



**REQUEST FOR PROPOSAL (RFP) FOR SELECTION OF BUS  
OPERATOR FOR PROCUREMENT, OPERATION AND  
MAINTENANCE OF ELECTRIC MIDI BUSES ON GROSS COST  
CONTRACT BASIS**

**Volume 2: Bus Operator Agreement**

**January, 2018**

**Ahmedabad Janmarg Ltd.  
GF, Dr. Ramanbhai Patel Bhavan,  
Amdavad Municipal Corporation, West Zone Office, Usmanpura  
Ahmedabad -380013**

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**BUS OPERATOR AGREEMENT**

**Ahmedabad Janmarg Ltd.** is incorporated under the provisions of the Companies Act 1956/2013, having its registered office at GF, Dr. Ramanbhai Patel Bhavan, Amdavad Municipal Corporation, West Zone Office, Usmanpura, Ahmedabad -380013 (hereinafter referred to as the “**Authority**”, which expression shall include its successors and permitted assigns);

**AND**

[\_\_\_\_\_], a company incorporated under the/ Registered Partnership firm/ Registered Proprietary firm having its registered office at [\_\_\_\_\_] (hereinafter referred to as the “**Operator**”, which expression shall include its successors and permitted assigns);

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

**WHEREAS**

- A. Ahmedabad is one of the several cities in the country which has been sanctioned assistance by the Government of India for purchase of 40 Electric Buses and other electric vehicles under the FAME Scheme of Department of Heavy Industry, Ministry of Heavy Industries and Public Enterprises for purchase of Electric Buses. Ahmedabad Municipal Corporation / Ahmedabad Janmarg Ltd. intend to use the vehicles / buses for augmenting clean and green shared mobility in the city by deploying them on a Gross Cost Contract (GCC) basis through appointment of an Operator. Towards this endeavour ,the Authority sought a Private Operator for procurement, operation and maintenance of the 40 MIDI AC Electric Buses with responsibilities better defined in the accompanying clauses in this Agreement and Instruction to Bidders in the RFP document, through an open competitive bidding process in \_\_\_\_2018.
- B. After evaluation of the proposals received, Authority accepted the proposal of M/s\_\_\_\_\_ as the successful Proposal and issued its Letter of Acceptance \_\_\_\_\_ dated \_\_\_\_\_ (hereinafter called the "LOA") for 40 nos of Midi AC Electric Buses (Contracted Buses) requiring, inter alia, the execution of this Agreement.
- C. By its letter dated \_\_\_\_\_the \_\_\_\_\_ (Operator) has accordingly agreed to enter into this Agreement with AUTHORITY for execution of his rights and responsibilities, subject to and on the terms and conditions set forth hereinafter.

D. The Authority and the Operator are hereby entering into this Operator Agreement to implement the Project of operation and maintenance of the Bus Rapid Transit System in the city of Ahmedabad.

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

## **1. DEFINITIONS AND INTERPRETATION**

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

1.1.1. **“Aggregate Fines”** shall have the meaning as ascribed thereto in Clause 31.3 of the Agreement.

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

1.1.3. **“Annual Assured Bus Km”** shall have the meaning as ascribed thereto in Clause 25.5(e) of the Agreement.

1.1.4. **“Annual Assured Payment Amount”** shall have the meaning as ascribed thereto in Clause 25.5)of the Agreement

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

1.1.6. **“Applicable Law”** means all the laws, acts, ordinances, rules, regulations, notifications, guidelines or bye-laws, in force and effect, as of the date hereof and which may be promulgated or brought into force and effect hereinafter in India, including judgments, decrees, injunctions, writs or orders of any court of record, as may be in force and effect during the subsistence of this Agreement, and applicable to the Project.

1.1.7. **“Assured Fleet Availability”** shall have the meaning as ascribed thereto in Clause 4.1(i)0 of the Agreement.

- 1.1.8. **“Available Fleet”** means the Buses made available by the Operator to Authority for operations to meet the Assured Fleet Availability clause 4.1(i)0 of the Agreement.
- 1.1.9. **“Authority”** means Ahmedabad Municipal Corporation/Ahmedabad Janmarg Limited or its authorized representatives.
- 1.1.10. **“Authority Clearances”** means the clearances, which are required to be procured by the Authority in accordance with Applicable Law, and which have been provided in detail in ANNEXURE 6 to this Agreement.
- 1.1.11. **“Authority’s Event of Default”** shall have the meaning as ascribed thereto in the Clause 35.1 of the Agreement.
- 1.1.12. **“BRTS”** means Bus Rapid Transit System,
- 1.1.13. **“Bus Delivery Schedule”** shall have the meaning as ascribed thereto in the Clause 10.1 of the Agreement.
- 1.1.14. **“Bus Kilometre”** means a kilometre travelled by a Contracted Bus as per this Agreement or as directed by the Authority.
- 1.1.15. **“Base Kilometre Charge” or “Kilometre Charge”** means the rate of the Kilometre Charge payable by the Authority to the Operator for travel by a Bus up to the Annual Assured Bus Kilometres.
- 1.1.16. **“Bus Permit”** means the permit for operating the Contracted Buses as required under the Motor Vehicles Act, 1988 or any other Applicable Law from time to time.
- 1.1.17. **“Bus Services”** means the BRTS bus services in the Bus Service Area being implemented by the Authority in one or more phases in accordance with the terms of this Agreement.
- 1.1.18. **“Bus Specification/Technical Specifications”** shall mean the specifications of the Contracted Buses including but not limited to design, power, GRPS, GPS and PIS and other IT equipment and other details stipulated by the Authority during the purchase of such buses.
- 1.1.19. **“Bus Stop”** means designated points as determined by the Authority, from time to time and notified to the Operator in writing, and such Bus Stops are where the Buses may stop for a short duration for passengers to embark onto

the Bus or disembark from the Bus.

- 1.1.20. **“Central Control Centre”** means computerised central monitoring unit setup, audited and supervised by the Authority for supervision, monitoring and control of the Bus Service.
- 1.1.21. **“Commercial Operations Date”/“COD”** The COD shall be the date which is 270 days from Date of LOA or date of deployment of all Contracted Buses, whichever is earlier. The Deployment shall be considered achieved after the completion of Training Period.
- 1.1.22. **“Contracted Bus(es)”** means one or more of the passenger bus units handed over to the Operator by the Authority from time to time for the purposes of operation and maintenance in the Bus Service Area in accordance with the terms of this Agreement, and which shall include but not be limited to including GRPS, GSPS and PIS and other IT equipment, and the details of such Buses such as the type, category registration number is provided in detail in ANNEXURE 2 to this Agreement at later stage.
- 1.1.23. **‘Consortium’** shall mean the group of legally constituted entities, who have come together and have agreed to or have formed an understanding (in writing) for Procurement, Operation and Maintenance of 40 No. MID AC electric buses, subject to the terms of this Agreement.
- 1.1.24. **“Dispute”** shall have the meaning ascribed to it in Clause 40 of this Agreement.
- 1.1.25. **“Encumbrances”** means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest or other obligations and shall also include physical encumbrances, including utilities both under and above the ground and encroachments.
- 1.1.26. **“Execution Date”** shall mean and refer to the date of signing of this Agreement.
- 1.1.27. **“Fines”** shall have the meaning as ascribed thereto in the Agreement.
- 1.1.28. **“Fleet”** shall refer to the total number of Contracted Buses having achieved COD pursuant to this Agreement.
- 1.1.29. **“Operation Plan”** means the detailed plan as developed and finalized by the Authority from time to time in accordance with Clause 21.

- 1.1.30. **“Global Positioning System (GPS)”** means the equipment installed on the bus to monitor its movement on the specified route during the Contract Period.
- 1.1.31. **“Government”** means the “Government of Gujarat or “Government of India (GOI)” as is relevant in the context;
- 1.1.32. **“Good Industry Practice”** shall mean the exercise of that degree of skill, diligence, prudence and foresight in compliance with the undertakings and obligations under this Agreement which would reasonably and ordinarily be expected of a skilled and an experienced person engaged in the implementation, operation and maintenance or supervision or monitoring thereof of any of them of a project similar to that of the Project.
- 1.1.33. **“Invoice Amount”** shall have the meaning specified in Clause 25.5(a) of this Agreement.
- 1.1.34. **“LED Display”** shall mean the light emitting diode display installed on the bus which would show the name and number of the designated Route of the respective Contracted Buses and which shall be used for the public information system.
- 1.1.35. **“Letter of Award”** means the letter of award dated \_\_/\_\_/20\_\_ issued by the Authority to the Selected Bidder to for Procurement, Operation and Maintenance of 40 MIDI AC Electric Buses.
- 1.1.36. **“Lot of Contracted Buses”** or “Lot” means Existing Lot of Contracted Buses and New Lot of Contracted Buses and details of which have been provided in the ANNEXURE 2 to this Agreement.
- 1.1.37. **“Manufacturer/ Bus Manufacturer”** means the bus manufacturer supplier of the Contracted Buses to Operator .Bus Manufacturer shall be part of Operator either a single party or part of Consortium representing Operator.
- 1.1.38. **“Material Breach”** means a breach of the terms and conditions of this Agreement, which has a material adverse effect on any act or event, or on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement, which include but are not limited to an act or event which causes a material financial burden or loss to either Party.
- 1.1.39. **“Operation and Maintenance Standards”** means the operation and



maintenance requirements which are required to be undertaken by the Operator throughout the Contract Period and have been provided at different places in **the agreement**.

- 1.1.40. **“Operations Manager”** shall have the meaning ascribed to it in Clause 28.1.11.
- 1.1.41. **“Operating Plan” or “Operation Plan”** means the detailed Route plan and trip schedule for the Bus Service, which is developed and finalised by the Authority.
- 1.1.42. **“Operator”** shall have the meaning as ascribed thereto in the array of Parties in the Recitals above.
- 1.1.43. **“Operator Clearances”** means the clearances which are required to be procured by the Operator in accordance with Applicable Law and which have been provided in detail in Annexure to this Agreement.
- 1.1.44. **“Operator’s Event of Default”** shall have the meaning as ascribed thereto in Clause 34.1 of the Agreement.
- 1.1.45. **“Operator’s Payment”** means payment given to the Operator for providing operating and maintenance services in accordance with Clause 25 of this Agreement.
- 1.1.46. **“Passenger Fare”** shall have the meaning ascribed to it in Clause 23.1 of this Agreement.
- 1.1.47. **“Parking Spaces”** shall mean the spaces provided by the Authority for parking and maintenance of Contracted Buses. Operator shall install Charging Infrastructure in Parking Space for charging of Buses during Non Operational Hours.
- 1.1.48. **“Payment Period”** shall have the meaning as ascribed thereto in Clause 25.5 of this Agreement.
- 1.1.49. **“Performance Security”** shall have the meaning as ascribed thereto in Clause 6.1 of this Agreement.
- 1.1.50. **“Project”** means the operation, maintenance of the Contracted Buses, and Bus operation and maintenance service being provided by the Operator for BRTS Ahmedabad in accordance with the terms of this Agreement.
- 1.1.51. **“RTO”** means the Regional Transport Office of Ahmedabad

- 1.1.52. **“Remedial Period”** shall have the meaning specified in Clause 36.1 and 36.2 of this Agreement.
- 1.1.53. **“Routes”** means the routes within the Bus Service Area determined exclusively and notified by the Authority from time to time, and the Contracted Buses under this Agreement shall operate only on such Routes.
- 1.1.54. **“Selected Bidder”** means the Bidder to whom the Authority issues the Letter of Award for undertaking the Project.
- 1.1.55. **“Third Party”** means any person other than the Authority and the Operator.
- 1.1.56. **“Contract Period/ Agreement Period”** shall mean the term as defined in Clause 3.1
- 1.1.57. **“Training Period”** shall have the meaning as ascribed thereto in Clause 18.4 of this Agreement.
- 1.1.58. **“Validity Period”** means the period for which the Performance Security has to be maintained in accordance with Clause 6 of this Agreement.
- 1.1.59. **“Vandalism”** shall have meaning specified in Clause 30 of this Agreement.
- 1.1.60. **“Vehicle Tracking System”** is the satellite and or other communication system or any other procedure or device which allows locate/track the position of the vehicles at all/any times.

## **1.2. Interpretation**

1.2.1. In this Agreement, unless the context otherwise requires:

- a. words denoting the singular shall include the plural and vice versa;
- b. words denoting a person shall include an individual, corporation, company, partnership, trust or other entity;
- c. heading and bold type face are only for convenience and shall be ignored for the purposes of interpretation;
- d. reference to any legislation or law or to any provision thereof shall include references to any such law as it may, after the date of this Agreement, from time to time be amended, supplemented or re-enacted;
- e. references to the word “include” or “including” shall be construed without limitation;

- f. references to this Agreement or to any other agreement or deed or other instrument shall be construed as a reference to such agreement, deed, or other instrument as the same may from time to time be amended, varied, supplemented or innovated; and
- g. the Annexure to this Agreement form part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement.
- h. terms and expression not herein defined shall have the meanings assigned to them in the Indian Sale of Goods Act, 1930 (as amended) or the Indian Contract Act, 1872 (as amended) or the General Clauses Act, 1897 (as amended) as the case may be.

1.2.2. The following documents attached hereto shall be deemed to form an integral part of this Agreement:

- a. This Agreement along with all Annexure hereto.
- b. Request for Proposal (RFP) in its entirety including all its Volumes, Sections, Annexure, Corrigendum and Addendums thereto.
- c. Letter of Acceptance (LOA) no. \_\_\_\_\_ issued to the Operator on \_\_/\_\_/2017
- d. Any relevant correspondence between the two Parties that the signatories have agreed to include as a part of the Agreement for validating and clarifying any points in the contract or by way of revised or improved understanding of any terms of the Agreement as appended herein.

## **2. APPOINTMENT OF THE OPERATOR , SUBSIDY AND CONSORTIUM CONDITIONS**

### **2.1. Appointment of the Operator<sup>1</sup>**

Subject to and in accordance with the provisions of this Agreement, the Authority hereby appoints, on a non-exclusive and non transferable basis, the Operator, and the Operator hereby accepts its appointment to procure, operate and maintain 40 Fully Built MIDI AC Electric buses as per the Technical Specification Volume-3 and maintain Annual Assured Fleet Availability, within the Bus Service Area in accordance with the terms of this Agreement and subject to the Applicable Laws and Applicable Clearances.

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<sup>1</sup>The Authority, at it's sole discretion may modify the order by plus or minus 25% buses. In other words, Authority may present an order for increase in number of Contracted Buses by upto a maximum of 25% or a minimum of 25%. In case of change in the order size, the total no of buses referred in this agreement along with associated clauses shall be revised accordingly.

## **2.2. Additional Buses**

The Authority, at its sole discretion, during the course of the agreement, may ask the Operator to provide additional buses equivalent to 25% of the total quantity of buses required under this agreement. The Agreement period of such additional buses shall be decided in consultation with the Operator at the time of issuing the request for Additional buses by Authority. However the Agreement Period for the additional buses shall not be higher than the agreement of period mentioned in this agreement. The buses shall be procured, operated and maintained by the Operator in accordance with the provisions of this Agreement.

## **2.3. Undertaking**

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

## **2.4. Subsidy**

Under the FAME Scheme, subsidy for the Buses has been sanctioned to the Authority by the Department of Heavy Industries. Subsidy will be released as per Department of Heavy Industry (DHI), Govt. of India norms. In the event, the subsidy is received by the Authority, it shall be passed on when received, upon submission of all required documentation, to the registered Bank / Financial Institution which has funded the Buses. In the event where the Buses have not been funded by registered Bank / Financial Institution, the subsidy shall be passed on to the OEM /Bus Manufacturer only.

## **2.5. Consortium Conditions<sup>2</sup>**

2.5.1. The Consortium representing Operator shall perform all obligations and responsibilities of the Operator specified in this Agreement during the Contract period and additionally adhere to the conditions specified hereunder.

a. Each member of the Consortium shall be jointly and severally liable for due

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<sup>2</sup> *Applicable if Operator is a Consortium*

implementation, procurement, operation and maintenance of the 40 Midi ac Electric Buses as per the scope and discharge of all obligations resulting from the Agreement.

- b. Operator shall submit a Consortium Agreement (the contract between the consortium members) comprising the terms specified hereunder , within 20 days from LOA to Authority for its review which shall become part of this Agreement.
  - (i) A Bidding Consortium is required to nominate a Lead Member as per provision of Volume 1 of RFP. The Lead Member shall be authorized to sign the Contract on behalf of the Consortium and do all deeds and acts on behalf of the Consortium. The nomination should be supported by a Power of Attorney in favour of the Lead Member as per the provision of Volume 1 of RFP.
  - (ii) Include a statement to the effect that all members of the Consortium shall be jointly and severally liable for all obligations of the Operator pursuant to this Agreement during the Contract Period.
  - (iii) The Tenure of the Consortium Agreement shall be coinciding with the Contract Period subject to clause 2.4.2. The Consortium shall continue to be in existence during the period of the contract and that any change will be subject to approval of the Authority and subject to clause 2.4.2.
  - (iv) Clearly outline the proposed roles and responsibilities, if any, of each member. The role and responsibility of any member must be commensurate with the technical/financial capabilities that such member is contributing towards meeting the qualification criteria. Each consortium member is liable to contribute resources in terms of knowledge, skills and trained manpower commensurate with its role and responsibilities during the Contract Period.
  - (v) The Consortium Agreement shall be made available to Authority for legal vetting and open to its suggestions by the Authority. The Authority shall have rights to suggest binding corrections if it finds that such contract does not meet its requirements and interests as per the

RFP in letter and spirit.

- (vi) The Agreement should be on stamp paper and notarized. The signatories must be duly authorized. The Authority shall have the right to suggest role re allocation if it finds that the role and responsibilities allocated to each partner are not commensurate with qualifications and capability of that partner.
- c. Any modification in roles and responsibilities between consortium members during Contract Period shall be allowed only after approval from the Authority. Any changes and deviation of roles and responsibilities of consortium members during the execution, operation and maintenance of this Project without prior approval of Authority shall be viewed seriously by the Authority as it can affect an important public service. Such unilateral action by the Operator shall entitle Authority to take appropriate action including considering it an Event of Default under this Contract leading to consequences including termination with appropriate notice.
- d. In the event of non-performance by any particular members of the consortium leading to an Event of Default not leading to Termination, Authority reserves as right to (i) demand a change in the defaulting member, with the process as above (ii) pay any non-defaulting non lead member directly for any obligations and costs pertaining to its role in the execution of the Bus Operator Agreement performed after the date of Event of Default with due advance notice to the Lead Member of the arrangement.
- e. Any Dispute arising during the Contract Period between the Consortium Member shall be resolved amicably without adversely impacting Agreement. If in Authority's opinion, Dispute between Consortium members adversely impacting implementation and operation of Authority then Authority may its sole discretion in the interest of the Project (a) Terminate the Contract after due process and/or (2) Provide a binding solution.

#### 2.5.2. Lock - in Period for Consortium

The members of Consortium shall remain in Consortium for a Lock- In Period as stipulated in Clause 8.2 of Volume 1 of RFP.

### **3. TERM OF THE AGREEMENT**

- 3.1. The term of this Agreement shall be a contiguous period comprising the (a) The “Bus Procurement Period” beginning on the Execution Date and ending on the Commercial Operations Date (COD) and (b) the “Operations Period” beginning from COD and ending 7 (Seven) years from the COD (“Contract Period/ Agreement Period”) during which period Operator shall operate and maintain the buses on or outside the BRT Corridor in Ahmedabad on Gross Cost Contract basis as directed by Authority, provided that the Agreement can be extended on mutually agreed terms and rates by additional two years based on performance and condition of the buses.
- 3.2. The COD shall begin from the date which is 270 days from Date of LOA or date of deployment of all Contracted Buses, whichever is earlier. The Deployment shall be considered achieved after the completion of Training Period.
- 3.3. In the event of termination, the Contract Period shall be limited to the period commencing from the Execution Date and ending on the date on which this Agreement is terminated in accordance with the provisions contained herein.

### **4. SCOPE OF WORK**

#### **4.1. Responsibilities during “Bus Procurement “**

The Operator shall before the deployment of buses undertake and complete the following tasks

- a. Procuring 40 number of fully built Midi AC Electric Buses as per technical specification included in RFP.
- b. Prototype approval of Bus to be procured, from the Authority;
- c. Ensure Bus Body ,Chassis, batteries , charging infrastructure and all other Bus components shall be built as per per “Good Industry Practices” and as per the specifications provided in Volume -3 of the RFP. The Operator shall not be permitted to make any changes in the Specifications until specifically authorised by the Authority in writing.
- d. Showcase prototype and adhere to the Bus Delivery Schedule specified in clause 10.1 of this Agreement.

- e. Facilitate the Authority or representatives of the Authority, for inspections and testing with regards to the structure ,bus body building and electric battery and related components as per the quality standards as prescribed in the Clause 8 of the agreement.
- f. Incorporate changes/modifications/Alternations suggested in the bus body and or in the Prototype by the Authority or representatives of the Authority during and after Inspection and testing and before obtaining the final acceptance certificate from the Authority as per Clause 15 of this agreement.
- g. Deploy buses pursuant to Clause 18 and provide training to the manpower as per clause 18.4 of the agreement.
- h. Provide duly licensed drivers to ensure the continued and uninterrupted Bus Service in accordance with the terms contained herein and as per Applicable Law;
- i. Ensure that all drivers, staff and personnel are provided the required training on driving, maintenance, safety, behaviour and hygiene aspects;
- j. At his own cost and expenses procure all Operator Clearances in accordance with ANNEXURE 6 for the purposes of providing Bus Services as per the terms of this Agreement;
- k. Establish maintenance facility ,equipments and Bus battery charging Infrastructure at parking space provided by Authority for preventive and routine maintenance of buses , charging batteries of the Buses and for periodic overhaul at its own cost and expense, and staff it with trained professionals for the purposes of maintenance of Contracted Buses;

#### 4.2. Responsibilities during “Operations Period ”

The Operator, on and after COD, and during the Operations Period shall undertake the following responsibilities:

- a. Operate the Contracted Buses in compliance with terms contained herein including but not limited to the routes, frequency and schedules as may be specified by the Authority from time to time on the routes prescribed by the Authority in Ahmedabad City;
- b. Ensure availability of duly licensed drivers, maintenance staff and other personnel through pro-active human resource management for continued and uninterrupted Bus Service in accordance with the terms of this agreement.



- c. Develop a training program driving, maintenance, charging, safety, behaviour and hygiene aspects; which ensures training to newly recruited drivers, staff and personnel and refresher training to the existing staff already deployed in the operations.
- d. At his own cost and expenses maintain all Operator Clearances in accordance with ANNEXURE 6 for the purposes of providing Bus Services as per the terms of this Agreement;
- e. Maintain the Contracted Buses in good operable conditions in accordance with Good Industry Practices and Operation and Maintenance Requirements set forth in the agreement.
- f. Ensure that safety and security of passengers and any third person on the Contracted Buses is maintained at all times;
- g. Bear all taxes as may be levied under Applicable Law in relation to the Bus Services, save and except those taxes which are the responsibility of the Authority as per the terms of this Agreement and Applicable Law;
- h. Ensure any equipment installed on the Contracted Buses or within the Bus Depot/ Parking Space including any monitoring device or equipment that is installed by the Authority is not tampered with in any manner; and that the Authority and its authorised personnel, are allowed to inspect the equipment installed on the Contracted Buses and the Parking Space at any time without any notice in this regard;
- i. Make available to the Authority a fixed proportion of the Contracted Buses throughout the Contract Period, for maintaining continued and uninterrupted operations of BRTS as per the terms of this Agreement. This proportion shall be 94% of each Lot of Contracted Buses on a shift basis during the initial three years of the Contract Period and 90% thereafter up-to the end of the Contract Period for each Lot of Contracted Buses, rounded off to the nearest whole number ("**Assured Fleet**

**Availability**)<sup>3</sup>; provided that the Authority in its sole discretion may allow the Operator to change the requirement of the Assured Fleet Availability for a particular Lot of Contracted Buses required for the first three months following COD for that Lot of Contracted Buses in writing;

Provided however, in determining compliance with the Assured Fleet Availability:

- i. non availability due to force majeure will not be considered
  - ii. seizure of the Contracted Buses by police authorities shall not be considered; and
- j. Adverse operating conditions shall not affect Contractual obligations and parameters of performance under the Agreement. Wear and tear of the bus due to bad road conditions, rains, flooding of roads, heavy traffic etc. shall not be considered an adequate defence on the part of the Operator for not fulfilling his Contractual obligations as per the Agreement.
- k. Ensure that all Applicable labour Laws and any other Laws including but not limited to the Minimum Wages Act, 1948 are complied with in relation to appointment, hire, recruitment, of any personnel (whether on temporary, contractual or permanent basis by the operator) required in relation to the operation and maintenance of Bus Service;
- l. Maintain and Upkeep the Parking Space in good condition as per the Parking Space License Agreement.
- m. Submit regular monthly reports to the Authority as per the format that may be instructed by the Authority from time to time; and
- n. Carry out all activities necessary for the effective implementation of the provisions of this Agreement.

## **5. AGREEMENT**

5.1. The whole Agreement is to be executed in the approved, substantial and workmanlike

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<sup>3</sup>Calculation of fleet availability is provided as follows for further clarity:

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

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

manner, to the entire satisfaction of the Authority, who both personally and by his deputies, shall have full power, at every stage of progress, to inspect the buses at such times as he may deem fit which he may disapprove. The Authority will depute a team of monitoring personnel who shall have full powers to check, monitor, demand any records from any of the Operator personnel.

## **6. PERFORMANCE SECURITY**

- 6.1. For securing the due and faithful performance of the obligations of the Operator under this Agreement, the Operator, has handed over to the Authority, Performance Security of Rs. \_\_\_\_\_ in form of Demand Draft / Bank Guarantee / Fixed Deposit Receipt (FDR) (instrument no \_\_\_\_\_) drawn on \_\_\_\_\_ (Bank) dated \_\_\_\_\_, for a Validity Period of \_\_\_\_\_, lien marked in favour of, Municipal Commissioner, Ahmedabad Municipal Corporation through such Bank being from the approved list of bank as provided in the Volume 1 of RFP, payable/encashable, admissible and extendable at Ahmedabad only. (**“Performance Security”**).
- 6.2. The Operator shall maintain a valid and binding Performance Security for a period of three months after the expiry of the Contract Period (**“Validity Period”**).
- 6.3. The Authority shall be entitled to forfeit and appropriate the amount of the Performance Security in whole or in part:
- a. in the event the Authority requires to recover any sum due and payable to it by the Operator including but not limited to Damages; and which the Operator has failed to pay in relation thereof; and
  - b. in relation to Operator’s Event of Default in accordance with the terms contained herein.
- 6.4. At any time during the Validity Period, the Performance Security has either been partially or completely been encashed by the Authority in accordance with the provisions of this Agreement. The Operator shall within [15 (fifteen) days] of such encashment either replenish, or provide a fresh performance security, as the case may be, failing which shall be considered as Operator’s Event of Default as per clause 34.1.
- 6.5. On the performance and completion of the Contract by expiry of its term in all respects the Performance Security shall be returned to the Operator without any interest, provided the

Operator is not in default of the terms hereof and there are no outstanding dues of the Authority with the Operator.

## **7. BUS PROCUREMENT**

7.1. Upon submission of requisite Performance Security and Signing of this Agreement, the operator shall procure 40 number of fully built Midi AC Electric Buses as per the Bus specifications attached as part of Vol. 3 of the RFP. The Operator shall obtain adequate insurance as mentioned in the clause pertaining to Insurance in this tender.

## **8. QUALITY ASSURANCE**

### **8.1. Quality of Materials:**

- i) The Bus Manufacturer appointed by the operator shall procure material which is as per Standards set in India. Wherever, Indian Standards are not available, internationally acceptable Standards may be referred/ indicated such as ECE, JIS, DIN, ASTM, ISO etc. for quality assurance of material.
- ii) The Bus Manufacturer can use any material out of the lots, which have been approved by a Authorised laboratory. A certificate to that effect along with copies of the latest Laboratory Test Report (as per specification of this contract from CIRT, Pune/ ARAI, Pune/ BIS approved Labs) shall be submitted to Authority at the time of inspection.
- iii) The Bus Manufacturer shall obtain type approval of all safety critical items/ materials from the authorized testing agencies before use. The Bus Manufacturer shall provide a list of such items along with their Certificates to the Authority.
- iv) Cost of all tests, analysis, and patent rights would be borne by the Bus Manufacturer.

### **8.2. Purchase of Material:**

- i) Material purchase orders of The Bus Manufacturer must be specifying quality, Standards, grade etc. of supplied material. Inspecting official(s) of Authority would carry out random checks and satisfy itself of these details vis-à-vis those specified in the contract.
- ii) In addition, copies of invoices of respective Manufacturers from whom these material had been purchased, be enclosed and these should also have details of quality & grade etc. Authority shall also satisfy itself of these details as above before permitting usage in the Bus.

iii) For items/ materials to be used as per BIS/ AIS/ASRTU Standards, The Bus Manufacturer shall show & furnish a copy of Laboratory Test Certificate from BIS approved Laboratories near the location of Bus Bodybuilder in respect of material proposed to be used in the body building of the Bus. 'ISI' or 'E' marked items of concerned country used in manufacturing of bus need no testing.

8.3. The Operator shall conform in all respect to provisions in this behalf as contained in the Central Motor Vehicle Act, 1988 (or latest) as amended up to date and Central Motor Vehicle Rules, 1989 (or latest) / Gujarat Motor Vehicle Rules currently in force in Ahmedabad or to any other statutory modifications or enactment thereof in such Act & Rules from time to time.

## **9. INSPECTION AND TESTING**

9.1. Authority or representative authorized by the Authority may carry out inspection of Prototype and other buses at any of the following stages before pre-dispatch stage at Bus operator's premises.

- Structural Inspection: Structural assembly stage before panelling in prototype and all buses.
- Final Inspection: After completion after panelling, and equipping of prototype and all buses.

9.2. For any Deficiency noted by the Authority during any stage of the inspection .the Operator shall initiate immediate remedial actions for the same as advised by the Authority. The Authority or Representative of the Authority shall not be entitled to suggest changes or modifications which are not part of the mutually agreed Bus specifications.

9.3. The Operator shall provide free of charge all facilities at Bus Manufacturer's premises viz. Working space, equipment, tools, labours, gauges, drawings and specifications required for this purpose without extra charge to the inspecting officer for proper performance of his work on inspecting and testing of work under this Agreement.

9.4. The Authority shall not conduct any laboratory test if the material procurement certificates are submitted by the Contractor at the time of inspection of buses. Notwithstanding with above, if found necessary, the Authority may conduct material test at any stage for prototype or any other buses, at its own cost. If the material fails the test, entire cost of testing shall have to be borne by the Operator. The Authority might conduct lab testing mostly for following material.

<b>Sr. No.</b>	<b>Items to be tested</b>	<b>Specifications</b>
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1.	CR Tubular sections	BIS:4923-1997 (or latest) of Grade Yst.-240
2.	Phosphating / Galvanizing	BIS:3618-1966 (or latest) Class A-2 for Phosphating & BIS:277-2003 or latest - 120 gsm for Galvanizing (Zinc Coating) and two weeks (336 hours) Salt Spray Test for both in accordance with ASTM procedure B117 with no structural detrimental effect to normally visible surfaces & no weight loss of over 1%.
3.	EPDM Rubber	As per AIS 085
4.	Glasses Laminated	BIS: 2553 (Part-2)-1992 (or latest) Float Glass, Front 'AA' Grade Glass, PVB Film in Laminated Glass.
5.	Aluminum Parts	IS:733-1974 (or latest) for Solid Part, IS:1285-1975 or latest for Extruded Round Tube &Hallow Part and IS:738-1977 or latest for Drawn Tubes, Alloy 63400, tempering WP.
6.	Paint	PU Paint as per relevant IS: 13213:1991 (or latest) & any other relevant BIS Standards. For Matt Black Paint the Gloss Value is upto 30 units.
7.	LT Wire	BIS: 2465-1984(or latest). DIN 72551- Dimensional Test JIS C 3406- Spark, Immersion & Conductor Resistance Test' SAE recommended J 1127 & J 1128
8.	Aluminium Sheet	BIS:737-1986(or latest), Aluminium Alloy H-2/31000
9.	CR sheets	BIS:513-2008(or latest)
10.	GI Sheets	BIS:277-2003 (or latest),Class-VIII Medium Coatingof Zinc Nominal Weight120 grams/M2.
11.	Passenger Seat Assembly	As per AIS-023, Bus Code & BIS Standards. For MS components two weeks (336 hours) Salt Spray test for both in accordance with ASTM procedure B117 with no structural detrimental effect to normally visible surfaces & no weight loss of over 1%.
12.	Marine Board / other floor material	BIS: 710-1976 (or latest) IS:5509-2000 (or latest) for Flammability.

9.5. The Authority shall issue Pre Despatch Inspection Certificate within seven days of satisfactory inspection of Fully Built buses. Operator shall despatch buses only after attending defects/ deficiencies observed during Pre- Dispatch Inspection.

## 10. DELIVERY OF CONTRACTED BUSES

10.1. Delivery Period: Delivery of prototype Bus and thereafter other Contracted buses shall be as follows; . (“Bus Delivery Schedule”)

Time	Delivery of Fully built Buses (no.)
Within 90 days from date of LOA/ Purchase Order	Prototype
Within 90 days of approval of prototype	First Lot of 20 Buses

Within 180 days of approval of prototype

Second Lot of 20 Buses

- 10.2. Operator shall deliver buses at the place/ places as shall be specified by the Authority within Ahmedabad Municipal Limits, not later than the dates/schedule specified in the Agreement.
- 10.3. Authority shall be entitled to levy damages as per clause 16 of the Agreement to the Operator upon failing to perform as per Clauses above.
- 10.4. Failure to comply with stipulated delivery schedule shall attract pre-defined liquidated damages and other provisions of the contract.
- 10.5. Operator shall intimate Authority at least 15 days prior to any inspection at Bus Manufacturer's premises failing which Authority shall not be liable for delay in inspection and supplies of buses. Authority shall conduct inspection within 15 days from the day of receipt of request for inspection from Operator. Delay in delivery of buses on account of late inspection and delay in submission of inspection report by the Authority for the affected quantity shall be entirely attributable to the Authority.

#### **11. INSPECTION OF CONTRACTED BUSES**

- 11.1. On receipt of fully built Contracted Buses at Ahmedabad, these shall be jointly inspected by the Operator and the Authority for completeness and satisfactory condition of all equipment/ components. Damages, defects and deficiencies, if any, shall be noted and the Operator shall initiate immediate action for making good the same under advice from Authority within mutually agreed time period. Any delay commissioning of these buses due to any such reason shall be to Operator's account and shall be dealt with by the Authority as per Conditions of the Agreement.

#### **12. COST OF INSPECTION**

- 12.1. All the costs associated with the inspection of prototype bus and other buses at Bus Operator's premises and at Ahmedabad, including travelling and conveyance expenses of representatives of the Authority shall be borne by the Bus Operator.

#### **13. PROVISIONAL RECEIPT CERTIFICATE**

- 13.1. Authority shall issue Provisional Receipt Certificate within three working days of receipt of Bus (es) in good conditions along with valid required documents at Ahmedabad. The Provisional Receipt Certificate issued by the Authority shall not be considered the Acceptance of the Buses for deployment for operations as per the conditions of the Agreement.

#### **14. REMOVAL AND REPLACEMENT OF REJECTED BUSES**

- 14.1. On rejection of any Bus, subjected to inspection or assessment of performance during commissioning at Authority's premises, such buses shall be removed, within 21 days of the date of intimation of such rejection.
- 14.2. The Operator shall immediately transport such rejected buses back to the Bus Manufacturer's premises at its own cost and risk.

#### **15. FINAL ACCEPTANCE CERTIFICATE**

- 15.1. The Operator shall inform about rectification/ removal of defects/ deficiencies observed during Joint Final Inspection within 07 days from date of inspection. Thereafter, Final Acceptance Certificate shall be issued by Authority. The Operator shall initiate the process of deployment of buses for BRTS operations in accordance with clauses of this agreement.

#### **16. LIQUIDATED DAMAGES FOR DELAY IN SUPPLY OF FULLY BUILT CONTRACTED BUSES**

- 16.1. If the Operator fails to complete the supply of Contracted Buses within the Month wise delivery schedule specified in the clause 10.1 above and if the Operator is not able to cure such default (delay in buses) within the next milestone of the contracted delivery schedule, by supplying combined quantity of Contracted Buses for both the milestones the Authority shall, without prejudice to other remedies under the Agreement, levy/deduct pre-estimated liquidated damages of Rs. @ Rs. 2500/- (Rupees Two thousand and Five hundred only) or part thereof, per bus per day of delay.
- 16.2. The amount of pre estimated liquidated damages to be charged under the contract, in terms of Clause 16 of Contract Conditions shall not exceed Rs 2.5 lakh per Bus.
- 16.3. In the event of the delivery of Contracted Buses is delayed beyond the stipulated Delivery Schedule as per clause 10.1 and within the period of additional 120 days after expiry of the delivery schedule, the Authority shall not accept delivery of number of delayed Buses beyond above mentioned time period unless such occurrence (delay in bus) is not attributable to Force Majeure Events.

#### **17. CONSEQUENCES OF NON ADHERENCE TO THE DELIVERY OBLIGATIONS**

- 17.1. In case of the Operator fails to deliver Contracted Bus as per stipulated schedules and timelines and as specified in sub clause 16.2, after exercising all remedial measures provided in elsewhere in this agreement, it shall be considered Operator's Event of Default.
- 17.2. Notwithstanding above, in case of delay in delivery of Contracted buses by the Operator



pursuant to clause 16.2 above, The number of Contracted Buses which are to form part of the contracted fleet shall be reduced by only the number of buses delivered and accepted by the Authority.

17.3. With pursuant to clause 17.2 above, in case of reduction in size of the contract, the Operator shall replace the amount of Performance Security calculated as per the revised contract size.

## **18. DEPLOYMENT OF CONTRACTED BUSES**

18.1. Subject to issuance of Final Acceptance Certificate from the Authority, the Operator shall commence Bus Service for each Lot of such accepted Contracted Buses no later than 15 (Fifteen) days from the date of Final Acceptance Certificate, or any extended period as may be agreed upon the Parties in writing (“Commercial Operations Date for Bus Lot” or “COD for Bus Lot”).

18.2. In the event the Operator is not able to start operations of particular Lot of Contracted Buses as per above clause for reasons not attributable to the Authority or to a Force Majeure Event, and which in the opinion of the Authority can be attributable to the Operator, the Operator shall pay liquidated damages of Rs.2500 per bus per day comprising of the Lot for every day of delay till COD for that Lot is achieved. Capping of LDs and consequences are as per clauses 16 and 17 of this Agreement.

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

18.4. The Operator shall deploy entire Staff for operation and maintenance of the Contracted buses for provision of training for 15 days prior to COD. (**“Training Period”**).

18.4.1. During the Training Period, The Operator’s staff shall be educated about the intricacies of BRTS system and Bus Service Area and skill-set required for efficient operations.

18.4.2. Cost of Damage to Project Asset or any other third party property including fatalities, injuries of employee of Authority, Operator or third party due to negligence of the Operator’s staff employed for the purpose of the training shall be the liability of Operator.

18.4.3. Payment to the Operator for the Training Period shall be paid separately by Authority as provided in The Clause 25.5 (d) of the Agreement.

## **19. OWNERSHIP OF CONTRACTED BUSES**

- 19.1. The ownership of the Buses shall remain fully with the Operator during the entire term of the Agreement. All the Contracted Buses shall be registered in the name of Operator.
- 19.2. Operator shall mount ITS Equipment on Buses as per the specifications provided in Volume 3. Operator shall also ensure to supply equipment compatible with existing ITS System of Authority so as to enable smooth integration. Operator shall be responsible for regular maintenance ITS equipment installed by it during the Contract Period. Operator and Authority are hereby agree to share interfacing protocols and Active Programming Interface with each other for smooth integration of ITS equipment provided by Operator with Authority's ITS System. Authority shall mount CCTV cameras etc on the Bus through a separate vendor appointed by it. The Operator shall return all CCTV or any other equipments installed by Authority in working condition to the Authority after successful completion of agreement period.

## **20. HANDOVER OF PARKING SPACE AND BUS DEPOT**

- 20.1. For the purposes of maintenance, charging and cleaning and parking of Contracted Buses, the Authority shall provide a Parking Space to park the Contracted Buses for short duration and carry out maintenance and charging activities in accordance with the terms contained herein. It is hereby clarified that the Operator shall only have a limited right to use the Bus Depot/ Parking space subject to the terms contained herein. The Operator shall enter in a separate Parking Space License agreement with the Authority at time of handover of such depot or Parking Space.
- 20.2. The Operator shall at his own cost and expenses bring any such moveable equipment and/or machinery and charging infrastructure and appoint skilled personnel and supervisor for regular upkeep, maintenance, cleaning and safekeeping of the Contracted Buses in accordance with the terms contained herein.
- 20.3. It is hereby clarified that the ownership of the Parking Spaces shall remain vested solely with the Authority at all times. The Operator shall only be provided the limited right to use the Bus Depot/ Parking Spaces during the Contract Period, and on Termination, the Operator shall vacate and hand back such Bus Depot/ Parking Spaces as per the terms contained herein. Upon termination, the Operator shall not remove any permanent structure created by him to fulfil the obligations as per the terms of this Agreement.
- 20.4. The Operator shall not have any right to display advertisement in the Bus Depot/

Parking Spaces or any part thereof.

20.5. The Operator shall:

- a. at his own cost and expense maintain the area of the Bus Depot/ Parking Space provided to it under the terms of the license agreement and the terms contained herein in good working condition;
- b. not cause any damage in the area of the Bus Depot/Parking Space provided to it under the terms of the license agreement and the terms contained herein or do any act which will in any way be prejudicial to the rights of Authority or other users/occupants of the same.
- c. only be responsible to maintain the area of the Bus Depot/Parking Spaces which has been specifically allocated and handed over to him by the Authority under the relevant license agreement.

20.6. Authority will make bulk power available at Parking Space. Operator will arrange for site level distribution of power to its charging points along with related equipment and infrastructure for charging including any civil and other ancillary work required for parking, charging and maintenance. The decision on number of chargers to be provided is left to the Operator according to his solution. The Operator shall also be liable to pay bills for utilities such as electricity, water etc. on actual basis in relation to the area of the Bus Depot/Parking Space allotted to the Operator. Information regarding Electricity Rates applicable may be obtained directly from Power suppliers Torrent Power Ltd. (for Ahmedabad city) and Uttar Gujarat Vij Company Ltd. (UGVCL) (for outside Ahmedabad city limits). Operator /Service Provider will present the best solution in terms of bus, capacity of batteries, charging infrastructure required, charging time etc. looking to the operational requirements of BRTS.

20.7. The Operator shall also be liable to pay bills for utilities such as electricity, water etc. on actual basis in relation to the area of the Bus Depot/Parking Space allotted to the Operator.

20.8. It shall be the obligation of the Operator to whom a Bus Depot/Parking Space is allotted to allow buses of other Bus Operators for BRTS/other Urban Bus services of Authority to park and share the facilities developed at the Bus Depot by the Operator. It is likely that Authority may ask multiple Operators to share Depot/Parking Space Facilities to optimize Bus Schedules. In such case different Operators may decide the terms if any between them which are most suitable in their opinion.

## 21. OPERATION PLAN

- 21.1. The Authority shall develop a plan which shall contain details including but not limited to number of Contracted Buses, details of the Assured Fleet Availability, Operating Plan, Routes, frequency, stoppage plan and table of schedule providing bus headways based on peak and off peak hour requirements ("**Operation Plan**").
- 21.2. The Authority may develop the Operation Plan in consultation with the Operator provided however, the suggestions made by the Operator shall not be binding on the Authority.
- 21.3. The Authority reserves the right at its own sole discretion to make changes to the Operation Plan from time to time and shall notify the same to the Operator.

## 22. ROUTES AND SCHEDULES

- 22.1. The Authority shall have the exclusive discretionary power to determine Routes, frequency and schedules of the Contracted Buses as a part of the Fleet Deployment Plan throughout the Contract Period.
- 22.2. The Operator shall ensure that the Contracted Buses are operated on the said Routes, frequency and schedules and other requirements as specified in the Fleet Deployment Plan and as specified by the Authority from time to time in accordance with the operation and maintenance standards specified herein.
- 22.3. The Authority may at any time make changes to the Routes, frequency, schedules of Contracted Buses due to any reason whatsoever including but not limited to special circumstances, festivals, and seasonal requirements.
- 22.4. In the event the Authority makes changes as specified in above Clause, it shall notify the Operator in writing [seven (7) days] prior to the date of implementation of such change.
- 22.5. In the event the Operator makes any unscheduled or unauthorized trip outside operation hours and beyond the Routes or in violation of any requirement of the Fleet Deployment Plan or specific instructions notified by the Authority in relation thereof, it shall be liable for the penalty set forth in this Agreement.

## **23. FARE AND FARE COLLECTION**

### **23.1. Passenger Fare Determination**

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

### **23.2. Passenger Fare Collection**

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

## **24. ADVERTISEMENT ON THE BUSES**

- 24.1. The Authority shall reserve rights to display advertisement of all types of media on the Contracted Buses as well as to collect and retain revenue generated from above activity.
- 24.2. The Authority shall share only 20 % of the total revenue generated from the advertisement on Contracted Buses with Operator.
- 24.3. The Operator shall be responsible for security and cleanliness of advertisement material and equipment. In case of theft or any malfunction of advertisement material/equipment the Operator shall report to the Authority on immediate basis.
- 24.4. In case any damages occur to the Contracted Buses while mounting or dismounting of advertisement material or equipments, the Operator shall immediately make good of such damages at its own cost. The Authority shall not make any compensation to the Operator in this regard.

## 25. PAYMENTS TO THE OPERATOR FOR KILOMETER CHARGE

- 25.1. Bus Kilometres for any particular Contracted Bus of a particular type shall comprise of the following:
- a. Distance travelled by the Contracted Bus assigned on given Route(s) as per the Operating Plan.
  - b. Distance travelled by a Contracted Bus as per Operating Plan.
  - c. Distance travelled by a Contracted Bus, which is outside the Operating Plan but approved by the Authority for specific and special requirements.
  - d. Distance travelled by the Contracted Bus from the Bus Depot/Parking Space to the first point of loading passengers at the commencement of its service on a day and Distance travelled by the Contracted Bus from its last passenger stop as per the Operating Plan to the Bus Depot/Parking Space at the end of the day's service.
- 25.2. Bus Kilometres shall not constitute the following
- a. Any kilometres travelled by the Contracted Bus to a maintenance facility other than that set up by the Operator at the Bus Depot/Parking Space provided for by Authority or for any travel not authorized by Authority.
  - b. Distance travelled by a Contracted Bus for charging facility other than that set up by the Operator at the Bus Depot/Parking Space provided for by Authority .
- 25.3. The Authority shall compute and provide to the Operator, for every Payment Period, from when the first of the Contracted Buses commences service, the total number of kilometres that the Contracted Buses have travelled for the aforesaid period. Such calculation shall be made using Global Positioning System (GPS) and in case of absence of GPS, manually with the supervision of the Authority staff. The Operator shall be paid based on the Bus Kilometres logged and verified in this manner according to the Kilometre Charge fixed.

### 25.4. Basis for Payments

The Base Kilometre Charge Payment to the Operator by the Authority for the Bus Services rendered shall be as per the provisions described hereinafter (“**Operator Payment**”).

The base Year Price of Fuel/Power per Unit, the Base Year Wholesale Price Index (WPI) and the applicable minimum wages as prevailing in the state of Gujarat and as

amended from time to time shall be used for determining the Applicable Kilometre Charge throughout the agreement period are as follows:

Base per Kilometre Charge quoted by the Operator in the Price Proposal for the Contracted Buses and accepted by the Authority in the LOA:

Sr. No.	Bus Type	Quantity (Nos)	Quoted Rate Rs / Km (Exclusive of GST )
1	Fully Built MIDI AC Electric Buses	40	

Base Year Price of Fuel/Unit : Rs [ ] per Unit of Power, being the prevailing price of Electricity Tariff charged by Torrent Power Ltd. / UGVCL for industrial consumers as applicable and as available from the cheapest legal source in the vicinity of the Bus Parking Space being prices of a week immediately prior to the last date of submission of the RFP on [ ].

Base Year Wholesale Price Index for all commodities:[ ]for calendar Year 2017].

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

Base applicable Minimum Wages for relevant Skilled Labour category/Schedule [ ] stipulated by Government of Gujarat and effective before one week prior to Bid Due Date.

Source : Labour and Employment Department, Govt. Of Gujarat.

## **25.5. Payment Terms**

### **a. Invoicing Period:**

For each Contracted Bus that has been put into regular operations from the date of COD, the Operator shall submit an invoice at the end of every 10 (Ten) days in a month ("**Payment Period**") specifying:

- i. registration number of each Contracted Bus and the type of bus that has travelled as part of the Bus Service,
- ii. Bus Kilometres travelled by each Contracted Bus as part of the Bus Service in the relevant payment period (clearly identifying the Contracted Bus)

- iii. Applicable Kilometre Charge for the period for the particular type of Contracted Bus.
- iv. GST tax, and any applicable surcharge or cess on it, if any, payable on the amount as per provision of sub clause below.
- v. Copy of daily Power price and purchase bills indicating source, quantity and rate per Power purchased.

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

The Operator shall submit invoice strictly for the route wise scheduled kms for the payment period provided by AJL/Authority.

***b. Payment Period***

The Authority shall, within a period of **10 (ten) days** of the receipt of invoice, make part payment of **90%** of the total invoiced amount for each payment cycle of 10 days. Balance **10%** of the amount of each invoice shall be released by the Authority in first 15 days of the next month of the every month of operation (starting from COD) after verifying the records that it has on the Bus operations and evidence of salary paid to employee and making adjustment against or damages or other adjustments as may be applicable against the invoice under the terms of the Agreement. In case of expiry the agreement in the normal course of time, complete payment of last month of operation shall be made by the last day of the Agreement.

All payments shall be made by the Authority to the Operator after making any tax deductions at source under Applicable Law.

The Authority reserves right to create an Escrow Account with a Bank acceptable to both the parties i.e Authority and the Bus Operator, vide a tripartite agreement signed between all Three Parties (Authority, Bank and the Bus Operator), with objective to prioritize the payment of salaries to the employee(s) of the Bus Operator out of the payment made to the Bus Operator by Authority as mentioned above.

***c. Method for Calculation of Aggregate Payment***

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

Payment = Applicable Kilometre Charge for Contracted Bus x [Operated KM]



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

Any Fines levied shall be adjusted from the Aggregate Payment subject provisions of this Agreement.

any applicable surcharge or cess on payment for services rendered by the Operator, if any, shall be levied and billed over and above the payment amount based on the number of operated kilometres in the given period multiplied by the Applicable Kilometre Charge. The Authority is liable to pay this additional amount on the Invoice Amount.

With regards to GST , It is the understanding of the Authority that no GST is applicable on the Km Rate payable to the Operator since the Authority is inviting the proposals in fulfillment of its role as a State Transport Undertaking. However, if GST is applicable, or becomes applicable at a later date during the currency of the Agreement due to any change in GST law or rules or due to a new interpretation upheld against contestation in any statutory Tribunal or Court of Law, then the Authority will pay such GST over and above the Km rate accepted against production of convincing documentations proving the same. The Authority's decision in the regard shall be final. No prior period claims of any GST payable in arrears by the Operator shall be admissible under this clause.

***d. Payment for Bus operation during Training Period.***

During the Training Period prior to COD, Authority shall pay the Operator for all operated Kilometres as per the formula is specified below.

Payment = Applicable Kilometre Charge for Contracted Bus x 50% x [Operated KM]  
Where

The Operator shall raise invoice at the end of the Training Period along with bus operation and other details specified in this Clause. The Authority shall make payment as per the procedures set forth in this clause.

***e. Guarantee to operate particular number of kilometres***

The Authority hereby assures the Operator that the Operating Plan will be formulated so as to ensure that the average number of Bus Kilometres travelled by each of the Contracted Buses, in a continuous period of **12 (Twelve) calendar months**, commencing from CoD of relevant Lot of Contracted Buses, and then

onwards on annual basis, shall be no fewer than 72,000 kms / Contracted Bus (Seventy Two Thousand Kilometres per contracted bus) [**“Annual Assured Bus Kilometres”**]

For calculating the Total Annual Assured Km in any particular year, only the Bus availability Factor will be taken into account.

(Illustration: for Year 1, if the Total Contracted Buses are 40, the total Km Contract under the Annual Assured Bus Km will be say [ (40 buses x 94%) = 38 Buses x 72000 = 27,36,000 Km ]. If the Aggregate Km demanded and operated in Year 1 exceeds 27.36 lakh, then for the number of Km exceeded, the payment shall be made at the Km rate for Excess Km. Similarly if the Aggregate Km operated is less than 27.36 Km, then for the number of Km by which the Aggregate Km fall short of 27.36 lakh km shall be made at the rate for Unutilised Km.)

***Annual Assured Payment after reconciliation***

**i. Payment for Unutilised Kilometres:**

In the event that the Authority is unable to demand from the Operator the operations of the Contracted Bus trips such that the average number of kilometres operated per Contracted Bus is not equal to the Annual Assured Bus Kilometres, Authority will pay to the Operator, in addition to the full payments made for Bus km operated based on invoices presented by the Operator, an amount which shall be determined as follows:

Annual Assured Payment Amount for Unutilised Kms =  $0.50 \times (T_m - T_a) \times$   
Applicable Kilometre Charge

*where*

$T_m$  = Annual Assured Bus Kilometres x Available fleet

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

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

*a. Default of the Operator under this Agreement*

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

**ii. Payment for Excess Kilometres**

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

**Annual Assured Payment Amount for Excess Kms = 0.50 x (Ta – Tm) x Applicable Kilometre Charge**

*where*

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

Tm = Annual Assured Bus Kilometres x Available fleet

- iii.** The Applicable Kilometre Charge for the purpose of the Payment of Unutilised or Excess Km shall be the weighted average of the applicable Kilometre Charge used in payment periods during the relevant year.
- iv.** The determination of whether Annual Assured Payment Amount is due shall be done at the end of a period of 12 (twelve) consecutive calendar months. The Authority shall provide the Operator with a notice of the calculation with the supporting data (the kilometres travelled by each of the Contracted Buses comprising the Available Fleet).
- v.** The Authority shall have right to compute on its own and verify the Annual Assured Kilometres. The Authority shall compute and provide to the Operator, every quarter from the COD for the respective lot of buses, the total number of Kilometres that the Available Fleet has travelled for the aforesaid period. Such calculation shall be made using GPS and in case of absence of GPS, with the help of Authority staff or its authorised agency.

vi. With respect to sub clauses (iv) and (v) herein above, the provision of clause 25.4 e shall be also be used to determine Annual Assured kilometres .

**f. Basis of Revision of Kilometre Charge**

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

- a. For Fuel cost, simple average of daily fuel /Power price as prevailing during the invoicing period shall be used for to determine the percentage change in fuel component in the Rate Revision formula provided further in this clause. The fuel/Power price must reflect an Electricity Tariff charged by Torrent Power Ltd. / UGVCL for industrial consumers as applicable in vicinity of parking space provided by Authority in Ahmedabad.
- b. For change in cost of consumables, change in Wholesale Price Index (WPI) from Base WPI, mentioned in this Agreement, published by the Ministry of Commerce, Government of India, or such other body that is reliably entrusted with this task shall be considered. The proportion of consumables cost in the Base Rates shall be revised on every anniversary of the COD of each Lot of Contracted Bus.
- c. For Change in labour / manpower cost component in the rate revision formula, the change in the applicable minimum wages from base wages mentioned in this agreement for the relevant skill category for bus drivers shall be applicable as and when revised by the competent Authority in the State of Gujarat. Such change in cost shall be made effective from the next invoicing period to notification issued by the competent authority.

The Kilometre charge shall be revised based on following formula;

$$RL = [R\text{-base} ] + [R\text{-base} \times 0.15 \times (F - F\text{-base})/F\text{-base}] + [R\text{-base} \times 0.25 \times \{((W - W\text{-base})/W\text{-base})\} * 72\%] + [R\text{-base} \times 0.15 \times \{(L - L\text{-base})/L\text{-base}\}]$$

Where

RL is the Kilometre charge for each Lot of Contracted Buses

R-base is the Base Kilometre Charge

F is present Price of Fuel /unit (i.e unit of Power)

F-base is the Base Year Price of Fuel/unit (i.e unit of Power)

W is the Present Year Wholesale Price Index

W-base is the Base Year Wholesale Price Index

L is the Present applicable Minimum Wages for the relevant skill category for drivers in the State of Gujarat

L-base is the applicable Base Year Minimum Wages for the relevant skill category for drivers

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

**25.6. Limitations to Liability of Authority for Operations and Maintenance**

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

**25.7. Liabilities arising from negligent driving and accidents**

- a) Any damages arising due to negligent driving, or accidents of the Contracted Buses on the street shall be the liability of the Operator.
- b) In case of accident, Operator himself shall make arrangement to bail out his employee (driver) from police custody and also to deal with further litigations arising out of the said accident.

**25.8. Fines and Compensation**

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

**26. TAXES AND STATUTORY LEVIES**

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

<b>Sr. No.</b>	<b>Taxes and Charges</b>	<b>Parties responsible for payment</b>
1	Vehicle Registration Charges	Operator
2	Insurance premium for the Buses and other assets owned by the Authority	Operator
3	Motor Vehicle tax within Municipal Limit of [Ahmedabad]	Operator
4	Motor Vehicle tax outside Municipal Limit of {Ahmedabad}	Operator
5	Passenger Tax	Authority
6	Stage Carriage Permit	Authority
7	GST	As per provision of clause 25.5 C

## **27. OPERATION AND MAINTENANCE STANDARDS**

- 27.1. The Operator shall observe the minimum service standards for operations and maintenance of Contracted Buses as provided in the Agreement.
- 27.2. The Operator shall operate and maintain the Contracted Buses in accordance with the Fleet Deployment Plan, and shall at all times ensure that the frequency is maintained as specified under the Fleet Deployment Plan or as per the instructions of the Authority from time to time.
- 27.3. The Operator shall ensure that the following activities are undertaken as part of the maintenance activity of the Contracted Buses without causing any disruption to the frequency or the availability of the Contracted Buses in accordance with the terms contained herein:
- a. Charging of Bus Batteries.
  - b. Checking and maintaining Charging Infrastructure.
  - c. Water topping of radiators
  - d. Checking and topping of engine oils
  - e. Checking of tyres
  - f. Cleaning, sweeping and washing of buses including soap washing every week.
  - g. Attending to defects reported by drivers.
- 27.4. In addition to the Operator Clearances, the Operator shall ensure that he procures and maintains a valid certificate of fitness and a pollution control certificate if applicable from the relevant authorities for all the Contracted Buses from time to time.

27.5. In the event the Operator fails to maintain the security of the Contracted Buses and there is any theft or damage of bus component/spare parts/hardware/software/instrument/bus batteries, then the Operator shall reinstall/re-instate such bus component/spare parts/hardware/software/instrument/bus batteries of the same or equivalent quality and specification after giving prior written notice to the Authority.

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

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

27.8. Operator shall replace batteries/ replenish charging infrastructure at its own cost if need so arise to comply with Assured Availability during the Contract Period.

## **28. ROLES, RESPONSIBILITIES AND OBLIGATIONS OF THE OPERATOR AND THE AUTHORITY**

### **28.1. Obligations of the Operator**

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

- 28.1.1. Operator shall deploy the fully built Midi AC Electric buses in accordance with terms and condition set forth in this Agreement.
- 28.1.2. Make full payment to the Bus Manufacturer for procuring Contracted buses.
- 28.1.3. Operation and Maintenance of Contracted Buses:
  - a. Operate and maintain the Contracted Buses in accordance with Specifications, maintenance manual and other information provided in Annexure to the Agreement.

- b. Use the Contracted Buses only for the purpose of providing Bus Services in accordance with this Agreement and shall not use the Contracted Buses for any other purposes;
- c. Allow access to the Contracted Buses to all members of the public without any prejudice or discrimination;
- d. Ensure that all recruited drivers shall hold commercial heavy duty vehicle license valid since the last three years. Licenses of drivers shall be submitted to Authority for verification before deployment. In addition, before deployment of any driver/s, the Operator shall arrange to verify, through appropriate tests, the knowledge, skills and expertise of the proposed drivers and obtain an acceptance certificate from Authority for deployment of each driver. When on duty, the driver shall always carry this certificate. No driver without the said certificate shall ever be deployed on the Buses provided for the Bus operation of the Authority. Further, if any driver is found to be wanting in the requisite skills, knowledge, and responsibility, Authority reserves the right to ask for replacement of such a driver by a duly qualified driver and the Operator shall forthwith comply with this requirement immediately.
- e. Make drivers and technicians for undergo orientation / familiarisation training programme at Ahmedabad. Operator would also arrange for space, the training bus, fuel etc for said training programme at his cost.
- f. The training program shall be organised by the Operator on periodic basis as an ongoing activity of providing primary training to newly recruited drivers and technicians as well as updation training to existing manpower.
- g. Ensure the highest standards of cleanliness both inside and outside the Contracted Bus at the time of reporting for the first shift of operations of the bus service of the day;
- h. Ensure safety and security of the passengers, personnel and any third party using the Contracted Buses. The Authority may impose penalties/damages for breach of safety, maintenance and operating requirements;



- i. Ensure safety and security of the Contracted Buses against theft or other forms of damage;
- j. Submit invoices in a timely manner in accordance with the terms contained herein;
- k. Maintain working capital equivalent to at least 2 (TWO) month's Operator Payment payable by Authority;
- l. Pay all amount due and payable including but not limited to damages and/or fines to the Authority as per terms of Agreement without any delays;
- m. Ensure that the Contracted Buses stop to pick up and allow the passenger to get off at the nominated bus stations;
- n. Provide and maintain (and keep up to date) first aid box in each Contracted Bus during Contract Period;
- o. Keep available any and all equipment, spare batteries, charging infrastructure ,consumable, machine or material that is required for the uninterrupted and continuous operation, management and maintenance of the Fleet at all times and places during the Contract Period;
- p. Make adequate arrangement through Annual Maintenance Contract with Bus Manufacturer for overhauling of bus aggregates, repair and retreading of tyres, repair of bus bodies, repair of accidental buses, repair of charging infrastructure and bus batteries etc to the satisfaction of the Authority.
- q. Make adequate arrangement either in-house or outsourced for attending to road calls on-line, towing of failed vehicles if required, clearance of bus ways, etc in least possible time.
- r. Shall not tamper or interfere with any equipment, instrument or system installed by Authority including the GPS tracking facilities and CCTV

surveillance and any other IT and Contracted Bus monitoring devices provided in the Contracted Buses and the Project to enable provision of safer Bus Services to the passengers.

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

personnel engaged by it for implementing the Project.

28.1.4. Co-operation with the Authority

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

- 28.1.5. Compliance with the terms of the Warranty and Good Industry Practice
- a. shall comply with all terms of Warranty and instructions that are provided by Bus Manufacturer ;
  - b. undertake all preventive and corrective maintenance in compliance with terms of the Warranty as provided by the bus manufacturer, standards and instructions as may be notified by the Authority from time to time and in accordance with Good Industry Practice;
  - c. carry out major overhauls of the Contracted Buses according to the number of kilometres travelled as per terms of the warranty as provided by the Bus manufacturer, standards and instructions as may be notified by the Authority from time to time and in accordance with Good Industry Practice;
  - d. shall comply with all the literature provided by bus manufacturer in terms of manuals, operating, and maintenance and safety instructions/manual to the Operator. The Operator shall be responsible for understanding the working of Contracted Buses allotted to it in all aspects specified above including safety features. Operator shall abide by the instructions specified in the operating, and maintenance and safety instructions/manual all times during the Contract Period. The inspection procedures for the frequency and type of the inspection for each technical condition criteria as specified therein for Contracted Buses shall be complied by the Operator;
  - e. notify defects of any bus component or equipment and/or monitoring device to Authority and take prompt and immediate action as per the instructions of the Authority at operator's own cost and expense, as per the instructions issued by the Authority.
- 28.1.6. Annual Maintenance Contract
- a. The Operator hereby agrees to enter into elaborate Annual Maintenance Contract with Bus Manufacturer for the purpose of ensuring regular servicing and preventive maintenance activities for the contracted Buses. The Operator shall share details of the Annual Maintenance Contract with Authority less of commercial details as evidence.
- 28.1.7. Record and Reporting Requirements
- a. maintain record of all preventive maintenance activities shall be kept in the bus maintenance log book and duly authenticated by the person in charge of carrying out Contracted Bus maintenance. The Operator shall submit the

log books for inspection by Authority staff as and when demanded;

- b. submit to the Authority in a format as specified by the Authority from time to time:
  - i. a monthly report which shall include but not be limited to:
    - Progress reports
    - Status of all risks and issues.
    - Status of readiness the skilled staff to operate Contracted Buses and supervise Contracted Bus operation.
    - Status of Contracted Buses with regards to roadworthiness and compliance with highest maintenance standards/manufacturer's manual or instruction.
  - ii. report on an immediate basis reporting incidents requiring urgent attention of the Authority such as accidents, theft, etc.
  - iii. submit a summary of all the complaints on a monthly basis to Authority.
  - iv. submit copy of certificate of road worthiness of the Contracted Buses periodically every quarter.

28.1.8. Inspection :

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

Upon such inspections any suggestions/instruction received from the Authority with regards to corrective actions, maintenance requirement, part replacement requirement, shall be implemented by the Operator at its own cost within [15 (fifteen)] days or a reasonable time period as specified by the Authority. In case of non rectification/non action of such instruction within stipulated time period, the Authority may replace or rectify such defect at its own cost and such expenses borne by the Authority shall be reimbursed by the Operator on an immediate basis.

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

28.1.9. Repair and Replacement

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

28.1.10. Appointment of Drivers and Staff

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

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

- persists in any misconduct,
- is incompetent or negligent in the performance of his duties,
- fails to conform with any provisions of this Agreement, or
- persists in any conduct which is prejudicial to safety, health, or the protection of the general public / environment.

- b. be solely and exclusively responsible for all drivers, employees, workmen, personnel and staff employed for the purposes of implementing the Agreement. The Operator shall ensure that all personnel and staff are under its supervision so as to provide the Bus Service in a safe and efficient manner to the public.

Provided, however the Authority shall not be liable for any payment or claim or compensation (including but not limited to compensation on account of death/injury/termination) of any nature to such foregoing persons at any point of time during tenure of this Agreement or thereafter and the Operator shall keep the Authority indemnified in this regard.

- c. ensure that all drivers, personnel and staff shall wear uniform as approved by Authority and are well behaved with passengers and officials of Authority. The Operator shall at its own cost and expense provide uniforms and shall ensure that clean uniforms shall be worn by drivers and any other personnel and staff employed at all times when they are on duty and doing any act in relation to providing the Bus Service under this Agreement.
- d. hold periodic training sessions for drivers, staff and all personnel (temporary or on contractual or permanent basis) so as to ensure to implementation of Bus Services efficiently.
- e. ensure that the drivers and other personnel engaged by the Operator do not involve in any subversive activities, disruption in normal services and inconvenience or/and harassment to the commuters/users. The drivers and other personnel engaged by the Operator are required to be police verified.
- f. be responsible for all the costs and expenses of maintenance, operation, employment of drivers and other personnel including but not limited to travel, training of its employees, and vendors engaged by the Operator in connection with the implementation of this Agreement.
- g. make efforts to maintain harmony and good industrial relations among the labor and personnel employed in connection with the performance of the Operator's obligations under this Agreement and shall at all times be the principal employer in respect of such labor and personnel.

28.1.11. Appointment of Operator's Manager

The Operator shall appoint qualified personnel to supervise and manage day to day operations and maintenance of the contracted buses and to act as a single point contact to manage all the communications and correspondence with Authority ("**Operations Manager**").

28.1.12. Payment of Taxes and Duties

Subject to Clause 25, make timely payment of all taxes and duties due and payable under Applicable Law.

28.1.13. Payment of Fines

Shall ensure that it promptly pays any fines or damages that may be imposed for any defaults in compliance with traffic rules or other

Applicable Laws in relation to the operation of the Bus Service.

28.1.14. Bear the cost associated with electricity and water as per clause 20.6.

28.1.15. No Alterations or Modifications of the Contracted Buses

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

28.1.16. Complaints Redressal

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

28.1.17. Provide APIs and Interfacing protocols of ITS Components to Authority so as to ensure compatibility and integration of Operator's ITS Equipments with Authority's ITS System.

## **28.2. Rights of the Operator**

The Operator shall have right to:

- 28.2.1. receive Operator Payment from the Authority as per the terms mentioned in this Agreement;
- 28.2.2. receive support for obtaining required permits and sanctions from the government, or local body and to obtain assistance and support in dutifully carrying out the obligations as provided for in this Agreement as may be within the purview and general jurisdiction of the Authority;



- 28.2.3. use Parking Space subject to the terms of the Bus Parking Space Lease Agreement and the terms provided herein; and
- 28.2.4. Operate and maintain the Contracted Buses on the Routes as per conditions set forth in the Agreement.
- 28.2.5. Expect Transfer of Contracted Buses after completion of contract as per the terms specified in Clause 39 of the Agreement

**28.3. Authority's Rights and Responsibilities**

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

- 28.3.1. Provide provisions for water and electric connection to the Parking Space during the Agreement Period;
- 28.3.2. Provide to the Operator the Bus Depot right to use to the Operator in accordance with the terms of this Agreement and Depot License Agreement
- 28.3.3. Obtain, at its own cost, Route licenses (stage carriage permits) from the RTO, and allow the Operator to operate the buses on its behalf under these Licenses;
- 28.3.4. provide APIs and Interfacing protocols to Operator so as to ensure compatibility and integration of Operator's ITS Equipments with Authority's ITS System.
- 28.3.5. establish and operate a Central Control Centre to: (i) register complaints, public grievances in relation to the Bus Services being undertaken by the Operator under this Agreement; and (ii) monitor and supervise the functioning of the Operator; (iii) maintain records and reports in relation to the implementation of the Project;
- 28.3.6. provide assistance, on a best effort basis, in obtaining the Operator Clearances, provided the Operator has made the applications for such permits/ clearances to the concerned government authorities and is otherwise in compliance with the terms applicable for grant of the same;
- 28.3.7. conduct regular inspections of Contracted Buses and the Project at any time

during the Contract Period. The Authority may penalise traveller commuting without ticket in cash as determined by the Authority;

28.3.8. provide the right of use and right of way to the Operator, in respect of the space for parking of Contracted Buses, together with the right to use and right of way for such space only for the purposes set forth in this Agreement;

28.3.9. have the right to levy damages and or fines as provided in this Agreement and in the event the Operator fails to make payments of such fines, the Authority shall have the right to deduct the same from the payments for Km charge and / or Performance Security

28.3.10. have the right to issue operating instructions and any other advisory or instruction as deemed necessary to maintain highest standards of Bus Services including safety, functionality and operationality of the Bus Services.

## **29. INSURANCE**

29.1. Insurance During the Contract Period

29.1.1. The Operator shall, from day one from the date of signing of Agreement at its cost and expense, purchase and maintain insurances, as per law of India and as per prudent market practices starting from COD and handover of Parking Space Premises upto the end of the Contract Period such, including but not limited to the following;

29.1.2. Insurance of Contracted Buses and payment of RTO registration charges as per Motor Vehicle Act for registration of Buses in name of Authority and insurance / RTO charges if any for all subsequent years of contract.

29.1.3. 100% replacement cost for any loss and damages to Authority's Property/Project Asset/Premises/Parking Space with Authority as beneficiary. Shortfall in insurance cover, if any, shall be borne by the Operator.

29.1.4. Operator's all risk insurance with the Authority as co-beneficiary;

- 29.1.5. Comprehensive third party liability insurance as per MV act.
- 29.1.6. 100% insurance of employee compensation and other liability as per Workmen's Compensation Act 1923.
- 29.1.7. Any other insurance that may be necessary to protect the Operator, its employees and the Project Asset against loss, damage or destruction at replacement value including all Force Majeure Events that are insurable and not otherwise covered in items 29.1.2 to 29.1.6 with the Authority as beneficiary/co-beneficiary.
- 29.1.8. The Operator shall be responsible to pay the premium regularly and maintain the insurance policies specified above all time during the Contract Period. Operator shall be solely responsible in case of failure of its renewal.
- 29.1.9. Apart from above, any liabilities arising out of or incidental to accidents in which Contracted Buses are involved shall be on account of the Operator and shall have to borne by the Operator including any compensation payable, whether such compensation payments becomes claimed, or paid during or after the currency of the contract. Authority shall not be responsible for payment of any such compensation to aggrieved parties on accounts of accidents of any kind involving the Contracted Buses.

**29.2. Evidence of Insurance Cover**

- 29.2.1. The Operator shall, from time to time, provide to Authority copies of all insurance policies (or appropriate endorsements, certifications or other satisfactory evidence of insurance) obtained by it in accordance with Operator Agreement.
- 29.2.2. If Operator shall fail to effect and keep in force the insurance for which it is responsible pursuant hereto, Authority shall have the option to take or keep in force any such insurance, and pay such premium and recover all costs thereof from Operator.

**29.3. Application of Insurance Proceeds**

29.3.1. Subject to the provisions of this Agreement, all moneys received under insurance policies shall be promptly applied by the Operator towards repair or renovation or restoration or substitution of the Project Asset or any equipment/part thereof or Third party Property which may have been damaged or required repair/modification.

29.3.2. The Operator shall carry out such repair or renovation or restoration or substitution to the extent possible in such manner that Project Asset, or any part thereof, shall, after such repair or renovation or restoration or substitution be as far as possible in the same condition as they were before such damage or destruction, normal wear and tear excepted.

29.3.3. For insurance policies where the Authority is the beneficiary and where it received the insurance proceeds, only such sums as are required from the insurance proceeds for restoration, repair and renovation of the Project Asset .

29.4. Validity of Insurance Cover

29.4.1. The Operator shall pay the premium payable on such insurance Policy/Policies so as to keep the insurance in force and valid throughout the Contract Period and furnish copies of the same to the Authority for each year/policy period. If at any time the Operator fails to purchase, renew and maintain in full force and effect, any and all of the Insurances required under this Agreement, Authority may at its option purchase and maintain such insurance and all sums incurred by the Authority therefore shall be reimbursed by the Operator forthwith on demand, failing which the same shall be recovered by the Authority by encashment of Performance Security, exercising right of set off or otherwise.

### **30. DAMAGE TO CONTRACTED BUSES DUE TO VANDALISM**

30.1. In the event that any damages or need for repairs to the Contracted Buses, Bus Station, Terminals and Bus Station/or Parking Spaces or any other asset provided by the Authority arises during the Contract Period on account of Vandalism, the Operator shall be required to make good the damages and repair the Contracted Buses to the original conditions at the cost of Operator. No re-imbursemnt of any kind shall be available to the operator for any such damage or loss, including for loss of full bus. In

case of loss of full bus, operator shall replace the lost bus with another bus of broadly similar configuration, specifications, make and vintage. In all cases, the repair, servicing and rectification Service or replacement shall be undertaken by the Operator at its own cost to the satisfaction of Authority.

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

Provided however, damage to Contracted Buses or any part thereof due to regular wear and tear, or breach of maintenance obligations or any other obligations by the Operator and/ or omission of act by the Operator shall be the liability of the Operator. In such cases, the repair, servicing and rectification Service shall be undertaken by the Operator at its own cost to the satisfaction of Authority.

### **31. FINES/DAMAGES**

31.1. Without prejudice to and notwithstanding any other provision of this Agreement pursuant to which the Operator is liable to pay fines/damages, the Operator shall be liable to pay damages/fines during the Payment Period to the Authority in respect of the deficiencies/events provided in ANNEXURE 1 of this Agreement (“**Fines**”).

31.2. Fines in respect of said specified deficiencies/events for Contracted Bus as provided in ANNEXURE 1 to this Agreement.

31.3. The total Fines payable to the Authority in any Payment Period in terms of this clause in respect of all the categories of buses shall be computed by arriving at the arithmetic sum computed for each such category (“**Aggregate Fines**”).

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

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

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

31.4.2. As an illustration, for avoidance of doubt, damages Payable for 85% Fleet Availability against an requirement of 94 % of Assured Fleet Availability can be calculated as follows:

**94%-85% = 9% (Assured Fleet Unavailability)**

ADR = Average Daily Revenue per Contracted Bus for each type of Contracted Bus in relevant Lot in the preceding Seven (7) days prior to the day for which the losses are being calculated.

**Then damages payable for the day = 9% x total assured fleet size for Contracted Buses x ADR x 10%.**

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

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

31.4.4. In case Aggregate Fines payable by the Operator exceeds the 10% limit specified above for consecutive 5 (five) and/or for total 7 (Seven) Payment periods, it shall be considered as breach of obligation by the Operator and shall entitle the Authority to terminate the Agreement in accordance with the provisions hereof.

## **32. MONITORING**

### **32.1. Evaluation of Performance of Operator**

32.1.1. The Authority shall review the performance of the Operator, based on three

sets of parameters, indicated broadly as follows;

<b>Sr. No.</b>	<b>Performance Parameter</b>	<b>Appraisal Period</b>	<b>Time</b>	<b>Mode of appraisal</b>
1	Bus Maintenance	Monthly and Random Checking		Physical checking
2	Bus Operations	Daily basis		Through GPS system connected with Central Control Centre and operations registers to be maintained by the Operator and inspected by the Authority. (in case of non working condition of GPS)
3	Staff Behaviour	Through random checking		Physical checking during operation hours, complaint call and letters from passengers.

32.1.2. In the event the Operator fails to perform any parameter as highlighted in sub-clause (i) above it shall be liable to pay damages to the Authority for such non performance in accordance with **ANNEXURE 1** to this Agreement.

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

### **33. CONFIDENTIALITY OBLIGATIONS OF OPERATOR**

#### **33.1. Protection of Confidential Information**

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

For the purpose of this Clause, the term "Confidential Information" means the information or document which is specifically marked by the issuer/provider of information as confidential or otherwise clearly marked as confidential or proprietary, and shall include any proprietary or confidential information of Authority relating to the

Bus Services provided under the Agreement in relation thereto and information relating to Authority's business or operations.

Confidential Information shall not include information which:

- a. Is or becomes generally available to the public without any act or omission of Operator;
- b. Was in Operator's possession prior to the time it was received from Authority or came into Operator's possession thereafter, in each case lawfully obtained from a source other than Authority and not subject to any obligation of confidentiality or restriction on use;
- c. Is required to be disclosed by court order or operation of law; in such event, Operator shall so notify Authority before such disclosure; and
- d. Is independently developed by or for Operator by persons not having exposure to Authority's Confidential Information.

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

**33.3. Intellectual Property Rights**

- a) Operator shall acknowledge and agree that any and all hardware, software, and / or firmware developed by Authority in relation to the BRTS Project and any modifications thereto or works derived there-from shall be the exclusive property of Authority at all times and Authority shall retain all right, title and interest in and to the same. Provided however that the Operator shall have the right to possess and use the same during the Agreement Period for purposes of effective implementation, operation and maintenance of the BRTS Project on specific approval of the same by Authority.
- b) After the expiry or termination of the Agreement Operator shall have no right, title or interest in or to any work including without limitation the designs, software, modifications or facilities developed at the allotted sites by Operator for Authority under the BRTS Project for any purpose whatsoever.



- c) For purposes of the Agreement the terms “software”, “software programs” shall include without limitation the specifications, documentation, technical information, and all corrections, modifications, additions, improvements and enhancements to any of the foregoing provided at the sites by the Operator in relation to the BRTS Project pursuant to the Agreement.
- d) Authority may in its sole discretion allow the use of any and all Buses used specifically for Authority in relation to the BRTS Project by Operator to a third party for the purpose of advertisements etc inside/outside the Buses.

### **34. EVENT OF DEFAULT AND TERMINATION**

#### **34.1. OPERATOR’S EVENT OF DEFAULT**

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

- 27.1.1 Operator is in breach of any of its obligations under this Agreement and the same has not been remedied for more than [60 (sixty)] days;
- 27.1.2 A resolution for voluntary winding up has been passed by the shareholders of the Operator;
- 27.1.3 Any petition for winding up of Operator has been admitted and liquidator or provisional liquidator has been appointed or Operator has been ordered to be wound up by Court of competent jurisdiction, except for the purpose of amalgamation or reconstruction, provided that, as part of such amalgamation or reconstruction the amalgamated or reconstructed entity has unconditionally assumed all surviving obligations of the Operator under this Agreement;
- 27.1.4 Operator fails to comply with the Applicable laws, rules and regulations.
- 27.1.5 Operator does not abide by Consortium conditions specified in Agreement and elsewhere in the RFP.
- 27.1.6 Operator does not share APIs and Interfacing protocols of its ITS equipment with Authority .
- 27.1.7 Any representation made or warranties given by the Operator under this

Agreement or under the RFP document is found to be false or misleading.

- 27.1.8 Operator fails to maintain/ refurbish/ replenish the Performance security as per terms of this Agreement.
- 27.1.9 Operator stands incapable of supply of single fully built bus as per the specifications.
- 27.1.10 Operator suspends or abandons the operations of Contracted Buses without the prior consent of Authority, provided that the Operator shall be deemed not to have suspended/ abandoned operation if such suspension/ abandonment was (i) as a result of Force Majeure Event and is only for the period such Force Majeure is continuing, or (ii) is on account of a breach of its obligations under this Agreement by the Authority.
- 27.1.11 The Operator repudiates this Agreement or otherwise evidences an intention not to be bound by this Agreement.
- 27.1.12 The Operator failed to make any payments/damages/damages due to Authority within period specified in this Agreement or indicated by Authority without any valid reason.
- 27.1.13 The Operator failed to perform any of the Operator's obligations, which has a Material Adverse Effect on the Agreement
- 27.1.14 Operator creates an Encumbrance over the Contracted Buses, Bus Depot, Terminals or Parking Spaces.
- 27.1.15 Operator fails to adhere to the timelines set forth in the Agreement for performance of Operator's obligations there under; and reason thereof damages as provided in Clause 31 exceeds value of Performance Security;
- 27.1.16 Repeated occurrence of breach of Operator's obligations specified in this Agreement and which shall not be remedied in Remedial Period specified by Authority; and
- 27.1.17 Any other default/breach of its obligation by the Operator, for which default/breach termination has been prescribed in terms of this Agreement.
- 27.1.18 The Operator fails to repay any debt / loan raised by the Operator for the purpose of financing the Bus Body Building from institutional Lenders such as Banks.

### **35. AUTHORITY'S EVENT OF DEFAULT**

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

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

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

### **36. TERMINATION DUE TO EVENT OF DEFAULT**

36.1. Termination for Operator's Event of Default

a. Without prejudice to any other rights or remedies, which the Authority may have under this Agreement, upon occurrence of an Operator Event of Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Operator; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Operator of its intention to issue such Termination Notice and grant minimum 45 (Forty Five ) days or such other reasonable period as the Authority deems fit at its sole discretion to the Operator to remedy the default ("**Remedial Period**") and/or make representations, and may after the expiry of such Remedial Period on non remedy of breach/default to the satisfaction of the Authority, whether or not it is in receipt of such representation, issue Termination Notice and then terminate the Agreement.

b. In the event of termination for an Operator Event of Default, the Authority shall:

i. In case such termination occurs due to non supply of buses as per agreement conditions,

a. Release bus(es) supplied to Authority to the Operator

- b. Be entitled to invoke and retain the Performance Security amount in full;
    - ii. In case such event occurs after COD
      - a. Takeover peaceful possession without any Encumbrance of, Bus Parking Space, Computer software, electronic hardware or any Intellectual Property, pertaining to Bus Operation and maintenance, provided to the Operator.
      - b. Be entitled to invoke and retain the Performance Security amount in full;
      - c. Release bus(es) under operation from the duty.
- 36.2. Termination for Authority's Event of Default
  - a. Without prejudice to any other right or remedies which the Operator may have under this Agreement, upon occurrence of Authority's Event of Default, the Operator shall be entitled to terminate this Agreement by issuing a Termination Notice to the Authority; provided that before issuing the Termination Notice, the Operator shall by a notice inform the Authority of its intention to issue such Termination Notice and grant 45 ( Forty Five )days or reasonable period to the Authority to remedy the default and/or make representations, and may after the expiry of such Remedial Period on non remedy of breach/default, issue a Termination Notice.
  - b. Upon Termination of this Agreement on account of Authority's Event of Default, the Authority shall:
    - i. Pay any sum due and payable as the Operation Payment by the Authority till date of such termination
    - ii. Takeover peaceful possession without any Encumbrance of all Bus Depots, Terminals, and/or Parking, Computer software, electronic hardware or any Intellectual Property, pertaining to Bus Operation and maintenance, provided to the Operator
    - iii. Refund/ release of performance security in full provided there are no outstanding dues off the Authority on the Operator

- iv. Transfer of the Bus Services of the Bus Operator to a similar system of Bus Service operating under the jurisdiction of Ahmedabad Municipal Corporation on the following terms and conditions:
  - a. The Applicable Kilometre Charge payable per km for Bus operations shall be the same as that determined under this agreement.
  - b. The balance terms and conditions for operations and maintenance and all associated matters shall be similar to what is prevailing in the system to which the Buses are transferred.

36.3. Termination of Contract for death

If the Operator is an individual or a proprietary concern and the individual or the Proprietor dies and if the Operator is a partnership concern and one of partners die then unless the Authority is satisfied that the legal representative of the individual Operator or the proprietor of the proprietary concern and in the case of partnership, the surviving partners, are capable of carrying out and completing the contract, the Authority shall be entitled to cancel the contract as to its incomplete part without the Undertaking being in any way liable for payment of any compensations to the estate of the deceased contractor and/or to the surviving partners of the contractor's firm on account of the cancellation of the contract. The decision of the Authority that the legal representative of the deceased Operator or the surviving partners of the Operator's cannot carry out and complete the contract shall be final and binding on the parties. In the event of such cancellation, the Undertaking will not hold the estate of the deceased contractor and/or the surviving partners of the contractor's firm liable in any damages for not completing the contract.

## **37. FORCE MAJEURE AND CHANGE OF LAW**

37.1. Force Majeure

- 37.1.1. For the purposes of this Agreement the expression "Force Majeure" or "Force Majeure Event" includes acts of God, war, revolutions, hostility, civil commotions, strikes, fires, floods, earthquake, epidemics, quarantine restrictions, freight embargoes or explosions and if it affects the performance by the Party claiming the benefit of Force Majeure (the "Affected Party") of its obligations under this Agreement and which act

or event: (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

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

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

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

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

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

reasonably require.

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

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

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

All prior performance shall be subject to the terms of this Agreement.

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

- a) Pay any sum due and payable as the Operation Payment by the Authority till date of such termination
- b) Takeover peaceful possession without any Encumbrance of all Bus Depots, Terminals, and/or Parking, Computer software, electronic hardware or any Intellectual Property, pertaining to Bus Operation and maintenance, provided to the Operator
- c) Refund/ release of performance security in full provided there are no outstanding dues off the Authority on the Operator
- d) Transfer of the Bus Services of the Bus Operator to a similar system of Bus Service operating under the jurisdiction of Ahmedabad Municipal Corporation on the following terms and conditions:
  - a) The Applicable Kilometre Charge payable per km for Bus operations shall be the same as that determined under this agreement.
  - b) The balance terms and conditions for operations and maintenance and all associated matters shall be similar to what is prevailing in the system to which the Buses are transferred.

### **38. CHANGE OF LAW**

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

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

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



- a. Coming into effect, after the Execution Date, of any provision or statute which is already in place as of the date of execution of this n Agreement;
  - b. Any new law or any change in the existing law under the active consideration of or in the contemplation of any government as of the Effective Date which is a matter of public knowledge;
  - c. Any change in taxes, duties, levies, cess or any other form of charges;
  - d. Non availability of any spare part, equipment, component due to price escalation or otherwise
- 38.2. Upon occurrence of a Change in Law, the Operator shall notify the Authority of the following:
- a. The nature and the impact of Change in Law on the Agreement and Project; and
  - b. Upon receipt of the notice of Change in Law issued by Operator pursuant to preceding sub-clause, the Authority and the Operator shall hold discussions in relation thereof.

### **39. HANDBACK ON TERMINATION**

- 39.1. The operator shall retain the title and ownership of Contracted Buses in relation to the Project under this Agreement during the Agreement Period.
- 39.2. After successful completion of agreement period, operator shall hand over all hardware, software, firmware, and deliverables on board installed by the Authority in sound condition.
- 39.3. In case of any early termination of the Agreement before its normal expiry with the efflux of time, for whatever reason, the Operator shall handover to the Authority free from Encumbrances the peaceful possession of all hardware, software, firmware, and deliverables on board installed by the Authority in sound condition.
- 39.4. In case of any early termination of the Agreement before its normal expiry with the efflux of time, for whatever reason, the Operator shall handover free from Encumbrances the peaceful possession of all awarded/allotted Bus Depots, Parking Spaces, Terminals, and any other assets installed or developed by Authority including without limitation any and all hardware, software, firmware, and

deliverables in sound condition.

- 39.5. The Operator shall have no right to seek the transfer of the Bus Parking Spaces or any other Movable or immovable asset that may be provided by the Authority to the Operator, and the Authority shall retain the title, and ownership in relation to such assets at all times.
- 39.6. Any immovable infrastructure, which may be constructed by the Operator shall be transferred by the Operator to the Authority.

## **40. DISPUTE RESOLUTION**

### **40.1. Amicable Resolution**

- 40.1.1. Save where expressly stated otherwise in this Agreement, any dispute, difference or controversy of whatever nature howsoever arising under, out of or in relation to this Agreement including non completion of the Agreement between the Parties and so notified in writing by either Party to the other (the "Dispute") in the first instance shall be attempted to be resolved amicably by the Parties and failing such resolution of the same, in accordance with the procedure set forth below.
- 40.1.2. Either Party may require the Dispute to be referred to the Municipal Commissioner of Ahmedabad for amicable settlement. Upon such reference, both the Parties and the Municipal Commissioner shall meet at the earliest mutual convenience and in any event within 15(fifteen) days of such reference to discuss and attempt to amicably resolve the dispute. If the Dispute is not amicably resolved within 15(fifteen) days of such meeting, either Party may refer the Dispute to arbitration in accordance with the provisions of clause 40.2 below.

### **40.2. Arbitration**

#### *40.2.1. Arbitrator*

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

*40.2.2. Place of Arbitration*

The place of arbitration shall be City of Ahmedabad.

*40.2.3. Language*

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

*40.2.4. Procedure*

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

*40.2.5. Enforcement of Award*

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

*40.2.6. Fees and Expenses*

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

*40.2.7. Performance during Arbitration*

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

## **41. SUB CONTRACT**

41.1. The Operator shall be allowed to sub contract the Bus Operation and Bus

Maintenance with approval from Authority provided;

(i) Sub contractor for Bus Operation shall meet minimum qualification criteria specified in Volume 1 of RFP with prior approval from the Authority.

(ii) Sub contractor for Bus Maintenance shall be the Bus Manufacturer with whom Operator has purchased Buses.

## **42. INDEMNITY**

- 42.1. The Operator shall at all times, i.e. during the Contract Period and at any time thereafter, defend, indemnify and hold the Authority harmless from and against all claims (including without limitation claims for infringement of intellectual property, breach of contract, death or injury to person or injury to property, or other tort claims) and expenses (including costs incurred in defending itself in court proceedings) arising out of or relating to the breach by Operator of any covenant representation or warranty or from any act or omission of the Operator or his agents, employees or sub-contractors.
- 42.2. The Operator shall be liable for and make good any damages which may be caused to Authority or to third parties, for non-compliance of any of its statutory/contractual obligations and responsibilities with respect to any party.
- 42.3. The Operator shall be liable and make good to Authority any damages or statutory claim like Motor Accident Claim which may be caused to Authority for any negligence on the part of Operator or its employees.
- 42.4. The overall liability of the Operator under the Agreement, either through invocation of Performance Security or liquidated damages or fine or penalties or claim for indemnity), irrespective of whether the liability arises as a result of a single act or omission or a series of acts or omissions shall be limited to an amount equal to twenty per cent (20%) of the total payment received by the Operator in that Operation Year.

## **43. MISCELLANEOUS**

### **43.1. Governing Law and Jurisdiction**

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

43.1.2. The Courts of Ahmedabad alone shall have exclusive jurisdiction over all matters

arising out of or in respect of the Agreement.

**43.2. No waiver of rights and claims**

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

**43.3. Schedules and Annexure**

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

**43.4. Supersession of earlier Agreements**

This Agreement represents the entire Agreement between the Authority and the Operator, and all agreements, correspondence, notes or any other document submitted or understandings made or reached by and between the Parties inter se in respect of the subject matter of these presents prior to the date hereof shall be deemed to have been superseded and revoked on the execution of this Agreement.

**43.5. Notices**

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

If to Authority

(Name of the Concerned Official)

Ahmedabad Janmarg Limited,

\_\_\_\_\_

\_\_\_\_\_

If to the Operator

\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

All notices under this Agreement shall be in English.

**43.6. Counterparts**

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

**43.7. Assignment**

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

Provided, however, the Operator may sub-contract part of the operation and maintenance of the Bus Services with the prior approval of the Authority as per clause 41.

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

**43.8. No Partnership**

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

**43.9. Severability**

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

**43.10. Representation and Warranties**

**43.10.1. Representation and Warranties of the Authority**

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

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

**43.10.2. Representation and Warranties of the Operator**

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

- a. That it is duly incorporated under the laws of India, and has the power to conduct its business as presently conducted and to enter into this Agreement;
- b. That it has full power, capacity and Authority to execute, deliver and perform this Agreement, and has taken all necessary sanctions and approvals (corporate, statutory or otherwise) to authorise the execution, delivery and performance of this Agreement;
- c. Nothing in this Agreement conflicts with its Memorandum and Articles of Association or any other agreement, understanding or arrangement or any

judgment, decree or order or any statute, rule or regulation applicable to it; and

d. this Agreement will be valid, legal and binding against it under the Applicable Law.

**43.10.3. Exclusion of Consequential Losses**

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

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

SIGNED, SEALED AND DELIVERED BY:

For and on behalf of AHMEDABAD JANMARG LIMITED

\_\_\_\_\_  
AHMEDABAD JANMARG LIMITED,  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Phone No.)

Email:

SIGNED, SEALED AND DELIVERED

For and on behalf of AHMEDABAD JANMARG LIMITED

\_\_\_\_\_  
Operator,  
\_\_\_\_\_  
\_\_\_\_\_



\_\_\_\_\_  
\_\_\_\_\_  
(Phone No.)

Email:

**ANNEXURE 1: DEFICIENCY AND INCIDENT WISE DAMAGES/ FINES**

1. Vehicle – Fine per deficiency per bus

<b>Sr. No.</b>	<b>Deficiencies</b>	<b>Fine Km</b>
<b>1</b>	Modification of the design or paintwork of the exterior or interior of the bus without the authorization of Authority	50
<b>2</b>	Missing bus body panels on the exterior/interior of the bus	50
<b>3</b>	Defective or malfunctioning headlights, rear lights, brake light, turning indicators and parking lights, broken mirrors at the time of Bus Operations	50
<b>4</b>	Dirty vehicle( i.e. dusty handrails, chairs and floor, litter of any kind on floor, foul odour; dirty windows and glass panels, Spots) inside or outside, at the time of start of first shift in the morning	50
<b>5</b>	Broken/damaged windows, fixed glass, front windshield or rear windshield	25
<b>6</b>	Fire Extinguisher missing or beyond expiry date	25
<b>7</b>	Malfunctioning passenger door	50
<b>8</b>	Broken/Loose/Missing Passenger Seat	25
<b>9</b>	Loose or missing handrails, roof grab rails and/or with Sharp edges	25
<b>10</b>	Visible dents more than 6" beyond 1 week on the bus exterior	25
<b>11</b>	Malfunctioning/Broken Light in the passenger compartment	25
<b>12</b>	Placing any decorative article/religious figure or symbol or political symbol inside or outside the bus without prior approval of the AUTHORITY	25
<b>13</b>	Placing any poster/advertisement/stickers or similar items inside or outside the bus which may or may not generate any revenue for the Operator unless authorized by Authority	25
<b>14</b>	Damage to the any vehicle tracking equipment or any Intelligent Transit Management System installed by Authority	200
<b>15</b>	Deterioration of Bus Speed or AC Performance due to inefficiency/ malfunctioning of Battery Pack	100
<b>16</b>	Defective break	50
<b>17</b>	Damaged Tyre	100
<b>18</b>	ACs not running up to design capacity and /or any stoppages and/or leakages of water.	25

**2. Bus Operation – Fine shall be applied per incident.**

<b>Sr. No.</b>	<b>Incidents</b>	<b>Fine Km</b>
<b>1</b>	Arriving for a shift more than 10 min late than as given in Operating Plan for a given route for a given bus for Buses as per Assured Fleet Availability	25
<b>2</b>	Delay of more than 20 min beyond the end of shift.	10
<b>3</b>	Driver not responding to more than 3 consecutive directions sent by Authority Control Centre.	25
<b>4</b>	Stopping at Bus Station for longer than authorized by Authority	25
<b>5</b>	Improper Docking the of the Buses	25
<b>6</b>	Letting passengers access bus at locations other than Bus Station and Terminals or as designated by Authority	25
<b>7</b>	Not stopping at Station designated as per Operating Plan unless authorized by Authority	25
<b>8</b>	Stopping at Station not designated as per Operating Plan unless authorized by Authority	25
<b>9</b>	Changing bus route without authorization of Authority	25
<b>10</b>	Bus breakdown inside the Bus Lane	50
<b>11</b>	Bus breakdown during operating hours at location other than bus lane	25
<b>12</b>	Abandoning bus during operating hours on the BRT infrastructure (not limited to Bus Stations, Terminals and Bus Lane)	200
<b>13</b>	Operating bus with Defective/Broken Headlights, Rear lights, Brake lights, Turning indicators, Parking lights	25
<b>14</b>	Use of electronic equipment like Radio or Music system unless authorized by Authority	25
<b>15</b>	Use of Cell phone by Driver while driving	25
<b>16</b>	Driver not wearing clean uniform as designed by Authority	25
<b>17</b>	Driver in drunken state	100
<b>18</b>	Misbehavior by driver with Authority officials	25
<b>19</b>	Cause accident due to irresponsible driving	50
<b>20</b>	Drive above speed limit set by Authority	25

**ANNEXURE 2: DETAILS OF CONTRACTED BUSES AND THE INDICATIVE HANDOVER SCHEDULE OF CONTRACTED BUSES**

**Details of Buses**

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

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

**ANNEXURE 3: INDICATIVE LAYOUT OF THE PARKING SPACE**

(To be Attached at the time of Signing of the agreement)

**ANNEXURE 4: INDICATIVE BUS SERVICE AREA AND FLEET DEPLOYMENT PLAN**

(To be Attached at the time of Signing of the agreement)

**ANNEXURE 5: INDICATIVE LIST OF EQUIPMENT TO BE PROVIDED BY THE OPERATOR**

[Indicative requirement]

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

**ANNEXURE 6: LIST OF AUTHORITY CLEARANCES AND OPERATOR CLEARANCES**

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

**ANNEXURE 7: PARKING SPACE LICENSE AGREEMENT**

**Ahmedabad Janmarg Ltd** having its principal office at Ground Floor, Dr. Ramanbhai Patel Bhavan, Ahmedabad Municipal Corporation, West Zone, Ahmedabad, (hereinafter referred to as “The Authority” which expression shall include its successors and permitted assigns);

**AND**

\_\_\_\_\_ having its office at  
[ \_\_\_\_\_ ] (hereinafter referred to as  
“the Operator”, which expression shall include its successors and permitted assigns);

**ANDWHEREAS**

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

**NOW THEREFORE IT IS AGREED AS FOLLOWS:**

1. All capitalized words used but not defined herein shall have the meaning specified in the Bus Operator’s Agreement.
2. The Authority hereby provides on a license basis the Parking Space (the details of which

are provided in Schedule 1 to this Agreement) and the Operator hires the Parking Space on the terms and conditions of this License, it being recorded that the Authority warrants that the Parking Space will, save for reasons beyond its reasonable control, be fit for the purpose for which it is to be used by the Operator, namely to provide a reasonable shelter for the Contracted Buses while not in use and to facilitate the cleaning, repair, maintenance and charging of the Contracted Buses.

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

3. This Parking Space License Agreement shall come into operation on the date of execution hereof and shall terminate on the termination or cancellation of this Parking Space License or the Bus Operator's Agreement for whatever reason, whichever is the earlier ("**License Period**").
4. Authority will make bulk power available at Parking Space. Operator will arrange for site level distribution of power to its charging points along with related equipment and infrastructure for charging including any civil and other ancillary work required for parking, charging and maintenance. The decision on number of chargers to be provided is left to the Operator according to his solution. The Operator shall also be liable to pay bills for utilities such as electricity, water etc. on actual basis in relation to the area of the Bus Depot/Parking Space allotted to the Operator. Information regarding Electricity Rates applicable may be obtained directly from Power suppliers Torrent Power Ltd. (for Ahmedabad city) and Uttar Gujarat Vij Company Ltd. (UGVCL) (for outside Ahmedabad city limits). Operator /Service Provider will present the best solution in terms of bus, capacity of batteries, charging infrastructure required, charging time etc. looking to the operational requirements of BRTS.
5. Insurance
  - a. The Operator shall not keep or do in or about the Parking Space anything which is liable to increase any of the risks against which the Parking Space infrastructure (or any part thereof) is insured for the time being to the extent that such insurance is rendered void or voidable or the premiums of such insurance are, or become liable to be, increased.

- b. Without prejudice to any other right of action or remedy that the Authority may have arising out of a breach of the foregoing provision, the Authority may recover from the Operator on demand the full amount of any increase in insurance premiums in respect of the Depot attributable to such breach.
  - c. For the purposes of the above provisions, the Operator shall be entitled to assume that the Depot is at all material times insured against such risks, on such terms, for such amounts, and at such premiums as are for the time being usual in respect of similar buildings in similar locations.
  - d. The Operator shall, in accordance with its obligations pursuant to the Bus Operator's Agreement, obtain and maintain contract works insurance and public liability insurance in relation to the Depot.
6. Cession and Subletting
- The Operator shall not be entitled to:
- a. cede all or any of its rights or delegate any of its obligations under this Parking Space License Agreement;
  - b. sublet the Parking Space in whole or part; or
  - c. give up possession and/or control of the Parking Space to any third party, without the Authority's prior written consent.
7. Operator's Obligations
- The Operator shall:
- a. keep the Depot clean, tidy and commercially usable at all times;
  - b. be responsible for the handling of all waste and effluent in accordance with the Applicable Law;
  - c. not use the Parking Space or allow it to be used, in whole or part, for any purpose other than that of implementing the Project;
  - d. not bring into the Parking Space any article which, by reason of its weight or other characteristics, is liable to cause damage to the Depot;
  - e. not leave refuse or allow it to accumulate in or about the Parking Space except in the refuse bins provided;



- f. refrain from interfering with the electrical or plumbing serving the Parking Space if so available , except as may be strictly necessary to enable the Operator to carry out its obligations of maintenance and repair in terms of this Agreement;
- g. not permit any person to permanently dwell in the Parking Space
- h. provide at the Operator's own expense all electric, fluorescent and incandescent light bulbs required in the Parking Space from time to time;
- i. Provide Bus Charging Infrastructure.
- j. co-operate with any other operator or third party using the Parking Space or a part thereof as notified by the Authority from time to time; and
- k. allow for use of the Parking Space by one or more other bus operators at the written request of the Authority, provided that such use shall not materially adversely affect the Operator's ability to implement the Project under the Bus Operator's Agreement.

8. Maintenance and Repairs

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

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

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

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

10. Exclusion of Liability

- a. The Operator shall have no claim against the Authority for any loss or damage suffered by the Operator by reason directly or indirectly of:
  - i. any negligent act or omission of the Authority or any agent or servant of, or contractor to, the Authority, including (without limiting the generality of the foregoing) any negligent act or omission of any cleaner, maintenance person, handyman, artisan, labourer, workman, watchman, guard or commissionaire, excluding gross negligence and/or wilful default;
  - ii. any failure or suspension of, or any interruption in, the supply of water, electricity, heating, or any other amenity or charging infrastructure or service to the Parking Space (including, without limiting the generality of the foregoing, any cleaning service), whatever the cause;
  - iii. any breakdown of, or interruption or delay in the operation of, any machinery, plant, equipment, installation, or system situated in or on, or serving, the Parking Space , and including (but without limiting the generality of the foregoing) any geyser, boiler, burglar alarm or security installation or system, again regardless of cause;
  - iv. any interruption of, or interference with, the enjoyment or beneficial occupation of the Parking Space or any parts of the common Parking Space caused by any building operations or other works to or in the Parking Space , whether by the Authority or by anybody else; or
  - v. any other event or circumstance beyond the Authority's reasonable control occurring, or failing to occur, upon, in, or about the Parking Space , whether

or not the Authority could otherwise have been held liable for such occurrence or failure, and the Operator indemnifies the Authority and holds it harmless against any and all liability to any employee or agent of the Operator, its guests and other invitees, and all other persons who may occupy or be entitled to occupy the Depot or any parts thereof through or under the Operator.

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

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

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

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

12. Damage to or destruction of Parking Space

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

13. Special Remedy for Breach

- a. Should the Operator be in breach of any of the terms or conditions of this Parking Space License Agreement or the Bus Operator's Agreement, in any way whatsoever, and fail to remedy such breach within [7 (seven)] Business Days after receiving a written demand that it be remedied, or such longer period as may reasonably required in the circumstances and agreed upon in writing by the Parties, the Authority shall be entitled, without prejudice to any alternative or additional right of action or remedy available to the Authority under the circumstances, to terminate this Depot License Agreement with immediate effect, be repossessed of the Parking Space , and recover from the Operator such damages sustained as a result of the breach and the termination of this Parking Space License Agreement.
- b. Nothing in sub-clause (a) above shall be construed as excluding the ordinary lawful consequences of a breach of this Parking Space License Agreement by either party (save any such consequences as are expressly excluded by any of the other provisions of this Parking Space License Agreement) and in particular any right of termination of this Parking Space License Agreement on the ground of a material breach of this Depot License Agreement.
- c. In the event of the Authority having terminated this Parking Space License Agreement or this Agreement justifiably but the Operator remaining in occupation of the Parking Space , with or without disputing the termination, the Operator shall be obliged to pay, all amounts which would have been due and payable by the Operator but for the termination, for so long as the Operator continues to occupy the Parking Space or any part thereof.

14. Right to Negotiate Renewal

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

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

***RFP for Selection of Operator for Procurement, Operation and Maintenance of 40 Midi Electric Buses on GCC Basis***

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**SIGNED ON BEHALF OF THE AUTHORITY**

\_\_\_\_\_ (Signature)

\_\_\_\_\_ (Name)

\_\_\_\_\_ (Designation)

**SIGNED ON BEHALF OF OPERATOR by the**

hand of its authorized representative

\_\_\_\_\_ (Signature)

\_\_\_\_\_ (Name)

\_\_\_\_\_ (Designation)

**SIGNED ON BEHALF OF SELECTED BIDDER by**

the hand of its authorized representative

\_\_\_\_\_ (Signature)

\_\_\_\_\_ (Name)

\_\_\_\_\_ (Designation)

**Schedule 1 to License Agreement: Details of Parking Space Infrastructure handed over to Operator during execution of Agreement**

**Depot 1:**

Date of Handover	
Address of Parking Space	
Area of Parking Space :	
Facilities	
Utilities	
Security	

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

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

For Operator

Name, Sign, Time and Place

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