

17 DEC 2022



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[Signature]
MANOJ KUMAR PANDA
NOTARY, BHUBANESWAR
GOVT. OF ODISHA (INDIA)
Regd. No.-ON-52-2009

BUS OPERATOR AGREEMENT (ROURKELA)

This Bus Operator Agreement (**Agreement**) is executed on this ^{17th} day of December, 2022 at Bhubaneswar:

BETWEEN

M/s. Capital Region Urban Transport, incorporated under the provisions of the Companies Act 1956 having its registered office at Plot no-548/1452, Patia, Kalarahanga, Bhubaneswar-751 024, Odisha. (hereinafter referred to as the "the Authority/CRUT", which expression shall include its successors and permitted assigns);

AND

M/s. Hansa Vahan India Private Limited, a company incorporated under the Companies Act, 2013 having its registered office at Gate No-9, VCA, Complex, Civil Lines, Nagpur – 440001 (hereinafter referred to as the "Operator", which expression shall include its successors and permitted assigns);



[Signature]
17/12/2022
General Manager (P&A)
Capital Region Urban Transport

HANSA VAHAN INDIA PVT. LTD.
[Signature]
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The Authority and the Operator are hereinafter individually referred to as "Party" and collectively as "Parties"

WHEREAS

- A. The Authority is legally empowered and mandated to plan, schedule, own, manage, operate and maintain the Bus Service in Rourkela and other peripheral towns. The Authority is planning to upgrade and expand the city's Bus System. As part of this plan, the Authority is deploying 100 (nos.) Midi buses (70 AC and 30 Non Ac Bharat Stage-VI diesel buses) under **Rourkela Mo Bus Operation** through the Gross Cost Contract with private operators selected through open competitive bidding.
- B. This Agreement is for Rourkela Mo Bus Operation comprising 70 Midi AC and 30 Midi non-AC Bharat Stage-VI Diesel buses with the Operator for Procurement, Operation and Maintenance of these buses with responsibilities better defined in the accompanying clauses in this Agreement and other volumes of this RFP document.
- C. The Authority had issued a RFP in 28th September, 2022 for selection of Private Bus Operator for aforementioned work. M/s. Hansa Vahan India Pvt. Ltd. had submitted its proposal which was duly evaluated and accepted by the Authority vide Letter of Acceptance issued vide letter no. 2477/CRUT dated 10.11.2022 (hereinafter called the "LOA") for 70 Midi AC Buses and 30 Midi non-AC Bharat Stage-VI Diesel buses (Contracted Buses). The LOA requires, inter alia, the execution of this Agreement.
- D. By its letter dated 10.11.2022, M/s. Hansa Vahan India Pvt. Ltd., (Operator) has accordingly agreed to enter into this Agreement with the Authority for execution of his rights and responsibilities, subject to and on the terms and conditions set forth hereinafter.
- E. The Operator has submitted Performance Security of **Rs. 6,80,89,896/-** (Rupees Six Crores Eighty Lakh Eighty-Nine Thousand Eight Hundred Ninety-Six only) in the form of Bank Guarantee, with Number – 0163222BG0000190, Dt – **21.11.2022** from State **Bank of India** in favour of the Authority encashable in Bhubaneswar as prerequisite for signing of this Agreement.



[Signature]
General Manager (P&A)
Capital Region Urban Transport

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[Signature]
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- F. The Authority and the Operator are hereby entering into this Operator Agreement to implement the Project of Procurement, operation and maintenance of the Bus Service System in the urban areas of Rourkela and other peripheral towns of Sundergarh Districts.

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. **“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.

1.1.2. **“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 this Agreement.

1.1.3. **“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.

1.1.4. **“Appointed Date”** shall mean and refer to the date of signing of this Agreement.

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

1.1.6. **“Available Fleet”** mean the Buses made available by the Operator to the Authority for operations to meet the Assured Fleet Availability Clause 1(i) of the Agreement.

1.1.7. **“Authority”** means CRUT erstwhile BPTS or its authorized



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representatives.

- 1.1.8. **“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 PA9 to this Agreement.
- 1.1.9. **“Authority’s Event of Default”** shall have the meaning as ascribed thereto in the Clause 32.2 of the Agreement.
- 1.1.10. **“Bus Deployment Schedule”** shall have the meaning as ascribed thereto in the Clause 11.1 of the Agreement.
- 1.1.11. **“Bus Kilometre”** means a kilometre travelled by a Contracted Bus as per this Agreement or as directed by the Authority.
- 1.1.12. **“Base Kilometre Charge” or “Kilometre Charge”** means the rate of the Kilometre Charge payable by the Authority to the Operator for travel by a Bus up to the Half-yearly Assured Bus Kilometres.
- 1.1.13. **“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.
- 1.1.14. **“Bus Service”** means the Service of provision, operating and maintaining the Buses as part of urban Bus Service inside and between urban areas of Rourkela and other peripheral towns of Sundergarh Districts on Gross Cost Contract basis, in accordance with this agreement, including providing public carriage in accordance with the performance standards stipulated by the Authority.
- 1.1.15. **“Bus Service Area”** means the area in which Bus Services will be provided by the operator and as may be decided by the Authority.
- 1.1.16. **“Bus Specification/Technical Specifications”** shall mean the specifications of the Contracted Buses including but not limited to on board IT equipment and other details stipulated by the Authority as a part of specifications.
- 1.1.17. **“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.
- 1.1.18. **“Bus Depot Area” or “Depot Area”** means the area provided by the Authority to Operator for Parking, Repair and Maintenance of



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Contracted Buses, as per terms and conditions of the Depot Lease Agreement.

- 1.1.19. **“Central Control Centre”** means computerised central monitoring unit setup, audited and supervised by the Authority for supervision, monitoring and control of the Bus Service.
- 1.1.20. **“Commercial Operations Date”/“COD”** for means the date of deployment on the roads for operations of Last Lot of Contracted Buses by the Operator and shall have the meaning specified in Clause 16.1 of this Agreement.
- 1.1.21. **“Contracted Bus (es)”** means one or more of the passenger bus units procured by the Operator 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 on board IT equipment and the details of such Buses such as the type, category registration number shall be provided in detail in Annexure to this Agreement at later stage.
- 1.1.22. **“Dispute”** shall have the meaning ascribed to it in Clause 37 of this Agreement.
- 1.1.23. **“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.
- 1.1.24. **“Fines”** shall have the meaning as ascribed thereto in the Agreement.
- 1.1.25. **“Fleet”** shall refer to the total number of Contracted Buses having achieved COD pursuant to this Agreement.
- 1.1.26. **“Global Positioning System (GPS)”** means the equipment installed on the bus to monitor its movement on the specified route during the Agreement Period.
- 1.1.27. **“Government”** means the “Government of Odisha or “Government of India (GOI)” as is relevant in the context;
- 1.1.28. **“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



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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.

- 1.1.29. **“Invoice Amount”** shall have the meaning specified in Clause 23.5.1 of this Agreement.
- 1.1.30. **“Half Yearly Assured Bus Km”** shall have the meaning as ascribed thereto in Clause 23.5 of the Agreement
- 1.1.31. **“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.
- 1.1.32. **“Letter of Award”** means the letter of award no. 2477/CRUT dated 10/11/2022 issued by the Authority to the Selected Bidder.
- 1.1.33. **“Lot of Contracted Buses”** or “Lot” means Lot of Contracted Buses and details of which shall be provided in the Annexure PA6 to this Agreement.
- 1.1.34. **“Manufacturer”** means the bus manufacturer and supplier of the Contracted Buses to the Authority.
- 1.1.35. **“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.
- 1.1.36. **“Operation and Maintenance Standards”** means the operation and maintenance requirements which are required to be undertaken by the Operator throughout the Agreement Period and have been provided at different places in the agreement.
- 1.1.37. **“Operations Manager”** shall have the meaning ascribed to it in Clause 25.1.11.
- 1.1.38. **“Operating Plan”** or **“Operation Plan”** means the detailed Route plan and trip schedule for the Bus Service, which is developed and

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finalised by the Authority.

- 1.1.39. **“Operator”** shall have the meaning as ascribed thereto in the array of Parties in the Recitals above.
- 1.1.40. **“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 PA9 to this Agreement.
- 1.1.41. **“Operator’s Event of Default”** shall have the meaning as ascribed thereto in Clause 32.1 of the Agreement.
- 1.1.42. **“Operator’s Payment”** means payment given to the Operator for providing operating and maintenance services in accordance with Clause 23 of this Agreement.
- 1.1.43. **“Passenger Fare”** shall have the meaning ascribed to it in Clause 21.1 of this Agreement.
- 1.1.44. **“Payment Period”** shall have the meaning as ascribed thereto in Clause 23.5 of this Agreement.
- 1.1.45. **“Performance Security”** shall have the meaning as ascribed thereto in Clause 7.1 of this Agreement.
- 1.1.46. **“Project”** means provision, operation and maintenance of city buses for managing public transport by the Operator in accordance with the terms of this Agreement.
- 1.1.47. **“Project Assets”** includes buses procured, developed depot and any assets created/ developed/ installed by the Operator or the Authority in relation to this Project.
- 1.1.48. **“RTO”** means the Regional Transport Office of Rourkela.
- 1.1.49. **“Remedial Period”** shall have the meaning specified in Clause 33.1 and 33.2 of this Agreement.
- 1.1.50. **“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.
- 1.1.51. **“Selected Bidder”** means the Bidder to whom the Authority issues the Letter of Award for undertaking the Project.



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- 1.1.52. **“Soft Loan”** shall have meaning ascribed in the Clause 6 of this agreement.
- 1.1.53. **“Third Party”** means any person other than the Authority and the Operator.
- 1.1.54. **“Contract Period/ Agreement Period”** shall mean the term as defined in Clause 3.1.
- 1.1.55. **“Training Period”** shall have the meaning as ascribed thereto in Clause 16.4 of this Agreement.
- 1.1.56. **“Urban Bus Service”** or **“Bus Service”** means Bus Services Provided by CRUT for which it possesses stage carriage license for approved routes in the urban areas of Rourkela and other peripheral towns of Sundergarh Districts.
- 1.1.57. **“Validity Period”** means the period for which the Performance Security has to be maintained in accordance with Clause 7 of this Agreement.
- 1.1.58. **“Vandalism”** shall have meaning specified in Clause 29 of this Agreement.
- 1.1.59. **“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:

- words denoting the singular shall include the plural and vice versa;
- words denoting a person shall include an individual, corporation, company, partnership, trust or other entity;
- heading and bold type face are only for convenience and shall be ignored for the purposes of interpretation;
- 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;

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- 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) or the Companies Act, 2013 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 Award (LOA) no. 2477/CRUT dated 10/11/2022, issued by CRUT.
- d. Performance Security in form of Bank Guarantee no. 0163222BG0000190, Dt. – 21.11.2022 from State Bank of India.
- e. 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 Agreement or by way of revised or improved understanding of any terms of the Agreement as appended herein.



In the event of any conflict of difference between the above documents, the position reflected in the document signed last shall prevail.

2. APPOINTMENT OF THE OPERATOR

2.1. Appointment of the Operator

Subject to and in accordance with the provisions of this Agreement, the Authority hereby appoints, on a non-exclusive and non-transferable basis, the

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Operator, and the Operator hereby accepts its appointment to procure, operate and maintain under Rourkela Mo Bus Operations 70 numbers of Midi AC buses and 30 numbers of Midi non-AC Bharat Stage-VI Diesel buses as per the specifications provided in the Volume III of the RFP, for Bus Service in accordance with the terms of this Agreement and subject to the Applicable Laws and Applicable Clearances.

2.2. Variation in Number of Buses to be Contracted

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 the Agreement. The Agreement period of such additional buses shall be decided in consultation with the Operator at the time of issuing the request for such additional buses by the Authority. However, the Agreement Period for the additional buses shall not be higher than the agreement 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.

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 Appointed Date and ending on the Commercial Operations Date (COD) and (b) the "Operations Period" beginning from COD and ending Eight (8) years from the COD ("Contract Period/ Agreement Period"), provided that the Authority, at its sole discretion, may extend the Operations Period by Two (2) additional year based on operator performance and condition of the Buses.

3.2. The Commercial Operations Date (COD) shall be the date of deployment of


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Contracted Buses as per the bus delivery schedule. The Deployment shall be considered achieved after the completion of Training Period.

- 3.3. In the event of termination, the Agreement Period shall be limited to the period commencing from the Appointed 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 the Contracted Buses as per technical specification included in RFP. The Operator is required to procure fully built buses meeting the bus specifications provided in the RFP from reputed bus manufacturers.
- b. Procure Buses as per “Good Industry Practices” and as per the specifications provided as part of the RFP. The Operator shall not be permitted to make any changes in the Specifications unless specifically authorised by the Authority in writing.

Showcase prototype and adhere to the Bus Delivery Schedule specified in clause 11.1 of this Agreement and obtain approval of prototype from the Authority.

- c. Facilitate the Authority or representatives of the Authority, for inspections and testing with regards to the structure and bus body building quality as prescribed in the Clause 9 of the agreement.
- e. Incorporate changes/modifications/alternations suggested in the bus body 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 12 of this agreement.
- f. Deploy buses pursuant to Clause 16 and provide training to the manpower as per Clause 16.4 of the agreement.
- g. Provide duly licensed drivers to ensure the continued and uninterrupted Bus Service in accordance with the terms contained herein and as per Applicable Law;
- h. Ensure that all drivers, staff and personnel are provided the required training on driving, maintenance, safety, behaviour and hygiene aspects;



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- i. At his own cost and expenses procure all Operator Clearances in accordance with Annexure PA9 for the purposes of providing Bus Services as per the terms of this Agreement;
- j. Establish maintenance facility and equipment at Bus Depot Area for preventive and routine maintenance of 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;
- k. Shall set up a Branch office at Rourkela. The head of this branch office shall be sufficiently empowered by the operator for taking all decisions related to day-to-day operations.

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 Bus Service corridor;
- 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, 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 PA9 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



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Depot Area including any monitoring device or equipment that is installed by the Authority is not tampered with in any manner; and that the Authority and its authorised personnel, are allowed to inspect the equipment installed on the Contracted Buses and the Bus Depot Area at any time without any notice in this regard;

- i. Make available to the Authority a fixed proportion of the Contracted Buses throughout the Agreement Period, for maintaining continued and uninterrupted operations of Bus Service as per the terms of this Agreement. This proportion shall be as per the proportion given in the Clause 10(c) of PIM of this RFP throughout the Agreement Period for each Lot of Contracted Buses. (“**Assured Fleet Availability**”)¹;

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. services during Sundays shall not be considered;
- ii. seizure of the Contracted Buses by police authorities shall not be considered;

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 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



¹Calculation of fleet availability is provided as follows for further clarity:

$$\text{Fleet availability (in percent)} = (\text{Fleet made available for operation} / \text{Total Fleet of Contracted Buses}) \times 100$$

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.

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maintenance of Bus Service;

- l. Submit regular monthly reports to the Authority as per the format that may be instructed by the Authority from time to time; and
- m. 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 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.
- 5.2. The Operator shall not be allowed to sub contract any part of the awarded Buses.
- 5.3. Any modification, alteration, addition and deletion of the provisions/clauses of this agreement shall be made with the mutual consent of both parties.

6. PROVISION OF LOAN BY THE AUTHORITY FOR PROCUREMENT OF BUSES

- 6.1. In order to facilitate the procurement of fully built buses by the Operator in a timely manner as well to keep the overall costs of bus operations low, the Authority hereby agrees to provide a Loan to Bus Operator for Procurement the New Buses at fixed concessional interest rate of 8% per annum for the tenure of 8 years as provided in the clause 3.1 above. The amount of such Loan shall be broadly equal to 75% of the Total Bus Procurement Cost.
- 6.2. The Bus Operator hereby agrees to enter into a separate Loan Agreement with the Authority to formalize the process of loan transaction. The Loan Agreement shall be considered as an independent Agreement on its own accord and shall be attached for purposes of clarity to this agreement as Annexure PA3. In the event of Termination of this Agreement, the terms of the Loan Agreement shall remain unaffected and vice versa.
- 6.3. The Loan Agreement shall be signed after execution of this Agreement at the time of placing of Bus Purchase order to Bus Manufacturer by the Bus Operator.
- 6.4. The Buses will be purchased by the Operator on his own through negotiations with

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the Bus Manufacturers. The final selected Bus will be required to be approved by the Authority along with the specifications, price and payment terms. At all stages the Operator will keep the Authority informed about the progress of Bus Purchase, bus building and delivery. The Operator will satisfy the Authority regarding the terms of the purchase and particularly the price being the most competitive offer as also being comparable to market price for same bus sold to other customers.

6.5. The amount of Soft Loan shall be disbursed directly to Bus Manufacturer(s) by the Authority after showing proof of payment of 25% of the Bus Procurement Cost by the Operator to the Bus manufacturer. The Loan amount will be disbursed by the Authority in accordance and in proportion of the payment terms agreed by Bus Manufacturer(s) and Bus Operator.

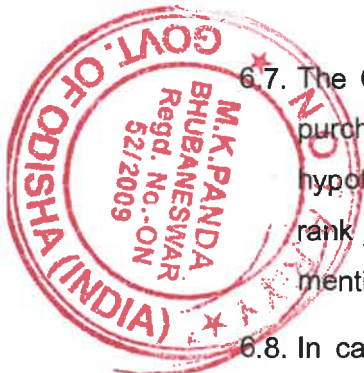
6.6. The Operator, during the currency of the Loan Agreement, shall 'hypothecate' all the Buses with the Authority as per the provisions of the Loan Agreement. At the time of hypothecation of the buses, the Authority shall be entitled to First charge on all the buses.

6.7. The Operator is free to raise financial resources for balance amount required for purchase of Buses other than Soft Loan, however any hypothecation/lien/charge/assignment or encumbrance from such fund raising will rank junior to the obligations resulting from the Loan Agreement with the Authority mentioned above.

6.8. In case the Operator raises additional financial resources from other sources by creating any further security (mortgage charge) on the buses procured under the Project (as mentioned above), it shall make a request in writing to the Authority for approval/NOC and will raise such additional resources, only after receiving approval/NOC from the Authority.

6.9. The Operator will also sign an Indemnity Bond in favour of the Authority whereby it will indemnify the Authority against any losses arising to the Authority owing to loss, damages, theft, neglect and poor maintenance of the Contracted Buses during the currency of the Soft Loan Tenure and Operator Agreements.

6.10. Bus Operator shall repay the disbursed amount of Soft Loan in Equated Monthly Instalments (EMIs) including portion of Principal repayment and Interest payment. The amount to be paid as EMI shall be decided based on formula applicable to the Commercial Vehicle Loans issued by Scheduled Banks. Interest on soft loan




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will be recovered on monthly rest which will be calculated on reduced outstanding amount only.

- 6.11. The Authority shall deduct the EMI every month from COD of the respective lot buses vide the Invoices submitted by the Bus Operator for Bus Operations before releasing the payment for the Bus Operations.
- 6.12. The Operator shall have liberty to make pre-payment of the Soft Loan at any point of time during the Loan repayment period without any penal interest.
- 6.13. The Authority, upon satisfactory pre-payment or Repayment of loan amount along with due interest, shall discharge the Hypothecation created on the Buses in its favour.
- 6.14. All above terms shall be repeated in the Loan Agreement and in case of any differences, the terms of the Agreement signed at a later date shall prevail.

7. PERFORMANCE SECURITY

7.1. 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. 6, 80, 89,896/-** (Rupees Six Crores Eighty Lakh Eighty-Nine Thousand Eight Hundred Ninety-Six only) in the form of Bank Guarantee, with Number – 0163222BG0000190, Dt – **21.11.2022** from State **Bank of India** in favour of the Authority encashable in Bhubaneswar as prerequisite for signing of this Agreement, for a Validity Period of 8 (Eight) years (i.e. till 21/11/2030), in favour of Capital Region Urban Transport through scheduled bank, payable / encashable, admissible and extendable at Bhubaneswar only. ("**Performance Security**").

7.2. The Operator shall maintain a valid and binding Performance Security for a period which will start from the Appointed Date and up to 60 days after the expiry of the Total Agreement Period ("Validity Period").

7.3. The Authority shall be entitled to forfeit and appropriate the amount of the Performance Security in whole or in part:

- 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
- in relation to Operator's Event of Default in accordance with the terms contained herein.

7.4. 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



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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 32.1.

7.5. On the performance and completion of the Agreement 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.

8. BUS PROCUREMENT

8.1. Upon submission of requisite Performance Security and Signing of this Agreement, the operator shall procure specified number of 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 Agreement.

8.2. The Buses will be purchased by the Operator on his own through negotiations with the Bus manufacturers. **It should be ensured that, State GST accrues to the Govt. of Odisha only.**

8.3. The final selected Bus will be required to be approved by the Authority along with the specifications, price and payment terms.

8.4. At all stages of Bus Procurement, the Operator will keep the Authority informed about the progress of Bus Purchase, bus building and delivery.

8.5. The Operator will satisfy the Authority regarding the terms of the purchase and particularly the price being the most competitive offer as also being comparable to market price for same bus sold to other customers.

9. QUALITY ASSURANCE

9.1. Quality of Materials:

9.1.1. 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.

9.1.2. The Bus Manufacturer can use any material out of the lots, which have been approved by a Authorized laboratory. A certificate to that effect along with copies of the latest Laboratory Test Report (as per specification of this Agreement from CIRT, Pune/ ARAI, Pune/ BIS approved Labs) shall be submitted to the Authority

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at the time of inspection.

9.1.3. The Bus Manufacturer shall obtain type approval of all safety critical items/ materials from the authorized testing agencies before use. Bus Bodybuilder would provide a list of such items along with their Certificates to the Authority.

9.1.4. Cost of all tests, analysis, and patent rights would be borne by the Bus Manufacturer.

9.2. Purchase of Material:

9.2.1. Material purchase orders of The Bus Manufacturer must be specifying quality, Standards, grade etc. of supplied material. Inspecting official(s) of the Authority would carry out random checks and satisfy itself of these details vis-à-vis those specified in the Agreement.

9.2.2. 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. The Authority shall also satisfy itself of these details as above before permitting usage in the Bus.

9.2.3. 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.

9.2.4. 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) / Odisha Motor Vehicle Rules currently in force in Bhubaneswar or to any other statutory modifications or enactment thereof in such Act & Rules from time to time.

10. INSPECTION AND TESTING OF PROTOTYPE BUS AND OTHER BUSES BEFORE DELIVERY:

10.1. The Authority or representative authorized by the Authority may carry out inspection of Prototype Bus and other buses to be supplied as part of this Agreement at any of the following stages before pre-dispatch stage at Bus operator's/ Bus Manufacturer's premises. This inspection shall include:

- Structural Inspection: Structural assembly stage before paneling in prototype and all buses

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- Final Inspection: After completion of paneling, and equipping of prototype and all buses (Fully built buses)

10.2. 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.

10.3. The Operator shall provide free of charge all facilities at the 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.

10.4. The Authority shall not conduct any laboratory test if the material procurement certificates are submitted by the Operator 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.

Sr. No.	Items to be tested	Specifications
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



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		&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 up-to 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 Coating of 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.



10.5. The Authority shall convey the Approval of the Prototype bus, if found satisfactory, within 15 days of date of Approval.

10.6. In case of Buses other than Prototype, 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.

M. K. Panda

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Capital Region Urban Transport

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D. K. Panda

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MANOJ KUMAR PANDA
NOTARY, BHUBANESWAR
GOVT. OF ODISHA (INDIA)
Regd. No.-ON-52-2009

11. DELIVERY OF CONTRACTED BUSES

11.1. Delivery Period: Delivery of prototype Bus and thereafter other Contracted buses shall be as per the following “Bus Delivery Schedule”

Time	Delivery of Custom built Buses (no.)
Within 30 days from date of Appointed Date	Prototype Bus
Within 20 days of approval of prototype	First Lot of 25 Buses
Within 50 days of approval of prototype	Second Lot of 25 Buses
Within 90 days of approval of prototype	Third Lot of 25 Buses
Within 120 days of approval of prototype	Final Lot of 25 Buses

11.2. Operator shall deliver buses at the place/ places as shall be specified by the Authority within Rourkela Municipal Limits, not later than the dates/schedule specified in the Agreement.

11.3. Failure to comply with stipulated delivery schedule shall attract pre-defined liquidated damages as per Clause 14, risk purchase & other provisions of the Agreement.

11.4. Operator shall intimate the Authority at least 15 days prior to any inspection at Bus Manufacturer’s premises failing which the Authority shall not be liable for delay in inspection and supplies of buses. The Authority shall conduct inspection within 15 days from the day of receipt of request for inspection from Operator.

11.5. 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.

12. INSPECTION OF CONTRACTED BUSES AFTER DELIVERY

12.1. Inspection of the Contracted Buses Received at Bhubaneswar:

12.1.1. On receipt of fully built Contracted Buses at Rourkela, these shall be jointly inspected by the Operator and the Authority for completeness and satisfactory condition of all equipment/ components.

12.1.2. Damages, defects and deficiencies, if any, shall be noted and the Operator shall initiate immediate action for making good the same under advice from the Authority within mutually agreed time period.

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12.1.3. 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.

12.2. Provisional Receipt Certificate

12.2.1. The Authority shall issue Provisional Receipt Certificate within three working days of receipt of Contracted Bus(es) in good conditions along with valid required documents at Bhubaneswar.

12.2.2. 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.

12.3. Inspection of the Buses Received at the Authority's Premises

12.3.1. The Authority or representatives of the Authority shall carry out inspection of the Buses at its premises jointly with the Bus Operator, within 7 working days, to check any damage/deficiencies that may have occurred in the received buses during transit from Bus Manufacturer's Facility.

12.3.2. The Authority shall communicate about such damage/deficiencies, if any, to the Operator on immediate basis to which the Operator shall start the remedial process at the earliest.

12.4. Final Acceptance Certificate

12.4.1. The Operator shall inform about rectification/ removal of defects/ deficiencies observed during Joint Inspection within 7 days from date of inspection.

12.4.2. If the rectification/ removal is found to be satisfactory, Final Acceptance Certificate shall be issued by the Authority. Thereafter, the Operator shall initiate the process of deployment of buses for Bus Service in accordance with clauses of this agreement.

12.5. Removal and Replacement of Rejected Buses

12.5.1. On rejection of any Bus, subjected to inspection or assessment of performance during commissioning at the Authority's premises, such buses shall be removed, within 21 days of the date of intimation of such rejection.

12.5.2. The Operator shall immediately transport such rejected buses back to the Bus Manufacturer's premises at its own cost and risk.

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13. COST OF INSPECTION: All the costs associated with the inspection of prototype bus and other buses at Bus Operator's premises and at Rourkela, including travelling and conveyance expenses of representatives of the Authority shall be borne by the Bus Operator.

14. LIQUIDATED DAMAGES FOR DELAY IN SUPPLY OF FULLY BUILT CONTRACTED BUSES

14.1. If the Operator fails to deliver the Contracted Buses as per the Month wise delivery schedule specified in the Clause 11.1 above and if the Operator is not able to cure such default (delay in buses) within any additional time permitted by the Authority, the Authority shall, without prejudice to other remedies under the Agreement, levy/deduct pre-estimated liquidated damages of Rs. 2,000/- (Rupees Two Thousand only) or part thereof, per bus per day of delay for additional 30 days from the expiry of the respective Milestone for delivery.

14.2. The amount of pre estimated liquidated damages to be charged under the Agreement, in terms of Clause 14 of Agreement Conditions shall not exceed Rs. 1, 20,000 per contracted Bus.

14.3. In the event the delivery of any number of Buses is delayed beyond the stipulated Delivery Schedule as per clause 11.1 plus an additional period of 30 days, the Authority, at its sole discretion may not accept the delivery of such delayed number of Buses unless such occurrence is not attributable to Force Majeure Events.

15. CONSEQUENCES OF NON ADHERENCE TO THE DELIVERY OBLIGATIONS

15.1. In case of the Operator fails to deliver any Buses as per stipulated schedules and timelines as specified in sub clause 11.1, read with Clause 14 above, after exercising all remedial measures provided in elsewhere in this agreement, it may be considered an Operator's Event of Default at the Authority.

15.2. Notwithstanding above, if the event of Default of the Operator pursuant to clause above does not result into termination, the number of Buses which form part of the contracted Bus shall be reduced to only the number of buses accepted by the Authority.

15.3. With pursuant to clause 15.2 above, in case of reduction in size of the Agreement, the Operator shall replace the amount of Performance Security calculated as per the revised Agreement size.


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16. DEPLOYMENT OF CONTRACTED BUSES

16.1. 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. However, the date of deployment of last lot of Contracted Buses shall be considered as COD as per the Agreement. ("Commercial Operations Date for Bus Lot" or "COD for Bus Lot"). The Operator shall achieve COD for the first lot of Contracted buses immediately after completion of Training Period as specified in the Clause 16.4 below.

16.2. In the event the Operator is not able to start operations of particular Lot of Contracted Buses within 195 days from the date of Execution of the Agreement as per abovementioned clauses 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.500/per bus per day for additional 30 days after completion abovementioned timeline. Amount of liquidated damages shall not exceed Rs. 15,000 per Bus. In case the Operator fails to start operation of Lot of Contracted buses within extended period of 30 days then it shall be constructed as Operator's event of default.

16.3. 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.

16.4. 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").

16.4.1. During the Training Period, The Operator's staff shall be educated about the intricacies of Bus Service and skill-set required for efficient operations.

16.4.2. Cost of Damage to Project Asset or any other third party property including fatalities, injuries of employee of the 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.

17. OWNERSHIP OF CONTRACTED BUSES

17.1. 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.


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18. OPERATION AND MAINTENANCE OF DEPOT

18.1. The Authority acknowledges the requirement of Bus Depot for the purposes of maintenance, cleaning and parking of Contracted Buses. Hence, the Authority shall provide Bus Depot at Rourkela Municipality area to carry out maintenance activities for the contracted buses in accordance with the terms contained herein.

18.2. Covenant with reference to Bus Depot Operation and Maintenance

18.2.1. The possession of the depot shall be handed over to the Authority who in turn shall enter into Depot Lease Agreement (Annexure PA4) with the Operator.

18.2.2. The Operator shall at his own cost and expenses bring any such moveable equipment and/or machinery and appoint skilled personnel and supervisor for regular upkeep, maintenance, cleaning and safekeeping of the Contracted Buses in accordance with the terms contained herein.

18.2.3. It is hereby clarified that the ownership of the Bus Depot Area shall remain vested solely with the Authority at all times. The Operator shall only be provided the limited right to use the Bus Depot Area, and on Termination or Expiry of this Agreement, whichever is earlier, the Operator shall vacate and hand back such Bus Depot Area as per the terms contained herein. Upon termination or Expiry of this Agreement, the Operator shall not remove any permanent structure created by him to fulfil the obligations as per the terms of this Agreement.

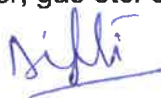
18.2.4. The Operator shall not have any right to display advertisement in the Bus Depot, Parking Spaces and/or Terminals or any part thereof.

18.2.5. The Operator shall:

- a. at his own cost and expense maintain the area of the Bus Depot Area 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 Area 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 the Authority or other users/occupants of the same.
- c. only be responsible to maintain the area of the Bus Depot Area which has been specifically allocated and handed over to him by the Authority under the relevant license agreement.

18.2.6. The Operator shall also be liable to pay bills for utilities such as electricity, water, gas etc. on actual basis in relation to the area of the Bus Depot, Terminal




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and Parking Space allotted to the Operator.

18.3. It is hereby clarified that the Operator shall only have a limited right to way and right to use the Project Site for Construction of Bus Depot and Operation and maintenance of it subject to the terms contained in the Depot Construction Agreement and Depot Lease Agreement.

19. OPERATION PLAN

19.1. The Authority shall develop a plan which shall contain details including but not limited to number of Contracted Buses, details of the Annual Assured Fleet Availability, Fleet Deployment Plan and any other relevant details required for Operation of Contracted Buses ("**Operation Plan**").

19.2. The Fleet Deployment Plan, to be prepared as part of Operation Plan, shall include Routes, Frequency, Stoppage plan, and table of Schedule providing bus headways based on peak and off peak hour requirements ("**Fleet Deployment Plan**").

19.3. 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.

19.4. The operator needs to operate the Contracted Buses in accordance with this Operation Plan.

19.5. 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.

20. ROUTES AND SCHEDULES

20.1. 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 Agreement Period.

20.2. 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.

20.3. 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.



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20.4. 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.

20.5. 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 without specific instructions notified by the Authority in relation thereof, it shall be liable for the penalty set forth in this Agreement.

21. FARE AND FARE COLLECTION

21.1. **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**").

21.2. Passenger Fare Collection:

21.2.1. 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.

21.2.2. The Operator shall not directly or indirectly collect Passenger Fare or any portion thereof.

21.2.3. 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.

22. ADVERTISEMENT ON THE BUSES

22.1. The Authority shall reserve the 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.

22.2. 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.

22.3. In case any damages occur to the Contracted Buses while mounting or dismounting of advertisement material or equipment, 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.


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23. PAYMENTS TO THE OPERATOR FOR KILOMETER CHARGE

23.1. 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, which is outside the Operating Plan but approved by the Authority for specific and special requirements.
- c. Distance travelled by the Contracted Bus from the Bus Depot to the first point of loading passengers at the commencement of its service on a day and Distance travelled by the Contracted Bus from its last passenger stop as per the Operating Plan to the Bus Depot at the end of the day's service.
- d. Distance travelled by a Contracted Bus for fuel refilling (two ways) not exceeding the 5 KM of nearest fuel station from the Depot Area.

23.2. 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 provided for by the Authority or for any travel not authorized by the Authority.

23.3. 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.

23.4. **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 Per Kilometre Charge quoted by the Operator in the Price Proposal for the Contracted Buses and accepted by the Authority in the LOA s as follows:

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Sl. No.	Package	Quantity of Buses (Nos)	Rate (Rs per KM) (A/c Buses)	Rate (Rs per KM) (Non A/c Buses)
1.	Rourkela Mo Bus (Operations)	100 numbers New Midi Buses (70 Midi AC & 30 Midi Non-AC)	Rs. 46.23 (Forty Six Rupees and Twenty Three Paise only)	Rs. 42.24 (Forty Two Rupees and Twenty Four Paise only)

The base Year Price of Fuel per Unit, Base Year Wholesale Price Index (WPI) and Applicable Minimum Wages/CPI-IW which shall be used for determining the Applicable Kilometre Charge throughout the agreement period are as follows:

- Base Year Price of Fuel/Unit : **Rs 95.83** per Liter (Diesel), being the prevailing price of fuel as available from the cheapest legal source in the vicinity of the Bus Depot Area being prices of a week immediately prior to the last date of submission of the RFP on 28.10.2022.
- Base Year Wholesale Price Index for all commodities: **152.50** (WPI) for October 2022 .Source: Office of the Economic Adviser to the Government of India, Ministry of Commerce and Industry: Website: <http://www.eaindustry.nic.in>.
- Minimum Wages for relevant Category Manpower Deployed of **Rs.483.00** (Highly Skilled) for time period from 01.10.2022. Source: Office of Labour Commissioner, Govt. of Odisha. <http://labour.odisha.gov.in>

23.5. Payment Terms

23.5.1. **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:

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


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- iii. Applicable Kilometre Charge for the period for the particular type of Contracted Bus.
- iv. GST, if applicable, if any, payable on the amount; and
- v. Copy of daily fuel price and purchase bills indicating source, quantity and rate per fuel purchased.

(here-in-after together referred as "Invoice Amount")

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

23.5.2. Payment Period:

- a. The Authority, within a period of 5 (five) working days of the receipt of invoice, shall undertake preliminary verification of invoice and shall ordinarily make part payment of 90% of the total invoiced amount for each payment cycle of 10 days.
- b. Balance 10% of the amount of each invoice or the amount due as per the final verification of invoice shall be ordinarily released by the Authority in first 15 days of the next month of after the month of invoicing (starting from COD) after verifying the records.
- c. In case of expiry the agreement in the normal course of time, complete payment of last month of operation shall be made within 30 days from the last day of the Agreement.
- d. All payments shall be made by the Authority to the Operator after making any tax deductions at source under Applicable Law.

23.5.3. Method for Calculation of Aggregate Payment

- a. 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)

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



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- c. GST, 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 GST if applicable on the Invoice Amount, provided that the Operator is able to furnish satisfactory evidence as to its applicability.
- d. The Toll Tax needs to be paid by the Operator. However, it shall be reimbursed by BPTS for each payment period and shall be along with the payment of invoiced amount.

23.5.4. **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 Kilometers travelled by each of the Contracted Buses, in a continuous period of **6 (Six) months**, commencing from CoD of Contracted Buses, and then onwards on Half Yearly basis, shall be no fewer than 31,500 kms / Contracted Bus (Thirty One Thousand Five Hundred Kilo meters per contracted bus) [**“Half Yearly Assured Bus Kilometers”**]

23.5.5. **Half Yearly Assured Payment after reconciliation**

- a. **Payment for Unutilized Kilometres:** In the event that the Authority is unable to demand from the Operator the operations of the Contracted Bus trips such that the average number of kilometres operated per Contracted Bus is not equal to the Half Yearly Assured Bus Kilometres, the 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:

Half Yearly Assured Payment Amount for Unutilised Kms = $0.35 \times (T_m - T_a) \times \text{Applicable Kilometre Charge}$

where

$T_m =$ Half Yearly Assured Bus Kilometres x Available fleet

$T_a =$ Actual Bus Kilometres Operated by all Contracted Buses comprising the Available Fleet during the relevant period of 6 (Six) calendar months that has triggered this provision



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

- (i). Default of the Operator under this Agreement
- (ii). Non-availability of Contracted Buses for reasons attributable to maintenance or accidents
- (iii). Breach of law by the Operator
- (iv). Occurrence of a Force Majeure Event.

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

Half Yearly Assured Payment Amount for Excess Kms =
 $0.65 \times (T_a - T_m) \times \text{Applicable Kilometre Charge}$

where

$T_a =$ Actual Bus Kilometres Operated by all Contracted Buses comprising the Available Fleet during the relevant period of 6 (Six) calendar months that has triggered this provision

$T_m =$ Half Yearly Assured Bus Kilometres x Available fleet

- c. 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.
- d. The determination of whether Half Yearly Assured Payment Amount is due shall be done at the end of a period of 6 (Six) 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).
- e. The Authority shall have right to compute on its own and verify the Half Yearly Assured Kilometres. The Authority shall compute and provide to the Operator, every quarter from the COD of Contracted buses, The total number of Kilometres that the Available Fleet has




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travelled for the aforesaid period. Such calculation shall be made using GPS and in case of absence of GPS, with the help of the Authority staff or its authorised agency.

23.6. Basis of Revision of Kilometre Charge

23.6.1. 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;

- For Fuel cost, Average of daily fuel price at the end of the month shall be used as an indicator. Fuel cost shall be revised on a monthly basis. The fuel price must reflect a legal source such as IOCL website or quotations of supply of fuel for urban bus operations in Bhubaneswar.
- For change in cost of consumables, using the Wholesale Price Index, annually.
- For Manpower Cost, using change in Minimum Wages for relevant skill category for manpower deployed on Annual Basis/ using change in CPI-IW annually.

Manpower Cost shall be revised as and when there is change in Minimum Wages for relevant skill category for manpower deployed (drivers) as per periodic Gazette Notifications, Labour and Employment Dept., Govt. of Odisha.

The Operator shall pay its manpower as per the applicable acts/rules and make necessary revision whenever Government notifies to this effect. In case of any violation, CRUT may impose suitable penalty on the Operator.

The Kilometre charge shall be revised based on following formula;

$$R_L = [R_L\text{-base}] + [R_L\text{-base} \times 0.40 \times (F - F\text{-base})/F\text{-base}] + [R_L\text{-base} \times 0.15 \times [(W - W\text{-base})/W\text{-base}]] + [R_L\text{-base} \times 0.20 \times [(L - L\text{-base})/L\text{-base}]]$$

Where

R_L is the Kilometre charge for each Lot

$R_L\text{-base}$ is the Base Kilometre Charge

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F is present Price of Fuel/unit

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

W -is the Present Year Wholesale Price Index

W-base is the Base Year Wholesale Price Index (Latest Financial year or Calendar Year WPI whichever is nearer to the Proposal Due Date)

L is the Present applicable Minimum Wages for the relevant skill category for drivers

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

23.7. Limitations to Liability of the Authority for Operations and Maintenance: The Authority shall not be liable to make any other payments other than the payments described in this Clause 23.5.

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

23.9. 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.

23.10. Escrow Account:

23.10.1. Escrow Account For payment to the Manufacturer:

- a. Within [30 (thirty)] days from the date of this Agreement, the Operator shall open and establish an Escrow Account for Payment to Manufacturer (the "Escrow Account") with a nationalized bank (the "Escrow Bank"). This Escrow Account shall be operational throughout the Bus Procurement Period.
- b. For the purpose of opening and operating an Escrow Account, the Authority shall enter into an Agreement with the Operator and the Escrow Bank ("the Escrow Agreement") in accordance with the format provided in Annexure PA11
- c. to this Agreement. The Escrow Agreement shall remain in full force and effect until the Escrow Account is not discharged in accordance with the terms contained thereof.



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- d. The Escrow Agreement shall set out the terms of appointment of the Escrow Bank, the obligation of the CRUT to ensure deposit of amounts in accordance with this agreement and the procedure for withdrawal of amounts from the Escrow Account for Payment to Manufacturer.
- e. The Escrow Account shall only be operated by the Operator.
- f. The Operator as well as the Authority shall credit their contribution of 25% and 75% of bus procurement cost subject to limit as per clause 6.1, respectively, into the Escrow account. The Operator shall make payment against invoices raised for procurement of buses only from this account.
- g. The contribution of the Authority shall be back loaded and shall be in proportion to the contribution of the Operator. This will mean that the Authority shall release its loan component in proportion to Operator's contribution into the Escrow Account only after certification of release of Operator's share by the Escrow Bank.
- h. The Operator shall place the purchase order of the buses directly with the manufacturer of the buses. Further, all payment due on account of procurement of buses shall be released by the Operator directly to bus manufacturer only.
- i. The Escrow Account shall, inter alia, provide for a priority order for payment to be made out of it. The order of priority shall be as given below:
 - a. Payment towards taxes and other statutory levies.
 - b. Payments to the Manufacturer for procurement of bus
 - c. In case of any Balance funds, the same shall flow to the Authority, subject to the terms and conditions of Escrow Agreement.
- j. Notwithstanding anything to the contrary contained in the Escrow Agreement upon Termination of this Agreement, all amounts standing to the credit of the Escrow Account shall be appropriated by the Authority.



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- a. Payment towards taxes and other statutory levies.
- b. Payments to the Operator towards Kilometer charge after adjusting for 'a' above.
- c. Balance funds to flow to the Authority, subject to the maintenance of balance of amount equivalent to [3 (three)] month's estimated payment of Kilometer Charge to the Operator.
- h. Notwithstanding anything to the contrary contained in the Escrow Agreement upon Termination of this Agreement, all amounts standing to the credit of the Escrow Account shall be appropriated by the Authority.

24. TAXES AND STATUTORY LEVIES

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

Sr. No.	Taxes and Charges	Parties responsible for payment
1	Road worthiness/Vehicle Fitness certificate	Operator
2	Vehicle Registration Charges	Operator
3	Insurance premium for the Buses and other assets owned by the Authority	Operator
4	Motor Vehicle tax within Municipal Limit of [Rourkela]	Operator
5	Motor Vehicle tax outside Municipal Limit of {Rourkela}	Authority
6	Passenger Tax/Additional MV Tax	Authority
7	Stage Carriage Permit	Authority
8	GST (if any)	Payable by the Operator and Authority as applicable




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

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

25.1.1. Operator shall Procure the buses in accordance with terms and condition set forth in this Agreement.

25.1.2. Operator shall Design and Construct the depot as per the provisions of this agreement.

25.1.3. **Operation and Maintenance of Contracted Buses:** The Operator shall carry out the following activities with respect to the 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. provide and install monitoring devices on the Contracted Buses to enable real time tracking (including but not limited to CCTV camera or Vehicle Tracking System).
- c. Use the Contracted Buses only for the purpose of providing Bus Services in accordance with this Agreement and shall not use the Contracted Buses for any other purposes;
- d. Allow access to the Contracted Buses to all members of the public without any prejudice or discrimination;
- e. 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 the 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 the 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 Service operation of the Authority. Further, if any driver is found to be wanting in the requisite skills,



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knowledge, and responsibility, the 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.

- f. Make drivers and technicians for undergo orientation / familiarisation training programme at Bhubaneswar. Operator would also arrange for space, the training bus, fuel etc. for said training programme at his cost.
- g. 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.
- h. 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;
- i. 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;
- j. Ensure safety and security of the Contracted Buses against theft or other forms of damage;
- k. Submit invoices in a timely manner in accordance with the terms contained herein;
- l. Maintain working capital equivalent to at least 1 (one) month's Operator Payment receivable from the Authority;
- m. 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;
- n. Ensure that the Contracted Buses stop to pick up and allow the passenger to get off at the nominated bus stops;
- o. Provide and maintain (and keep up to date) first aid box in each Contracted Bus during Agreement Period;
- p. Keep available any and all equipment, fuel, consumable, machine or material that is required for the uninterrupted and continuous




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operation, management and maintenance of the Fleet at all times and places during the Agreement Period;

- q. Make adequate arrangement either in-house or outsourced for overhauling of bus aggregates, repair and retreading of tyres, repair of bus bodies, repair of accidental buses, etc. to the satisfaction of the Authority.
- r. 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.
- s. Shall not tamper or interfere with any equipment, instrument or system including the GPS tracking facilities and CCTV surveillance and any other IT and Contracted Bus monitoring devices provided in the Contracted Buses and the Project to enable provision of safer Bus Services to the passengers.
- t. 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.
- u. 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 the Authority.
- v. Ensure at its own cost and expense and keep available at all times, any and all equipment, fuel, consumable, machine or material that is required for the uninterrupted and continuous operation, management and maintenance of the Bus Service and the implementation of this Agreement. It is clarified that all the costs, including costs relating to the equipment, material and consumables shall be solely borne by the Operator.
- w. Submit the copy of the Employee State Insurance and Provident Fund challans to the Authority every month; and
- x. Agree to comply with all Applicable Laws including labour and local laws, pertaining to the employment of labour, staff and personnel engaged by it for implementing the Project, that are now or may in



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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 labour and local laws, pertaining to the employment of labour, staff and personnel engaged by it for implementing the Project.

25.1.4. **Co-operation with the Authority:** The Operator shall

- a. cooperate with the Authority and/or any third party appointed by the 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 and/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 the Project.
- f. Maintain bus wise log books and all maintenance work / activities pertaining to each bus shall be entered there-in on regular basis. The Authority shall be free to inspect log books at all times and the



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Operator shall make log books available to the Authority or its representative and answer all queries to its satisfaction.

- g. respond to all notices, letters and communications received from the Authority within the given time frame;
- h. provide all information, data, records, documents or information as may be required by the Authority or Project Management Consultant , from time to time; and
- i. Participate in all the meetings, discussions as directed by the Authority from time to time.

25.1.5. **Compliance with the terms of the Warranty and Good Industry**

Practice: The Operator shall

- a. shall comply with all terms of Warranty and instructions that are provided as a part of the purchase with each Contracted Bus;
- b. undertake all preventive and corrective maintenance in compliance with terms of the Warranty as provided by the bus manufacturer, standards and instructions as may be notified by the Authority from time to time and in accordance with Good Industry Practice;
- c. carry out major overhauls of the Contracted Buses according to the number of kilometres travelled as per terms of the warranty/purchase order as provided by the bus manufacturer, Engine overhaul agency, AC system provider agency 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. The 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;




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- e. notify defects of any bus component or equipment and/or monitoring device that may be within the scope of the warranty, within 1 (one) day of noting such defect, to the Authority and take prompt and immediate action to remedy or rectify the defects. In case any instruction in this regard is given by the Authority, the same shall be complied with by the Operator. In the event that the Operator does not notify the Authority within the stipulated time period then it shall be liable to repair or remedy at its own cost and expense such defect, as per the instructions issued by the Authority.

25.1.6. **Annual Maintenance Contract:** In case of the operator does not have or does not develop in-house capacity for adequate maintenance of Contracted Buses, the Operator shall procure and maintain, at its own cost, an Annual Maintenance Contract with the manufacturer of the Contracted Bus or his authorized dealer and with the Bus Bodybuilder for the purpose of ensuring regular servicing and preventive maintenance activities for the Contracted Buses.

25.1.7. **Record and Reporting Requirements:** The Operator shall

- a. maintain record of all preventive maintenance activities to 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 to the 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

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urgent attention of the Authority such as accidents, theft, etc.

iii. submit a summary of all the complaints on a monthly basis to the Authority.

iv. submit copy of certificate of roadworthiness of the Contracted Buses periodically every quarter.

25.1.8. **Inspection:** The Operator shall make available Contracted Buses to the Authority or its authorised personnel for inspection as and when required/instructed by the 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 and/or 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 adjusted from the next payment due to the Operator.

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.

25.1.9. **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.

25.1.10. **Appointment of Drivers and Staff:** The Operator shall

a. appoint: (i) drivers holding a valid licence for a period of 3 (three) years before the Appointed Date in accordance with the Motor


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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.

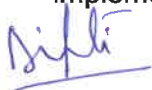
- b. be solely and exclusively responsible for all drivers, employees, workmen, personnel and staff employed for the purposes of implementing the Agreement. The Operator shall ensure that all personnel and staff are under its supervision so as to provide the Bus Service in a safe and efficient manner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




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- 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 labour 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 labour and personnel.

25.1.11. **Appointment of the 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 the Authority ("**Operations Manager**").

25.1.12. **Payment of Taxes and Duties:** Subject to Clause 23, the Operator shall make timely payment of all taxes and duties due and payable under Applicable Law.


25.1.13. **Payment of Fines:** The Operator 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.

25.1.14. **No Alterations or Modifications of the Contracted Buses:** The Operator shall

- 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




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of the Authority.

- c. shall not tamper or interfere with any equipment, instrument or system including the GPS tracking facilities and CCTV surveillance and any other equipment or monitoring devices provided in the Contracted Buses.

25.1.15. Complaints Redressal: The Operator shall

- 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.

25.2. Rights of the Operator: The Operator shall have right to:

- 25.2.1. receive Operator Payment from the Authority as per the terms mentioned in this Agreement;
- 25.2.2. receive payment for Construction of Depot from the Authority as per the terms mentioned in the Depot Construction Agreement.
- 25.2.3. receive support for obtaining required permits and sanctions from the government, or local body and to obtain assistance and support in dutifully carrying out the obligations as provided for in this Agreement as may be within the purview and general jurisdiction of the Authority;
- 25.2.4. use Bus Depot subject to the terms of the Bus Depot Agreement and the terms provided herein; and
- 25.2.5. Operate and maintain the Contracted Buses on the Routes as per conditions set forth in the Agreement.
- 25.2.6. Exercise option to Buy contracted buses after successful completion of Agreement Period as per the terms specified in Clause 36 of the Agreement.

25.3. Authority's Rights and Responsibilities: In addition to the terms and conditions of this Agreement, the Authority shall:

- 25.3.1. Provide adequate infrastructure for water and electric supply to the Depot during the Agreement Period;
- 25.3.2. Provide to the Operator the Bus Depot right to use in accordance with


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the terms of this Agreement and Depot Lease Agreement;

25.3.3. 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;

25.3.4. 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;

25.3.5. 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;

25.3.6. conduct regular inspections of Contracted Buses and the Project at any time during the Agreement Period. The Authority may penalise traveller commuting without ticket in cash as determined by the Authority;

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

25.3.8. 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;

25.3.9. 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 operability of the Bus Services.



26. INSURANCE

26.1. Insurance During the Agreement Period

26.1.1. The Operator shall, 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 upto the end of the Agreement Period such, including but not limited to the following;

26.1.2. Insurance of Contracted Buses and payment of RTO registration

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charges, as per Motor Vehicle Act, required for registration of Buses in name of the Operator and insurance / RTO charges if any for all subsequent years of Agreement.

26.1.3.100% replacement cost for any loss and damages to the Authority's Property/Project Asset/Premises with the Authority as beneficiary. Shortfall in insurance cover, if any, shall be borne by the Operator.

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

26.1.5.Comprehensive third party liability insurance.

26.1.6.100% insurance of employee compensation and other liability as per Workmen's Compensation Act 1923.

26.1.7.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 26.1.1 to 26.1.6 with the Authority as beneficiary/co-beneficiary.

26.1.8.The Operator shall be responsible to pay the premium regularly and maintain the insurance policies specified above all time during the Agreement Period. Operator shall be solely responsible in case of failure of its renewal.

26.1.9.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 Agreement. The 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.



26.2. Evidence of Insurance Cover

26.2.1.The Operator shall, from time to time, provide to the Authority copies of all insurance policies (or appropriate endorsements, certifications or other satisfactory evidence of insurance) obtained by it in accordance with the Agreement.

26.2.2.If Operator shall fail to effect and keep in force the insurance for which it is responsible pursuant hereto, the Authority shall have the option to take or keep in force any such insurance, and pay such premium and


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recover all costs thereof from the Operator.

26.3. Application of Insurance Proceeds

- 26.3.1. 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.
- 26.3.2. The Operator shall carry out such repair or renovation or restoration or substitution to the extent possible in such manner that the 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.
- 26.3.3. For insurance policies where the Authority is the beneficiary and where it received the insurance proceeds, such sums shall be utilized for restoration, repair and renovation of the Project Asset.

26.4. Validity of Insurance Cover

- 26.4.1. The Operator shall pay the premium payable on such insurance Policy/Policies so as to keep the insurance in force and valid throughout the Agreement 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, the 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 from outstanding payment to the Operator and/or by encashment of Performance Security, exercising right of set off or otherwise.



27. APPOINTMENT OF PROGRAM MANAGER

27.1. The Authority, at its own cost, shall appoint a reputed firm having adequate experience of operation and maintenance of Urban Bus Operation, as "Program Manager". The Program Manager shall;

- a. Ensure compliance of the Performance Standards by the Concessionaire as per the provision of the agreement.

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- b. Perform contract management and ensure enforcement of Agreement Conditions during the Agreement Period.
- c. Develop Operation Plan including Bus Deployment Plan for the Bus Service.
- d. Carryout Supervision, Monitoring and inspection of Buses, Depot development, maintenance and allied supporting system on behalf of the Authority.
- e. Evaluate and verify the invoices and make recommendations in this regard.

28. OPERATION AND MAINTENANCE STANDARDS

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

28.2. 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.

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

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

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

28.6. The Authority or representative of the Authority shall monitor the replacement or re-



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

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

29. DAMAGE TO CONTRACTED BUSES DUE TO VANDALISM

29.1. In the event that any damages or need for repairs or complete replacement to the Contracted Buses and repair of Bus Depot or any other asset provided by the Authority arises during the Agreement 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 the Operator.

29.2. The Authority shall reimburse the cost to the operator for any such damage or loss, including for loss of full bus after deducting the insurance proceeds. 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 the Authority.

29.3. 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.

30. PERFORMANCE APPRAISAL SYSTEM

30.1. Without prejudice to and notwithstanding any other provision of this Agreement pursuant to which the Operator shall follow the Performance Indicators provided in the Performance Appraisal System (PAS) placed as Annexure

30.2. PA5. The Operator shall pay Liquidated damages or Receive Incentive as a resultant of the evaluation of daily, weekly and monthly parameters for Bus Operation and Maintenance as defined in the PAS in detail. The parameters generally covers aspects of 1) Regulatory Compliance 2) Passenger Experience 3) Safety and 4)




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Vehicle upkeep.

- 30.3. The Authority, in consultation with the Operator, reserves the right to make modification in the frequency, nature and quantum of the Performance evaluation parameters during the course of the Agreement based on the experience gained in implementation of PAS.
- 30.4. The total damages 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 Damages**").
- 30.5. Damages or incentives shall be applicable from the Commercial Operation Date.
- 30.6. In case Aggregate Damages payable by the Operator exceeds the 10% of invoice value prescribed above for consecutive 5 (five) Payment Period, it shall be considered as breach of obligation by the Operator and shall entitle the Authority to consider it an Operator Event of Default in accordance with the provisions hereof.
- 30.7. 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. CONFIDENTIALITY OBLIGATIONS OF THE OPERATOR

- 31.1. **Protection of Confidential Information:** The Operator shall not without the Authority's prior written consent use, copy or remove any Confidential Information from the 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 the Authority all documents or other materials containing the 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 the Authority relating to the Bus Services provided under the Agreement in relation thereto and information relating to the Authority's business or operations.

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31.2. 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 the Authority or came into Operator's possession thereafter, in each case lawfully obtained from a source other than the 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 the Authority before such disclosure; and
- d. Is independently developed by or for Operator by persons not having exposure to the Authority's Confidential Information.

31.3. 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.

31.4. Intellectual Property Rights:

31.4.1. Operator shall acknowledge and agree that any and all hardware, software, and / or firmware developed by the Authority in relation to the Bus Service Project and any modifications thereto or works derived there-from shall be the exclusive property of the Authority at all times and the 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 Bus Service Project on specific approval of the same by the Authority.

31.4.2. 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 the Operator for the Authority under the Bus Service Project for any purpose whatsoever.

31.4.3. 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



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Bus Service Project pursuant to the Agreement.

- 31.4.4. The Authority may in its sole discretion allow the use of any and all Buses used specifically for the Authority in relation to the Bus Service Project by the Operator to a third party for the purpose of advertisements etc. inside/outside the buses.

32. EVENT OF DEFAULT AND TERMINATION


32.1. **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:

- 32.1.1. Operator is in breach of any of its obligations under this Agreement and the same has not been remedied within 60 (sixty) days;
- 32.1.2. A resolution for voluntary winding up has been passed by the shareholders of the Operator;
- 32.1.3. Any petition for winding up of Operator has been admitted and liquidator or provisional liquidator has been appointed or the Operator has been ordered to be wound up by the 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;
- 32.1.4. Operator fails to comply with the Applicable laws, rules and regulations.
- 32.1.5. Any representation made or warranties given by the Operator under this Agreement or under the RFP document is found to be false or misleading.
- 32.1.6. The operator fails to maintain/ refurbish/ replenish the Performance security as per terms of this Agreement.
- 32.1.7. The operator is unable to supply Buses beyond the 60 days permitted delay period and beyond any additional period granted by the Authority in accordance with Clause 15.
- 32.1.8. Operator suspends or abandons the operations of Contracted Buses without the prior consent of the 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




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Authority.

- 32.1.9. The Operator repudiates this Agreement or otherwise evidences an intention not to be bound by this Agreement.
- 32.1.10. The Operator failed to make any payments/damages due to the Authority within period specified in this Agreement or indicated by the Authority without any valid reason.
- 32.1.11. The Operator fails to payback the monthly instalment of the soft loan given for four consecutive months.
- 32.1.12. The Operator failed to perform any of the Operator's obligations, which has a Material Adverse Effect on the Agreement.
- 32.1.13. The operator creates an Encumbrance over the Contracted Buses, Bus Depot, Terminals or Parking Spaces.
- 32.1.14. The operator fails to adhere to the timelines set forth in the Agreement for performance of the Operator's obligations there under. Also in case, the value of damages due to these failure(s) exceeds the limit as provided in the relevant clauses;
- 32.1.15. Repeated occurrence of breach of the Operator's obligations specified in this Agreement and which shall not be remedied in Remedial Period specified by the Authority; and
- 32.1.16. Any other default/breach of its obligation by the Operator, for which default/breach termination has been prescribed in terms of this Agreement.
- 32.1.17. The Operator defaults in the repayment of the Soft Loan as per the Terms of Loan Agreement.
- 32.1.18. The Operator fails to repay any debt / loan raised by the Operator for the purpose of financing the Bus from institutional Lenders such as Banks.



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

- 32.2.1. The Authority is in Material Breach of any of its obligations under this Agreement and has failed to cure such breach within 60 (sixty) days of occurrence thereof.
- 32.2.2. The Authority has unlawfully repudiated this Agreement or otherwise expressed its intention not to be bound by this Agreement (for example the Authority fails to renew stage carriage license/permit, demands


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withdrawal of the Contracted Buses etc.)

33. TERMINATION DUE TO EVENT OF DEFAULT

33.1. Termination for Operator's Event of Default:

33.1.1. 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.

33.1.2. In the event of termination for an Operator's Event of Default, the Authority shall:

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

- (i). Release bus(es) supplied to the Authority by the Operator
- (ii). Be entitled to invoke and retain the Performance Security amount in full;
- (iii). Demand and get paid by the Operator in full the outstanding Loan Amount under the Soft Loan Agreement along with applicable interest.

b. In case such event occurs after COD


- (i). Takeover peaceful possession without any Encumbrance of, Bus Depots, Computer software, electronic hardware or any Intellectual Property, pertaining to Bus Operation and maintenance, provided to the Operator.
- (ii). Be entitled to invoke and retain the Performance



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Security amount in full;

- (iii). Release bus(es) under operation from the duty.
- (iv). Demand and get paid by the Operator in full the outstanding Loan Amount under the Soft Loan Agreement along with applicable interest.

33.2. Termination for the Authority's Event of Default

33.2.1. Without prejudice to any other right or remedies which the Operator may have under this Agreement, upon occurrence of the 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.

33.2.2. Upon Termination of this Agreement on account of the Authority's Event of Default, the Authority shall:


- 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, 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. Release bus(es) under operation from the duty.

33.2.3. Upon Termination of this Agreement on account of the Authority's Event of Default, the Authority shall Demand and get paid in full the outstanding Loan Amount by the Operator under the Soft Loan Agreement along with applicable interest.



34. FORCE MAJEURE

34.1. For the purposes of this Agreement the expression "Force Majeure" or "Force


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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.

34.2. 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:

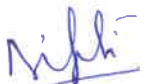
- a. the nature and extent of the Force Majeure Event;
- b. the estimated duration of the Force Majeure Event;
- c. the nature of and the extent to which, performance or any of its obligations under this Agreement is affected by the Force Majeure Event;
- d. the measures which the Affected Party has 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.


34.3. As soon as practicable and in any case within 5 (five) days of notification by the Affected Party in accordance with the preceding Cause , 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;

34.4. 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.

34.5. If the Affected Party is rendered wholly or partially unable to perform any of its


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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. 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
- 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.



34.6. 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.

34.7. Upon Termination of this Agreement on account of a Force Majeure Event, the Authority shall be entitled to;

- a. Pay any sum due and payable as the Operation Payment by the Authority till date of such termination;


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- 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. Release bus(es) under operation from the duty.

34.8. Upon Termination of this Agreement on account of a Force Majeure Event, the Operator shall pay any outstanding in full under the Soft Loan Agreement along with applicable interest.

35. CHANGE OF LAW

35.1. 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 Appointed Date, of any provision or statute which is already in place as of the date of execution of this 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 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

35.2. 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


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- 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.

36. HANDBACK ON TERMINATION

36.1. The operator shall retain the title and ownership of Contracted Buses in relation to the Project under this Agreement during the Agreement Period.

36.2. After successful completion of agreement period, the operator shall hand over free from Encumbrances the peaceful possession of all awarded/allotted Bus Depots, Parking Spaces, Terminals, and any other assets installed or developed by the Authority including without limitation any and all hardware, software, firmware, and deliverables on board installed by the Authority in sound condition.

36.3. 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.

36.4. 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 the Authority including without limitation any and all hardware, software, firmware, and deliverables in sound condition.

36.5. The Operator shall have no right to seek the transfer of the Bus Depot Area 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.

36.6. Any immovable infrastructure, which may be constructed by the Operator shall be transferred by the Operator to the Authority.

37. DISPUTE RESOLUTION

37.1. Amicable Resolution

- 37.1.1. 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


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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.

37.1.2. Either Party may require the Dispute to be referred to the Managing Director of CRUT for amicable settlement. Upon such reference, both the Parties and the Managing Director of CRUT 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 37.2 below.

37.2. Arbitration

37.2.1. In the event of any dispute arising between the Parties in relation to or under this Agreement and same not being amicably resolved within 15(fifteen) days of the meeting as mentioned in clause 37.1.2, the same shall be settled by arbitration. The decision of the arbitrator shall be final and binding.

37.2.2. *Arbitrator:* The dispute shall be referred to the Managing Director, CRUT who shall choose list of 3 independent arbitrators unconnected with affairs of either parties given option to choose one among them to be the sole arbitrator to undertake the arbitration, on such terms and conditions and in accordance with the provisions of the Arbitration and Conciliation Act, 1996 ("Arbitration Act").

37.2.3. *Place of Arbitration:* The place of arbitration shall be City of Bhubaneswar.

37.2.4. *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.

37.2.5. *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.

37.2.6. *Enforcement of Award:* Any decision or award resulting from arbitration



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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.

37.2.7. *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.

37.2.8. *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.



38. SUB CONTRACT

The Operator shall not be allowed to sub contract any part of this Agreement except activities related to Bus depot & bus maintenance with prior approval from the Authority.

39. INDEMNITY

39.1. The Operator shall at all times, i.e. during the Agreement 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 the Operator of any covenant representation or warranty or from any act or omission of the Operator or his agents, employees or sub-contractors.

39.2. The Operator shall be liable for and make good any damages which may be caused to the Authority or to third parties, for non-compliance of any of its statutory/contractual obligations and responsibilities with respect to any party.

39.3. The Operator shall be liable and make good to the Authority any damages or statutory claim like Motor Accident Claim which may be caused to the Authority for

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any negligence on the part of the Operator or its employees.

39.4. 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 annual payment of the Operator in that financial Year.

40. MISCELLANEOUS

40.1. Governing Law and Jurisdiction

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

40.1.2. The Courts of Bhubaneswar alone shall have exclusive jurisdiction over all matters arising out of or in respect of the Agreement.

40.2. **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.

40.3. **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.

40.4. **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.

40.5. **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 the Authority

Managing Director
Capital Region Urban Transport (CRUT),
Plot No-548/1452, Patia, Kalarahanga
Bhubaneswar- 751024

General Manager (P&A)
Capital Region Urban Transport

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If to the Operator

Director
M/s. Hansa Vahan India Pvt. Ltd.,
Gate No-9, V.C.A Complex,
Civil Lines, Nagpur, Pin -440001

MANOJ KUMAR PANDIA
NOTARY, BHUBANESWAR
GOVT. OF ODISHA (INDIA)
Regd. No.-ON-52-2009

All notices under this Agreement shall be in English.

40.6. **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.

40.7. **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 Agreement Period.

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

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

40.8. **No Partnership:** Nothing herein contained shall be construed to constitute a partnership between the Authority and the Operator, or to constitute either party as the agent of the other and neither party shall hold itself out as such.

40.9. **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.

40.10. **Representation and Warranties**

40.10.1. **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


General Manager (P&A)
Capital Region Urban Transport

HANSA VAHAN INDIA PVT. LTD.

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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.

40.10.2. **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 authorize 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.



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


General Manager (P&A)
Capital Region Urban Transport

HANSA VAHAN INDIA PVT. LTD.

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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 **Capital Region Urban Transport (CRUT),**

Siphi
17/12/2022
General Manager (P&A)
Capital Region Urban Transport (CRUT),
Plot No-548/1452, Patia, Kalarahanga
Bhubaneswar- 751024
Phone No. 0674-3501580
Email: crutbbsr@gmail.com

Siphi
17/12/2022
General Manager (P&A)
Capital Region Urban Transport

SIGNED, SEALED AND DELIVERED

For and on behalf of **M/s. Hansa Vahan India Pvt. Ltd.**

Deavin
Mr. Navin Kumar Duseja (Associate Director) **HANSA VAHAN INDIA PVT. LTD.**
M/s. Hansa Vahan India Pvt. Ltd.,
Gate No-9, V.C.A Complex,
Civil Lines, Nagpur, Pin -440001
Email ID-management@hansagroupindia.com

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Witness: -

- Deavin*
17/12/2022 1.
- Chandela*
17-12-2022 2.
- 3.