and disposable items as above
54.	Vehicles for transportation of materials, stores and spares
55.	Desk tops and laptops, printers, related hard ware and software; cash counting, safe cash storage and handling equipment
L	
56.	Basic Control Centre equipment including those related to IT, ITS, communication, display, etc. - hardware and software
57.	Navigation based operational schedule monitoring system
M	Other ITS
58.	Electronic type passenger Information display boards at Bus Stops etc.
59.	Other equipment, facility, tools etc. if any required for O&M of Buses and for other facilities under its control

SCHEDULE-M
(See Clause 27.1)

ESCROW AGREEMENT

THIS ESCROW AGREEMENT is entered into on this the day of 20....

ESCROW AGREEMENT

THIS ESCROW AGREEMENT is entered into on this the day of 20....

AMONGST

- 1 Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at (hereinafter referred to as the “**Operator**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
- 2 (name and particulars of Lenders’ Representative) and having its registered office at acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “**Lenders’ Representative**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);
- 3 (name and particulars of the Escrow Bank) and having its registered office at (hereinafter referred to as the “**Escrow Bank**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and
- 4 The Governor of *****, represented by [**** and having its principal offices at *****] (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns).

WHEREAS:

- (A) The Authority has entered into a Supply cum Operation and Maintenance Agreement dated with the Operator (the “**SCOM Agreement**”) for operation of Buses on build, own and operate basis (“**BOO**”), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) The SCOM Agreement requires the Operator to establish an Escrow Account, *inter alia*, on the terms and conditions stated therein.

NOW THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

“Agreement” means this Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;

“Contract” means the Supply cum Operation and Maintenance Agreement referred to in Recital (C) above and annexed hereto as Annex-A, and shall include all of its Recitals and Schedules and any amendments made thereto in accordance with the provisions contained in this behalf therein;

“Cure Period” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Operator or the Authority, as the case may be and shall commence from the date on which a notice is delivered by the Authority or Operator, to the Operator or the Authority, as the case may be, with either the Operator or the Authority asking the other Party to cure the breach or default specified in such notice;

“Escrow Account” means an escrow account established in terms of and under this Agreement, and shall include the Sub-Accounts;

“Escrow Default” shall have the meaning ascribed thereto in Clause 6.1;

“Parties” means the parties to this Agreement collectively and “Party shall mean any of the Parties to this Agreement individually;

“Payment Date” means, in relation to any payment specified in Clause 4.1, the date(s) specified for such payment; and

“Sub-Accounts” means the respective Sub-Accounts of the Escrow Account, into which the monies specified in Clause 4.1 would be credited every month and paid out if due, and if not due in a month then appropriated proportionately in such month and retained in the respective Sub Accounts and paid out therefrom on the Payment Date(s).

1.2 Interpretation

1.2.1 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Contract shall, unless repugnant to the context, have the meaning ascribed thereto in the Contract.

1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

1.2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Contract shall apply, *mutatis mutandis*, to this Agreement.

2 ESCROW ACCOUNT

2.1 Escrow Bank to act as trustee

2.1.1 The Operator hereby appoints the Escrow Bank to act as trustee for the Authority, Lenders' Representative and the Operator in connection herewith and authorises the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.

2.1.2 The Operator hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Authority, Lenders' Representative and the Operator, and applied in accordance with the terms of this Agreement. No person other than the Authority, Lenders' Representative and the Operator shall have any rights hereunder as the beneficiaries of, or as third party beneficiaries under this Agreement.

2.2 Acceptance of Escrow Bank

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Operator or the Senior Lenders' or the Authority with the Escrow Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Authority, Lenders' Representative and the Operator or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

2.3 Establishment and operation of Escrow Account

2.3.1 Within {insert number of days} days from the date of this Agreement, and in any case prior to the Appointed Date, the Operator shall open and establish the Escrow Account with the..... (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.

2.3.2 The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.

2.3.3 The Escrow Bank and the Operator shall, after consultation with the Lenders' Representative and the Authority agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4 Escrow Bank's fee

The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Parties. Such fee and expenses shall be appropriated from the Escrow Account in accordance with Clause 4.1.

2.5 Rights of the parties

The rights of the Authority, Lenders' Representative and the Operator in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Authority, Lenders' Representative and the Operator shall have no other rights against or to the monies in the Escrow Account.

2.6 Substitution of the Operator

The Parties hereto acknowledge and agree that upon substitution of the Operator with the Nominated Company, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Agreement that the Nominated Company is a Party hereto and the Nominated Company shall accordingly be deemed to have succeeded to the rights and obligations of the Operator under this Agreement on and with effect from the date of substitution of the Operator with the Nominated Company.

3 DEPOSITS INTO ESCROW ACCOUNT

3.1 Deposit by the Authority

3.1.1 The Authority agrees and undertakes that it shall deposit into and/or credit the Escrow Account with;

- (a) Fee in accordance with Article 22 of the agreement wherein the Authority shall at all times throughout the Contract Period maintain in the Escrow Account, a balance of at least an amount equivalent to {2 (two)} months' estimated Fee;
- (b) Any other monies disbursed by the Authority to the Operator;
- (c) Damages payable to the Operator;
- (d) Termination Payments.

3.2 Deposits by the Operator

3.2.1 The Operator agrees and undertakes that it shall deposit into and/or credit the Escrow Account with:

- (a) all monies received in relation to the Project from any source, including the Senior Lenders, lenders of Subordinated Debt and the Operator;
- (b) all funds received by the Operator from its share-holders, in any manner or form;
- (c) any other revenues, rentals, deposits or capital receipts, as the case may be, from or in respect of the Project; and
- (d) all proceeds received pursuant to any insurance claims.

3.2.2 The Operator may at any time make deposits of its other funds into the Escrow Account, provided that the provisions of this Agreement shall apply to such deposits.

3.3 Deposits by Senior Lenders

The Lenders' Representative agrees, confirms and undertakes that the Senior Lenders shall deposit into and/or credit the Escrow Account with all disbursements made by them in relation to or in respect of the Project; provided that notwithstanding anything to the contrary contained in this Agreement, the Senior Lenders shall be entitled to make direct payments to the Contractors under and in accordance with the express provisions contained in this behalf in the Financing Agreements.

3.3 Interest on deposits

The Escrow Bank agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account; provided that the Escrow Bank shall be entitled to appropriate therefrom the fee and expenses due to it from the Authority in relation to the Escrow Account and credit the balance remaining to the Escrow Account.

4 WITHDRAWALS FROM ESCROW ACCOUNT

4.1 Withdrawals during Contract Period

4.1.1 At the beginning of every month, or at such intervals as the Authority may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub-Accounts for making due payments, and if such payments are not due in any month, then retain such monies in such Sub-Accounts and pay out therefrom on the Payment Date(s):

- (a) All payments towards taxes and other statutory levies, payable by the Operator for and in respect of the Project;
- (b) all payments relating to construction of the Maintenance Depot and procurement of Buses, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
- (c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
- (d) O&M Expenses incurred by the Authority, provided it certifies to the Escrow Bank that it had incurred such expenses in accordance with the provisions of the SCOM Agreement and that the amounts claimed are due to it from the Operator;
- (e) monthly proportionate provision of Debt Service due in an Accounting Year;
- (f) all payments and Damages certified by the Authority as due and payable to it by the Operator pursuant to the SCOM Agreement;
- (g) monthly proportional provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
- (h) any reserve requirements set forth in the Financing Agreements; and
- (i) balance, if any, in accordance with the instructions of the Operator.

4.1.2 No later than 60 (sixty) days prior to the commencement of each Accounting Year, the Operator shall provide to the Escrow Bank, with prior written approval of the Lenders'

Representative, details of the amounts likely to be required for each of the payment obligations set forth in this Clause 4.1; provided that such amounts may be subsequently modified, with prior written approval of the Lenders' Representative, if fresh information received during the course of the year makes such modification necessary.

4.2 Withdrawals upon Termination

Upon Termination of the Contract, all amounts standing to the credit of the Escrow Account shall, notwithstanding anything in this Agreement, shall be appropriated in the following order:

- (a) all taxes due and payable by the Operator for and in respect of the Project;
- (b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- (c) all payments and Damages certified by the Authority as due and payable to it by the Operator pursuant to the SCOM Agreement and any claims in connection with or arising out of Termination;
- (d) retention and payments arising out of, or in relation to, liability for defects and deficiencies set forth in Article 34 of the SCOM Agreement;
- (e) outstanding Debt Service including the balance of Debt Due;
- (f) outstanding Subordinated Debt;
- (g) incurred or accrued O&M Expenses;
- (h) any other payments required to be made under the SCOM Agreement; and
- (i) balance
- (j) if any, in accordance with the instructions of the Operator:

Provided that the disbursements specified in Sub-clause (j) of this Clause 4.2 shall be undertaken only after the Vesting Certificate has been issued by the Authority.

4.3 Application of insufficient funds

Funds in the Escrow Account shall be applied in the serial order of priority set forth in Clauses 4.1. If the funds available are not sufficient to meet all the requirements, the Escrow Bank shall apply such funds in the serial order of priority until exhaustion thereof.

4.4 Application of insurance proceeds

Notwithstanding anything in this Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilised for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project, and the balance remaining, if any, shall remain deposited in the Escrow Account.

5 OBLIGATIONS OF THE ESCROW BANK

5.1 Segregation of funds

Monies and other property received by the Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Escrow Bank in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Escrow Bank.

5.2 Notification of balances

[●] business days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Authority as to the relevant Payment Dates), the Escrow Bank shall notify the Authority of the balances and any anticipated shortfall in the Escrow Account and Sub-Accounts as at the close of business on the immediately preceding business day. In the event of any such shortfall, the Authority shall meet the same by crediting adequate sums to the Escrow Account from its own financial sources.

5.3 Communications and notices

In discharge of its duties and obligations hereunder, the Escrow Bank:

- (a) 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 Authority upon a certificate signed by or on behalf of the Authority;
- (b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;
- (c) shall, within [●] Business Days after receipt, deliver a copy to the Authority acting through..... (name to be specified by the Authority) of any notice or document received by the Escrow Bank (in its capacity as the Escrow Bank) from the Operator or any other person hereunder or in connection herewith;
- (d) shall, within [●] 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.

5.4 No set off

The Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Escrow Bank that the monies and properties held by the Escrow Bank in the Escrow Account shall not be considered as part of the assets of the Escrow Bank and being trust property, shall in the case of bankruptcy or liquidation of the Escrow Bank, be wholly excluded from the assets of the Escrow Bank in such bankruptcy or liquidation.

5.5 Regulatory approvals

The Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Escrow Account. The Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Escrow Bank.

6 ESCROW DEFAULT

6.1 Escrow Default

6.1.1 Authority Default

Following events shall constitute an event of default by the Authority (an “Authority Escrow Default”) unless such event of default has occurred as a result of Force Majeure or any act or omission of the Operator:

- (a) the Authority commits breach of this Agreement by failing to deposit any monies into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of [●] business days;
- (b) the Authority causes the Escrow Bank to transfer funds to any account of the Authority in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any Sub-Account in which such transfer should have been made, within a Cure Period of [●] business days; or
- (c) the Authority commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of [●] business days.

6.1.2 Operator Default

Following events shall constitute an event of default by the Operator (an “Operator Escrow Default”) unless such event of default has occurred as a result of Force Majeure or any act or omission of the Authority:

- (a) the Operator commits breach of this Agreement by failing to deposit any monies into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of [●] business days;
- (b) the Operator causes the Escrow Bank to transfer funds to any account of the Operator in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any Sub-Account in which such transfer should have been made, within a Cure Period of [●] business days; or
- (c) the Operator commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of [●] business days.

6.1.3 Upon occurrence of an Authority Escrow Default or Operator Escrow Default, as the case may be, the consequences thereof shall be dealt with under and in accordance with the provisions of the Contract.

7 TERMINATION OF ESCROW AGREEMENT

7.1 Duration of the Escrow Agreement

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 Authority and the Operator to the Escrow Bank, remain in full force and effect for the duration of the Contract.

7.2 Substitution of Escrow Bank

The Authority may after consultation with the Operator, by not less than [●] days prior notice to the Escrow Bank, the Authority, terminate this Agreement and appoint a new Escrow Bank, provided that arrangements are made for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank. The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

7.3 Closure of Escrow Account

The Escrow Bank shall, at the request of the Authority made on or after the payment by the Authority of all outstanding amounts under the Contract including the payments specified in Clause 4.2, and upon confirmation of receipt of such payments, close the Escrow Account and Sub-Accounts and pay any amount standing to the credit thereof to the Authority. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

8 SUPPLEMENTARY ESCROW AGREEMENT

8.1 Supplementary escrow agreement

The Authority and the Operator shall be entitled to enter into a supplementary escrow agreement with the Escrow Bank providing, inter alia, for detailed procedures and documentation for withdrawals from Sub-Accounts pursuant to Clause 4.1.1 and for matters not covered under this Agreement such as the restrictions on withdrawals by the Operator or the Authority in the event of breach of this Agreement or upon occurrence of an Escrow Default, procedures relating to operation of the Escrow Account and withdrawal therefrom, reporting requirements and any matters incidental thereto; provided that such supplementary escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

9 INDEMNITY

9.1 General indemnity

- 9.1.1 The Authority will indemnify, defend and hold the Operator and Escrow Bank, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Authority of any of its obligations under this

Agreement or on account of failure of the Authority to comply with Applicable Laws and Applicable Permits.

- 9.1.2 The Operator will indemnify, defend and hold the Authority harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Operator to fulfil any of its obligations under this Agreement materially and adversely affecting the performance of the Authority's obligations under the Contract.
- 9.1.3 The Escrow Bank will indemnify, defend and hold the Authority harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Escrow Bank to fulfil its obligations under this Agreement materially and adversely affecting the performance of the Authority's obligations under the Contract other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Escrow Bank, its officers, servants and agents.

9.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 9.1 or in respect of which it is entitled to reimbursement (the "Indemnified Party"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "Indemnifying Party") within [●] days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

10 DISPUTE RESOLUTION

10.1 Dispute resolution

- 10.1.1 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 with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "Rules") or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.
- 10.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be.....(name of the city) and the language of arbitration shall be English.

11 MISCELLANEOUS PROVISIONS

11.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the Courts at.....shall have jurisdiction over all matters arising out of or relating to this Agreement.

11.2 Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Authority with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

11.3 Priority of agreements

In the event of any conflict between the Contract and this Agreement, the provisions contained in the Contract shall prevail over this Agreement.

11.4 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

11.5 Waiver

11.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;

- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

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

11.6 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

11.7 Survival

11.7.1 Termination of this Agreement:

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

11.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of [●] years following the date of such termination or expiry of this Agreement.

11.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 10.1 of this Agreement or otherwise.

11.9 Successors and assigns

This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

11.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The addresses for service of each Party, its facsimile number or e-mail, are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

11.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

11.12 Authorised representatives

Each of the Parties shall, by notice in writing, designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

11.13 Original Document

This Agreement may be executed in four counterparts, each of which when executed and delivered shall constitute an original of this Agreement

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

SIGNED, SEALED AND
DELIVERED

SIGNED, SEALED AND
DELIVERED

For and on behalf of
ESCROW BANK by:

For and on behalf of
AUTHORITY by:

(Signature)
(Name)
(Designation)

(Signature)
(Name)
(Designation)

(Address)
(Fax No.)

(Address)
(Fax No.)

SIGNED, SEALED AND
DELIVERED

For and on behalf of OPERATOR
in the presence of:

1.

2.

SCHEDULE-N
(See Clause 20.9)

PASSENGER CHARTER

***** Buses**

At your service

Our Passenger Charter explains our commitments to you and sets out the targets that these are based upon. It is not legally binding and does not affect your legal rights, which are set under the law. Copies of the Conditions can be obtained from our Customer Service Centre. They can also be viewed online at www.*****.

Contents

- (1) Introduction
- (2) Our standards for bus service performance
- (3) Information and planning for your journey
- (4) Passengers who require assistance
- (5) Buying a ticket
- (6) Your journey
- (7) Claims for delays and cancellations
- (8) Listening to your views

1. Introduction

We want to give our passengers excellent service!

This is a bold statement but its intention is to focus the mind of every employee of the ***** Bus, on what is important - our passengers. We aim to provide you with:

- (i) Safe, clean, reliable and punctual services
- (ii) Clean and safe bus stops
- (iii) Reliable, timely and easy to understand information
- (iv) Polite, friendly and helpful staff

We will also continue to work at improving the integration of our bus services with other transport providers.

Inevitably, there will be times when problems occur and we are not able to achieve the standards we aim for. Our Charter explains what we will do for you when this happens.

2. Our standards for bus service performance

We will continue to work hard at improving our performance to provide you with a consistently reliable and punctual service.

2.1 Punctuality

Our target is that [95%] of the buses will arrive at their final destination within [one minute] of the scheduled time.

2.2 Peak time definition

Peak buses are any buses departing between 0800 and 1000 hours inclusive, or between 1700 and 1900 inclusive, Monday to Friday only and the aforesaid time definition may be modified from time to time depending on average daily traffic volumes during these hours.

2.3 Reliability

Our target is that [99%] of all scheduled services will run. This is measured from Monday to Friday (excluding public holidays).

You can view our performance results for the previous four weeks and 12 months on 'Track Record' posters displayed on the website of the ****.

The method of monitoring our performance is independently audited annually.

We do not include disruption caused by matters out of the industry's control, such as trespass, vandalism and terrorism.

3. Information and planning for your journey

We will provide you with accurate and impartial information about the bus services, fares and facilities to help you plan your journey. You can obtain this information in a number of ways.

(i) ***** Bus Enquiries - telephone: (24 hours)

***** Bus Enquiries offers you impartial information on bus times and fares for any part of the city, on behalf of all the bus companies.

* Calls are charged at a local rate and may be monitored.

You can also obtain online information about bus times and up-to-the-minute bus-running information by visiting www.*****.

(ii) Customer Service Centre – Tel: *****

In addition to the Bus Enquiries, Customer Service Centre also provides information on how our buses services are running. The Customer Service Centre is open 24 hours a day except on national holidays.

*Calls are charged at a local rate and may be monitored.

3.1 At the Maintenance Depots

We will display up-to-date timetable posters at all Maintenance Depots and our website ****. These will include the main destinations and connections.

Timetables and pocket timetables are available in advance of timetable changes.

We also provide information on posters and other signages at bus stops about the location of bus stops and other local transport to help you continue your journey.

3.2 Our website

We aim to provide as much useful and relevant information as possible on our website to help you plan your journey. This includes real-time bus-running information and pocket timetables to download.

3.3 Engineering work

3.3.1 Planned engineering work

From time to time, ***** Buses have to carry out planned engineering and improvement work to maintain the Buses. This can cause alterations to our services, especially on weekends and public holidays.

When alterations take place, we will advise you in advance where possible through our published timetables and our website *****.

For weekend and public holiday engineering work affecting our services, a poster titled 'Changes to Bus Times' will be displayed at each bus stop we serve.

Information will also be available from:

- Bus Enquiries
- Customer Service Centre

We will always aim to provide information at least four weeks in advance through these three channels.

3.3.2 Unplanned engineering work

Occasionally, ***** Buses have to carry out emergency engineering work at very short notice. When this happens we aim to inform you through Bus Enquiries, our Customer Service Centre, bus stop and on-bus public address announcements, bus stop posters, Teletext and local radio stations.

3.3.3 Bus replacement services

When bus services are replaced by a special bus service, for all or part of the journey, it may not be possible for you to take prams or bicycles on these buses. Please enquire on our website ***** or contact our Customer Service Centre if you need further advice.

3.3.4 Help and advice during your journey

We understand that alterations to services due to engineering work can cause extra problems for customers. Our on-bus staff can help you if you need advice.

4. Passengers who require assistance

We are committed to meeting the travelling needs of our disabled passengers. We recognise that many of our passengers may have special needs which require us to adjust the way we provide our service.

4.1 Advance information and assistance for disabled passengers

We advise passengers who would like assistance to contact our Customer Service Centre in advance. Our staff will advise you of the most suitable route for you, taking into account those bus stops along our route which may not be accessible for passengers with disabilities.

- Telephone (24 hours):
- Fax:
- Textphone:
- Bus Enquiries textphone:

4.2 Buses

All buses on our network are fully accessible to disabled passengers.

4.3 Reservations of wheelchair spaces

Reservations are available to disabled passengers on all of our services that have a designated wheelchair space and/or priority seats.

4.4 On-bus information

We are committed to providing important travel information in a variety of ways so that it can be accessed by as wide a group of passengers as possible.

All of our buses are equipped with public address systems to provide audible announcements to hearing passengers. All buses are equipped with a passenger information system that uses visual displays to enable hearing-impaired passengers to access information.

We recognise that good announcements are essential to visually impaired passengers, so our employees are trained to speak clearly.

4.5 Disability awareness training

All our frontline staff and managers receive training in disability awareness.

4.6 Further Information:

***** Bus System Disabled Persons' Protection Policy (DPPP) sets out our full arrangements for passengers with disabilities. It can be supplied in a range of formats (large print, Braille and audio), available from our Customer Service Centre.

We have also produced a leaflet containing useful information, called 'Our Service for Passengers with Impairments'. It is available at our Maintenance Depots and from our Customer Service Centre.

5. Buying a ticket

We will sell you the most appropriate ticket for your journey.

5.1 In the bus

- You can pay by cash or pre-paid cards.

6. Your journey

6.1 Getting a seat

We operate a 'walk-on' service, which means you can board any bus provided you purchase a valid ticket. As a result, we cannot guarantee to provide a seat for you, especially during peak periods or during disruption.

6.2 Security

We work very closely with the local authorities to improve security on our buses.

We aim to reduce levels of crime, trespass and vandalism and we are investing to achieve this. Initiatives include:

- Teams of Travel Safe Officers, trained and co-ordinated by the Police

- Installation of CCTV on Buses
- Lighting in buses Security guards at key locations.

More information can be found in the *Safety and security* section of our website.

6.4 Smoking

Smoking is not permitted anywhere on the Buses.

6.5 Lost Property

Our Lost Property office at is open from 0730 -1900 Monday to Friday. Telephone the office on All property found on our services and at our bus stops is forwarded to our Lost Property office.

To make an enquiry, complete our Lost Property online form.

6.6 Service disruption

Unfortunately, things do sometimes go wrong, causing disruption that cannot always be foreseen or avoided. In these circumstances, we may have to introduce emergency timetables. We will aim to inform you in advance before these timetables come into operation, with notices at bus stops and by other appropriate media.

Other causes of disruption include:

- Emergency engineering work
- Trespass and vandalism
- Bus breakdowns
- Accidents
- Security alerts.

Under such circumstances we may have to make changes to our services without giving prior warning to protect your safety and that of our staff. We will always try to minimise disruption, keep you informed and provide or recommend alternative means of travel.

If a problem occurs after your bus journey has started, we will work hard to get you to your destination bus stop or provide other transport arrangements. If your intended journey is no longer possible, we will do our best to get you back to an appropriate bus stop.

All our buses are fitted with public address systems and most of our staff are linked by telephone systems. We aim to let you know what is happening.

7. Listening to your views

We carry out and analyse passenger survey research to provide information about what you think of different aspects of our service.

We hold regular Meet the Manager events, which enable you to speak directly to managers to put your views to them or ask them questions. Details of Meet the Manager events will be advertised on bus stop posters, in our passenger magazine *e-motion*, through our Customer Service Centre and also online.

We will listen to your views and communicate through correspondence and by telephone. We have a specially trained Customer Service Centre team able to respond to you and we also liaise with passenger representative bodies and user groups that exist to protect your interests.

7.1 Making a comment or complaint

We welcome your comments, suggestions, complaints and praise about any aspect of our service. We also welcome comments about our Charter.

Senior managers monitor the number and type of complaints and comments that you make. They are also responsible for delivering continuous improvement to customer service. Your feedback can therefore help us to achieve this.

If you are commenting on a journey please remember to include your rail tickets and any other details, as this will help us to provide you with a quicker response.

7.2 Further information:

We have a full Customer Comments and Complaints Handling Procedure (CCCHP). Copies of our CCCHP can be obtained from our Customer Service Centre or from our website www.rail.gov.uk.

7.3 Contacting our Customer Service Centre

Please visit our *Contact us* section for details.

7.4 Our promised response times

If you write to us, you should hear from us within five working days of us receiving your communication.

However, it may take longer to provide a full reply (e.g. if an investigation is required) and if this happens we will send you an acknowledgement within five working days and reply within 20 working days.

If a full reply cannot be made within 20 working days we will contact you again to update you.

7.5 If you are unhappy with our reply

We will work hard to deal with your concerns to your satisfaction but if you are unhappy with our response please let us know.

Alternatively, you can approach the consumer courts or other similar fora set up under Applicable Laws.

SCHEDULE-O
(See Clause 5.5.6)

STAFFING QUALIFICATIONS

1. Drivers:

The Operator to ensure that the driver complies with the following conditions:

- (a) Must be a holder of a valid Driving license in accordance with Applicable Laws for at least [•] years preceding the date of employment; (the Operator to submit copies of the licenses of all such Drivers appointed by it to the Authority for its record);
- (b) Should possess minimum [eight standard qualifications] and any other educational/ other requirements such as Public Service Vehicle (PSV) badge as prescribed under Applicable Law;
- (c) Should possess minimum [•] years' experience of driving heavy transport vehicles in India;
- (d) Should not have been blacklisted from operation of a heavy commercial vehicle and or a transport vehicle;
- (e) Should not have any pending cases related to fatal accidents or traffic fines due or have his license suspended at any time during the last [•] years preceding Effective Date;
- (f) Should meet all requirements specified under Applicable Laws including without limitation, the Central Motor Vehicle Rules, 1989.

SCHEDULE-P
(See Clause 33.6)

VESTING CERTIFICATE

1. The (the “Authority”) refers to the Contract dated*** (the “Contract”) entered into between the Authority and (the “Operator”) for(hereinafter called the ‘Project’).
2. The Authority hereby acknowledges compliance and fulfilment by the Operator of the handback requirements set forth in Article 33 of the Contract on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired, and all title and interest of the Operator in or about the Project shall be deemed to have vested unto the Authority, free from any encumbrances, charges and liens whatsoever.
3. Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Operator to rectify and remedy any defect or deficiency in any of the Handback requirements and/or relieving the Operator in any manner of the same.

Signed this *** day of ***, 20** at.....

AGREED, ACCEPTED AND SIGNED

For and on behalf of OPERATOR by:

(Signature)

(Name)

(Designation)

(Address)

SIGNED,SEALED AND DELIVERED

For and on behalf of Authority by:

(Signature)

(Name)

(Designation)

(Address)

In the presence of:

1.

2.

SCHEDULE-Q
(See Clause 19.7)

DATA MONITORING SYSTEM

Note: Details of the Data Monitoring System as per requirements of ITS and UBS – II specifications to be inserted.

SCHEDULE-R
(See Clause 26.2)

PANEL OF CHARTERED ACCOUNTANTS

1 ***Panel of Chartered Accountants***

Pursuant to the provisions of Clause 26.2.1 of the Agreement, the Authority and the Operator shall prepare a mutually agreed panel of 5 (five) reputable firms of Chartered Accountants having their registered offices in India (the “**Panel of Chartered Accountants**”). The criteria for preparing such Panel and the procedure to be adopted in this behalf shall be as set forth in this Schedule-R.

2 ***Invitation for empanelment***

2.1 The Authority shall invite offers from all reputable firms of Chartered Accountants who fulfil the following eligibility criteria, namely:

- (a) the firm should have conducted statutory audit of the annual accounts of at least one hundred companies registered under the Companies Act, 1956, or the Companies Act, 2013, of which at least ten should have been public sector undertakings;
- (b) the firm should have at least 5 (five) practicing Chartered Accountants on its rolls, each with a minimum experience of ten years in the profession;
- (c) the firm or any of its partners should not have been disqualified or black-listed by the Comptroller and Auditor General of India or the Authority; and
- (d) the firm should have an office in the State or in an adjacent State with at least 2 (two) practicing Chartered Accountants on its rolls in such State.

2.2 Interested firms meeting the eligibility criteria shall be required to submit a statement of their capability including the bio-data of all the practicing Chartered Accountants on its rolls. In particular, each firm shall be required to furnish year-wise information relating to the names of all the companies with an annual turnover exceeding Rs. 25,00,00,000 (Rupees twenty five crore) whose annual accounts were audited by such firm in any of the preceding 5 (five) Accounting Years.

3 ***Evaluation and selection***

3.1 The information furnished by each firm shall be scrutinised and evaluated by the Authority and 1 (one) point shall be awarded for each annual audit of the companies specified in Paragraph 2.2 above. (For the avoidance of doubt, a firm which has conducted audit of the annual accounts of any such company for five years shall be awarded five points).

3.2 The Authority shall prepare a list of all the eligible firms along with the points scored by each such firm and 5 (five) firms scoring the highest points shall be identified and included in the draft Panel of Chartered Accountants.

4 ***Consultation with the Operator***

The Authority shall convey the aforesaid panel of firms to the Authority for scrutiny and comments, if any. The Operator shall be entitled to scrutinise the relevant records of the Authority to ascertain whether the selection of firms has been undertaken in accordance with

the prescribed procedure and it shall send its comments, if any, to the Authority within 15 (fifteen) days of receiving the aforesaid panel.

5 ***Mutually agreed panel***

- 5.1 The Authority shall, after considering all relevant factors including the comments, if any, of the Operator, finalise and constitute a panel of 5 (five) firms which shall be deemed to be the mutually agreed Panel of Chartered Accountants.

- 5.2 After completion of every five years from the date of preparing the mutually agreed Panel of Chartered Accountants, or such earlier period as may be agreed between the Authority and the Operator, a new panel shall be prepared in accordance with the provisions of this Schedule-R.

SCHEDULE-S
(See Clause 35.3.1)

SUBSTITUTION AGREEMENT

THIS SUBSTITUTION AGREEMENT is entered into on this the day of 20....

AMONGST

- 1 The Governor of *****, represented by [• and having its principal offices at *****] (hereinafter referred to as the “**Authority**” which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);
- 2 [..... Limited], a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at, (hereinafter referred to as the “**Operator**” which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes);
- 3 (name and particulars of Lenders’ Representative) and having its registered office at, acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “**Lenders’ Representative**”, which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

WHEREAS:

- (A) The Authority has entered into a Supply cum Operation and Maintenance Agreement dated with the Operator (the “**SCOM Agreement**”) for e-Buses in the State on build, own, operate and transfer basis (“**BOOT**”), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) Senior Lenders have requested the Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Contract to a Nominated Company in accordance with the provisions of this Agreement and the SCOM Agreement.
- (D) In order to enable implementation of the Project including its financing, construction, operation and maintenance, the Authority has agreed and undertaken to transfer and assign the Contract to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the SCOM Agreement.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

“**Agreement**” means this Substitution Agreement and any amendment thereto made in accordance with the provisions contained in this Agreement;

“**Financial Default**” means occurrence of a material breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Operator for a minimum period of 3 (three) months;

“**Lenders’ Representative**” means the person referred to as the Lenders’ Representative in the foregoing Recitals;

“**Nominated Company**” means a company, incorporated under the provisions of the Companies Act, 1956, or the Companies Act, 2013, as the case may be, selected by the Lenders’ Representative, on behalf of Senior Lenders, and proposed to the Authority for assignment/transfer of the Contract as provided in this Agreement;

“**Notice of Financial Default**” shall have the meaning ascribed thereto in Clause 3.2.1; and

“**Parties**” means the parties to this Agreement collectively and “**Party**” shall mean any of the Parties to this Agreement individually.

1.2 Interpretation

1.2.1 References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Senior Lenders.

1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

1.2.3 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the SCOM Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the SCOM Agreement.

1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the SCOM Agreement shall apply, *mutatis mutandis*, to this Agreement.

2 ASSIGNMENT

2.1 Assignment of rights and title

The Operator hereby agrees to assign the rights, title and interest in the Contract to, and in favour of, the Lenders’ Representative pursuant to and in accordance with the provisions of this Agreement and the SCOM Agreement by way of security in respect of financing by the Senior Lenders under the Financing Agreements.

3 SUBSTITUTION OF THE OPERATOR

3.1 Rights of substitution

3.1.1 Pursuant to the rights, title and interest assigned under Clause 2.1, the Lenders’ Representative shall be entitled to substitute the Operator by a Nominated Company under and in accordance with the provisions of this Agreement and the SCOM Agreement.

3.1.2 The Authority hereby agrees to substitute the Operator by endorsement on the SCOM Agreement in favour of the Nominated Company selected by the Lenders’ Representative in accordance with this Agreement. (For the avoidance of doubt, the Senior Lenders or the

Lenders' Representative shall not be entitled to operate and maintain the Project as Operator either individually or collectively).

3.2 Substitution upon occurrence of Financial Default

- 3.2.1 Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Operator (the "Notice of Financial Default") along with particulars thereof, and send a copy to the Authority for its information and record. A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Operator for the purposes of this Agreement.
- 3.2.2 Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Operator by a Nominated Company in accordance with the provisions of this Agreement.
- 3.2.3 At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Authority to suspend all the rights of the Operator and undertake the operation and maintenance of the Project in accordance with the provisions of Article 16 and 17 of the SCOM Agreement, and upon receipt of such notice, the Authority shall undertake Suspension under and in accordance with the provisions of the SCOM Agreement. The aforesaid Suspension shall be revoked upon substitution of the Operator by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Authority may terminate the SCOM Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the SCOM Agreement; provided that upon written request from the Lenders' Representative and the Operator, the Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days. For the avoidance of doubt, the Authority expressly agrees and undertakes to terminate the SCOM Agreement forthwith, upon receipt of a written request from the Lenders' Representative at any time after 240 (two hundred and forty) days from the date of Suspension hereunder.

3.3 Substitution upon occurrence of Operator Default

- 3.3.1 Upon occurrence of an Operator Default, the Authority shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days time to the Lenders' Representative to make a representation, stating the intention to substitute the Operator by a Nominated Company.
- 3.3.2 In the event that the Lenders' Representative makes a representation to the Authority within the period of 15 (fifteen) days specified in Clause 3.3.1, stating that it intends to substitute the Operator by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Operator by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the Authority shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the Lenders' Representative and the Operator, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

3.4 Procedure for substitution

- 3.4.1 The Authority and the Operator hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Authority under Clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of

the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Project including the Contract to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Operator towards the Authority under the SCOM Agreement and towards the Senior Lenders under the Financing Agreements.

- 3.4.2 To be eligible for substitution in place of the Operator, the Nominated Company shall be required to fulfil the eligibility criteria that were laid down by the Authority for shortlisting the bidders for award of the Contract; provided that the Lenders' Representative may represent to the Authority that all or any of such criteria may be waived in the interest of the Project, and if the Authority determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.
- 3.4.3 Upon selection of a Nominated Company, the Lenders' Representative shall request the Authority to:
- (a) accede to transfer to the Nominated Company the right to construct, operate and maintain the Project in accordance with the provisions of the SCOM Agreement;
 - (b) endorse and transfer the Contract to the Nominated Company, on the same terms and conditions, for the residual Contract Period; and
 - (c) enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.
- 3.4.4 If the Authority has any objection to the transfer of Contract in favour of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Authority, the Nominated Company shall be deemed to have been accepted. The Authority thereupon shall transfer and endorse the Contract within 15 (fifteen) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Authority, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Operator.

3.5 Selection to be binding

The decision of the Lenders' Representative and the Authority in selection of the Nominated Company shall be final and binding on the Operator. The Operator irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Senior Lenders or the Authority taken pursuant to this Agreement including the transfer/assignment of the Contract in favour of the Nominated Company. The Operator agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Operator's shares. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or Authority and the Operator shall have no right or remedy to prevent, obstruct or restrain the Authority or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Contract as requested by the Lenders' Representative.

4 PROJECT AGREEMENTS

4.1 Substitution of Nominated Company in Project Agreements

The Operator shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its discretion, in place and substitution of the Operator in the event of such Nominated Company's assumption of the liabilities and obligations of the Operator under the SCOM Agreement.

5 TERMINATION OF SCOM AGREEMENT

5.1 Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Authority to terminate the SCOM Agreement forthwith, and upon receipt of such notice, the Authority shall undertake Termination under and in accordance with the provisions of Article 32 of the SCOM Agreement.

5.2 Termination when no Nominated Company is selected

In the event that no Nominated Company acceptable to the Authority is selected and recommended by the Lenders' Representative within the period of 180 (one hundred and eighty) days or any extension thereof as set forth in Clause 3.3.2, the Authority may terminate the SCOM Agreement forthwith in accordance with the provisions thereof.

5.3 Realisation of Debt Due

The Authority and the Operator hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders' Representative is entitled to receive from the Operator, without any further reference to or consent of the Operator, the Debt Due upon Termination of the SCOM Agreement. For realisation of the Debt Due, the Lenders' Representative shall be entitled to make its claim from the Escrow Account in accordance with the provisions of the SCOM Agreement and the Escrow Agreement.

6 DURATION OF THE AGREEMENT

6.1 Duration of the Agreement

This Agreement shall come into force from the date hereof and shall expire at the earliest to occur of the following events:

- (a) Termination of the Agreement; or
- (b) no sum remains to be advanced and no sum is outstanding to the Senior Lenders, under the Financing Agreements.

7 INDEMNITY

7.1 General indemnity

- 7.1.1 The Operator will indemnify, defend and hold the Authority and the Lenders' Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Operator of any of its obligations under this Agreement or on account of failure of the Operator to comply with Applicable Laws and Applicable Permits.

- 7.1.2 The Authority will indemnify, defend and hold the Operator harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement, materially and adversely affecting the performance of the Operator's obligations under the SCOM Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.
- 7.1.3 The Lenders' Representative will indemnify, defend and hold the Operator harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfil its obligations under this Agreement, materially and adversely affecting the performance of the Operator's obligations under the SCOM Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders' Representative, its officers, servants and agents.

7.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

8 DISPUTE RESOLUTION

8.1 Dispute resolution

- 8.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Authority, Operator and the Lenders' Representative. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "**Rules**") or such other rules as may be mutually agreed by the Parties, and shall be subject to provisions of the Arbitration and Conciliation Act, 1996.
- 8.1.2 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.

9 MISCELLANEOUS PROVISIONS

9.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the Courts at *** shall have jurisdiction over all matters arising out of or relating to this Agreement.

9.2 Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Authority with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

9.3 Priority of agreements

In the event of any conflict between the SCOM Agreement and this Agreement, the provisions contained in the SCOM Agreement shall prevail over this Agreement.

9.4 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

9.5 Waiver

9.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

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

9.6 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

9.7 Survival

9.7.1 Termination of this Agreement:

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

9.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

9.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 8 of this Agreement or otherwise.

9.9 Successors and assigns

This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

9.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

9.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

9.12 Authorised representatives

Each of the Parties shall by notice in writing designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

9.13 Original Document

This Agreement may be executed in three counterparts, each of which when executed and delivered shall constitute an original of this Agreement.

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

THE COMMON SEAL OF OPERATOR has been affixed pursuant to the resolution passed by the Board of Directors of the Operator at its meeting held on the day of 20..... hereunto affixed in the presence of, Director, who has signed these presents in token thereof and, Company Secretary / Authorised Officer who has countersigned the same in token thereof [§]:

SIGNED, SEALED AND DELIVERED
For and on behalf of
AUTHORITY by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

SIGNED, SEALED AND DELIVERED

For and on behalf of

SENIOR LENDERS by the Lenders' Representative:

(Signature)
(Name)
(Designation)
(Address)
(Fax)
(e-mail address)

In the presence of:

1. 2.

[§] To be affixed in accordance with the articles of association of the Operator.

SCHEDULE-T
(See Clause 22.5.2)

STATEMENT OF INPUT COST

Period	Total Units of Electricity consumed at the Maintenance Depot	Electricity Units consumed at / by the Charging Infrastructure	Price per kWh of electricity on the Date of Submission of Statement

Name & Designation of the Authorised Signatory:

Date of Submission: _____

Note 1: Authority may modify the statement depending on specific requirement.