



**RFP for Procurement, Operation and Maintenance of Staff and
School Buses for Akarimota Thermal Power Station (ATPS)**

Volume 2- Draft Bus Operator Agreement

February 2024

Gujarat Mineral Development Corporation Limited

132 - Ring Road Gujarat University Ground, Vastrapur Ahmedabad - 380052

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BUS OPERATOR AGREEMENT

Gujarat Mineral Development Corporation is incorporated under the provisions of the Companies Act 1956/2013, having its registered office at Khanij Bhavan, 132 - Ring Road Gujarat University Ground, Vastrapur Ahmedabad - 380052 (hereinafter referred to as the “**Authority**”, which expression shall include its successors and permitted assigns);

AND

_____ a company incorporated under the [Companies Act, 1956]/ [Companies Act, 2013] **Registered Partnership firm/ Proprietorship** having its registered office at _____ (hereinafter referred to as the “**Operator**”, which expression shall include its successors and permitted assigns);

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

WHEREAS

- A. Authority is in the business of mining and mineral processing activities having its mining sites across the Gujarat. The Authority is also performs Corporate Social Responsibilities (CSR) around the mining area in the field of education and health. The Authority provides Staff Bus Services to its employees deployed at mining operations and School bus service to students residing in the site colonies and neighbouring villages as part of the CSR activities. The Authority sought a Private Operator for procurement, operation and maintenance of the 2 Staff buses and 2 School Buses (total 4 buses) to serve ATPS on Gross Cost Contract with responsibilities better defined in the accompanying clauses in this Agreement and Instruction to Bidders in the RFP document, through an open competitive bidding process in February 2024.

- B. After evaluation of the proposals received, Authority accepted the proposal of M/s _____ as the successful Proposal and issued its Letter of Acceptance no. _____ dated _____ (hereinafter called the "LOA") for 8 nos. of Buses (Contracted Buses) requiring, inter alia, the execution of this Agreement.

- C. _____ (Operator) has accordingly agreed to enter into this Agreement with AUTHORITY for execution of his rights and responsibilities, subject to and on the terms and conditions set forth hereinafter.

D. The Authority and the Operator are hereby entering into this Operator Agreement to implement the Project of operation and maintenance of the Bus Services at various sites of GMDC Ltd.

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 the 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 including Mines Act 1952, Factory Act 1948, the Provident Fund Act 1925, Employees Provident Fund Act, 1952 and amendments thereto.

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

1.1.5. **“Available Fleet”** means the Buses made available by the Operator to Authority for operations to meet the Assured Fleet Availability clause 4.1(h) of the Agreement.

1.1.6. **“Authority”** means Gujarat Mineral Development Corporation or its authorized representatives.

1.1.7. **“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 4 to this Agreement.

- 1.1.8. **“Authority’s Event of Default”** shall have the meaning as ascribed thereto in the Clause 32.1 of the Agreement.
- 1.1.9. **“Bus Delivery Schedule”** shall have the meaning as ascribed thereto in the Clause 10.1 of the Agreement.
- 1.1.10. **“Bus Kilometre”** means a kilometre travelled by a Contracted Bus as per this Agreement or as directed by the Authority.
- 1.1.11. **“Base Kilometre Charge” or “Kilometre Charge”** means the rate of the Kilometre Charge payable by the Authority to the Operator for travel by a Bus up to the Annual Assured Bus Kilometres.
- 1.1.12. **“Bus Services”** means the School and Staff bus services at GMDC sites specified in the RFP.
- 1.1.13. **“Bus Specification/Technical Specifications”** shall mean the specifications of the Contracted Buses specified in the Volume 3 and other details stipulated by the Authority during the purchase of such buses.
- 1.1.14. **“Contracted Bus(es)”** means the Buses number of buses awarded to the Operator by the Authority under this Agreement .
- 1.1.15. **“Dispute”** shall have the meaning ascribed to it in Clause 37 of this Agreement.
- 1.1.16. **“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.
- 1.1.17. **“Execution Date”** shall mean and refer to the date of signing of this Agreement.
- 1.1.18. **“Final Commercial Operations Date”/ “FCOD”** shall mean the date of successful Deployment of all Contracted Buses for regular Operations.
- 1.1.19. **“Fleet”** shall refer to the total number of Contracted Buses having achieved FCOD pursuant to this Agreement.
- 1.1.20. **“Operation Plan”** means the detailed plan as developed and finalized by the Authority from time to time in accordance with Clause 20.
- 1.1.21. **“Government”** means the “Government of Gujarat or “Government of India

(GOI)” as is relevant in the context;

- 1.1.22. **“Good Industry Practice”** shall mean the exercise of that degree of skill, diligence, prudence and foresight in compliance with the undertakings and obligations under this Agreement which would reasonably and ordinarily be expected of a skilled and an experienced person engaged in the implementation, operation and maintenance or supervision or monitoring thereof of any of them of a project similar to that of the Project.
- 1.1.23. **“Invoice Amount”** shall have the meaning specified in Clause 23.5(a) of this Agreement.
- 1.1.24. **“Letter of Acceptance”** means the letter of Acceptance dated __/__/20__ issued by the Authority to the Selected Bidder to
- 1.1.25. **“Liquidated Damages”** shall have the meaning as ascribed thereto in the Agreement.
- 1.1.26. **“Manufacturer”** means the bus manufacturer supplier of the Contracted Buses to the Authority.
- 1.1.27. **“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.
- 1.1.28. **“Annual Assured Bus Km”** shall have the meaning as ascribed thereto in Clause 23.5(d) of the Agreement.
- 1.1.29. **“Operation and Maintenance Standards”** means the operation and maintenance requirements which are required to be undertaken by the Operator throughout the Contract Period and have been provided at different places in **the agreement**.
- 1.1.30. **“Operations Manager”** shall have the meaning ascribed to it in Clause 26.1.9.
- 1.1.31. **“Operator”** shall have the meaning as ascribed thereto in the array of Parties in the Recitals above.

- 1.1.32. **“Operator Clearances”** means the clearances which are required to be procured by the Operator in accordance with Applicable Law and which have been provided in detail in Annexure to this Agreement.
- 1.1.33. **“Operator’s Event of Default”** shall have the meaning as ascribed thereto in Clause 31.1 of the Agreement.
- 1.1.34. **“Operator’s Payment”** means payment given to the Operator for providing operating and maintenance services in accordance with Clause 23 of this Agreement.
- 1.1.35. **“Parking Spaces”** shall mean the spaces provided by the Authority for parking and maintenance of Contracted Buses.
- 1.1.36. **“Payment Period”** shall have the meaning as ascribed thereto in Clause 23.5 of this Agreement.
- 1.1.37. **“Performance Security”** shall have the meaning as ascribed thereto in Clause 6.1 of this Agreement.
- 1.1.38. **“Project”** means the operation, maintenance of the Contracted Buses for the Bus Service.
- 1.1.39. **“RTO”** means the applicable Regional Transport Office for Bus Service Area.
- 1.1.40. **“Remedial Period”** shall have the meaning specified in Clause 33.1 and 33.2 of this Agreement.
- 1.1.41. **“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.
- 1.1.42. **“Selected Bidder”** means the Bidder to whom the Authority issues the Letter of Award for undertaking the Project.
- 1.1.43. **“Third Party”** means any person other than the Authority and the Operator.
- 1.1.44. **“Contract Period/ Agreement Period”** shall mean the term as defined in Clause 3.1
- 1.1.45. **“Validity Period”** means the period for which the Performance Security has to be maintained in accordance with Clause 6 of this Agreement.
- 1.1.46. **“Vandalism”** shall have meaning specified in Clause 28 of this Agreement.

1.2. Interpretation

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

- a. words denoting the singular shall include the plural and vice versa;
- b. words denoting a person shall include an individual, corporation, company, partnership, trust or other entity;
- c. heading and bold type face are only for convenience and shall be ignored for the purposes of interpretation;
- d. reference to any legislation or law or to any provision thereof shall include references to any such law as it may, after the date of this Agreement, from time to time be amended, supplemented or re-enacted;
- e. references to the word “include” or “including” shall be construed without limitation;
- f. references to this Agreement or to any other agreement or deed or other instrument shall be construed as a reference to such agreement, deed, or other instrument as the same may from time to time be amended, varied, supplemented or innovated; and
- g. the Annexure to this Agreement form part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement.
- h. terms and expression not herein defined shall have the meanings assigned to them in the Indian Sale of Goods Act, 1930 (as amended) or the Indian Contract Act, 1872 (as amended) or the General Clauses Act, 1897 (as amended) as the case may be.

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

- a. This Agreement along with all Annexure hereto.
- b. Request for Proposal (RFP) in its entirety including all its Volumes, Sections, Annexure, Corrigendum and Addendums thereto.
- c. Letter of Acceptance (LOA) no. _____ issued to the Operator on __/__/2024

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

2. APPOINTMENT OF THE OPERATOR

2.1. Appointment of the Operator

Subject to and in accordance with the provisions of this Agreement, the Authority hereby appoints, on a non-exclusive and non-transferable basis, the Operator, and the Operator hereby accepts its appointment to procure, operate and maintain brand new Fully built BS VI compliant Buses in the following quantity in accordance with the terms of this Agreement and subject to the Applicable Laws and Applicable Clearances.

Location	Staff Bus (no. of vehicles)			School Bus (No. of Vehicle)			Total (No. of Vehicles)
	AC 10 - 12 Mtr (55 - 56 Seater + driver, 3X2)	AC 7-9 mtr (40 Seater + driver, 3X2)	Total	Non AC 10-12 Mtr (55-56 Seater + driver, 3X2)	Non AC 7-9 mtr (40 Seater + driver 3X2)	Total	
ATPS	1	1	2	1	1	2	4

2.2. Additional Buses

The Authority, at its sole discretion, may increase the order quantity by 2 buses during the course of the Agreement at the applicable per km at the given period of time at the rate adjusted as per the formula provided in the RFP. The Agreement period of such additional buses shall decide in consultation with the Operator at the time of issuing the request for Additional buses by Authority. However the Agreement Period for the additional buses shall not be higher than the agreement of period mentioned in this agreement. The buses shall be procured, operated and maintained by the Operator in accordance with the provisions of this Agreement.

2.3. Undertaking

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

expenses and charges in connection with, or incidental to the performance of its obligations in accordance with the terms contained herein.

3. TERM OF THE AGREEMENT

- 3.1. The term of this Agreement shall be a contiguous period comprising
- i. “Bus Procurement Period” beginning on the Execution Date and ending on the Final Commercial Operations Date (FCOD) and
 - ii. The “Operations Period “beginning from FCOD and ending **3 (Three) years** from the FCOD (“Contract Period/ Agreement Period”) during which period, the Operator shall operate and maintain the buses in the Service Area on Gross Cost Contract basis as directed by the Authority. Provided that the Agreement can be extended on mutually agreed terms and rates by additional Two years beyond 3 years subject to satisfactory performance of the bus operator. The Authority retains right, at sole discretion, to extend the Agreement Period beyond 5 years on mutually agreed terms and rates however subject to satisfactory performance of the bus operator.
- 3.2. FCOD shall be the earlier of the following two dates whichever is earlier:
- 3.2.1. 30 days from the date of supply of first lot of Buses as per the timelines that may be mutually agreed by the Parties through an Addendum in this Agreement.
 - 3.2.2. Date on which all Contracted Buses are deployed for Commercial Operations.
- 3.3. In the event of termination, the Contract Period shall be limited to the period commencing from the Execution Date and ending on the date on which this Agreement is terminated in accordance with the provisions contained herein.

4. SCOPE OF WORK

4.1. Responsibilities during "Bus Procurement "

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

- a. Procuring Contracted Buses as per technical specification included in RFP. The Operator can procure fully built bus meeting the bus specifications provided in the RFP from reputed bus manufacturers or can opt for Fully built buses . The Operator shall not be permitted to make any changes in the Specifications until specifically authorised by the Authority in writing.
- b. Showcase and obtain approval of prototype from the Authority as well as adhere to the Bus Delivery Schedule specified in clause 10.1 of this Agreement.
- 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 8 of the agreement.
- d. 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 15 of this agreement.
- e. Deploy buses pursuant to Clause 17 of the agreement.
- f. Ensure that all drivers, staff and personnel are provided the required training on driving, maintenance, safety, behaviour and hygiene aspects;
- g. Establish or arrange for maintenance facility and equipments at parking space 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;

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

The Operator, on and after FCOD, 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;
- b. Ensure availability of duly licensed drivers, maintenance facility/arrangements and other personnel through pro-active human resource management for continued and uninterrupted Bus Service in accordance with the terms of this agreement.
- c. At his own cost and expenses maintain all Operator Clearances in accordance with Annexure 4 for the purposes of providing Bus Services as per the terms of this Agreement;
- d. Maintain the Contracted Buses in good operable conditions in accordance with Good Industry Practices and Operation and Maintenance Requirements set forth in the agreement.
- e. Ensure that safety and security of passengers and any third person on the Contracted Buses is maintained at all times;
- f. 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;
- g. Ensure any equipment installed on the Contracted Buses or within the Parking Space including any monitoring device or equipment that is installed by the Authority is not tampered with in any manner; and that the Authority and its authorised personnel, are allowed to inspect the equipment installed on the Contracted Buses and the Parking Space at any time without any notice in this regard;

- h. The Staff Buses shall be operated for 365 days or as per the Operation plan. The School Buses shall not be required during the vacation period and public holidays. . In the event of breakdown of any buses, the Operator can provide an alternative bus of similar specification and with similar service levels, but not exceeding 36 days in a year. In case the Operator fails to make any alternative arrangement, GMDC shall deduct the cost of such alternative arrangement made by it on an emergency basis from the Operator's payment ("**Assured Fleet Availability**")
- i. 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.
- j. 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 maintenance of Bus Service;
- k. Submit regular monthly reports to the Authority as per the format that may be instructed by the Authority from time to time; and
- l. 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.

6. PERFORMANCE SECURITY

6.1. For securing the due and faithful performance of the obligations of the Operator under this Agreement, the Operator, has handed over to the Authority, Performance Security of Rs. 6,00,000/- (Rs. Six Lakh Only) in form of Bank Guarantee (instrument no _____) drawn on _____ (Bank) dated _____, for a Validity Period of _____, in favour of, GMDC Ltd through such Bank being from the approved list of bank as provided in the Annexure 10 of Volume 1: ITB of RFP, payable/encashable, admissible and extendable at Ahmedabad only. (**“Performance Security”**).

6.2. The Operator shall maintain a valid and binding Performance Security for a period of three months after the expiry of the Contract Period (“Validity Period”). In case, the availability of Bank Guarantee from the banks for the length of the Contract is difficult to obtain, the initial Guarantee maybe submitted valid for a period of 2 (two) years, and which shall have to be renewed for similar tenure, 45 (forty five) days before its expiry. The Bank Guarantee performance security can be renewed in above manner upto the end of the Contract Period. Payment security should be paid within 15 days of Letter of Acceptance (LOA).

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

- a. in the event the Authority requires to recover any sum due and payable to it by the Operator including but not limited to Damages; and which the Operator has failed to pay in relation thereof; and
- b. in relation to Operator’s Event of Default in accordance with the terms contained herein.

6.4. At any time during the Validity Period, the Performance Security has either been partially or completely been encashed by the Authority in accordance with the provisions of this Agreement. The Operator shall within [15 (fifteen) days] of such encashment either replenish, or provide a fresh performance security, as the case may be, failing which shall be considered as Operator’s Event of Default as per clause 31.1.

6.5. On the performance and completion of the Contract by expiry of its term in all respects the Performance Security shall be returned to the Operator without any interest, provided the Operator is not in default of the terms hereof and there are no outstanding dues of the Authority with the Operator.

7. BUS PROCUREMENT

7.1. Upon submission of requisite Performance Security and Signing of this Agreement, the operator shall procure the Contracted Buses as per the Bus specifications attached as part of Vol. 3 A and B of the RFP. Operator shall Procure Brand New Fully Built Buses at his own cost and risks as per the specifications provided and as agreed by both parties through mutual consent expressed vide formal correspondence before the Execution Date. The Date of manufacturing of buses shall not be later than 1st January 2023. The Operator shall obtain adequate insurance as mentioned in the clause pertaining to Insurance in this Agreement.

7.2. The Operator shall appoint/ select a Bus Manufacturer to construct the Chassis and Bus Body of the Fully Built Bus as follows:

- (i) The Bus Chassis shall be manufactured at the fully owned in-house facility/ plant of the vehicle manufacturer only.
- (ii) The Warranty of the buses must be provided for the Fully Built Bus by the Manufacturer including for the Chassis and Body.
- (iii) The Bus Body can be constructed at:
 - a. The fully owned in-house Bus Body building facilities of the Manufacturer
OR
 - b. Bus Body Building Facility owned by the Manufacturer's Associate or
 - c. Bus Body Building Facility owned by the Authorised Bus Body Builder of the Manufacturer.

The "Associate" of the Manufacturer shall meet the requirement as set forth in the clause 7.2.1 of Vol 2 of the RFP.

The Authorised Body Builder shall meet the requirements as follows:

- i. Possess valid Accreditation Certificate for bus body building from ARAI or CIRT or an equivalent institute authorised under rule no. 126 of CMVR 1989.

ii. Experience in Bus Body Building for a minimum 100 (nos.) ICE buses for the Vehicle Manufacturer supplying the bus in the last 7 financial years preceding the bid due date. The experience can be demonstrated through a Work Order issued by the Vehicle Manufacturer/ Agreement.

7.2.1. For the purpose hereof, the word “Associate” shall mean, in relation to the Bus Manufacturer, a firm which controls the Bus Manufacturer (i.e., Parent) or is controlled by the Bus Manufacturer (i.e., subsidiary), or is under the common control with the Bus Manufacturer (i.e., sister concern).

7.2.2. As used here, the expression “control” means, with respect to Bus Manufacturer which is a company registered under Indian Companies Act 1956/2013, the ownership of common shareholders, directly or indirectly, of at least 50% of the voting shares/shareholding of the firm in question.

7.2.3. Any claims of relationship of Bus Manufacturer with it’s Associate firm must be accompanied by a certificate by a registered chartered accountant clearly explaining how the Associate firm meets the above definition of the Associate firm.

7.3. The Operator shall supply a single invoice for the entire bus for verification to GMDC.

8. QUALITY ASSURANCE

8.1. Quality of Materials:

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

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

9. INSPECTION AND TESTING

- 9.1. Authority or representative authorized by the Authority may carry out inspection of each type of Fully built Prototype Buses before pre-dispatch stage at Bus operator's premises.
- 9.2. For any Deficiency noted by the Authority during any stage of the inspection .the Operator shall initiate immediate remedial actions for the same as advised by the Authority. The Authority or Representative of the Authority shall not be entitled to suggest changes or modification which are not part of the mutually agreed Bus specifications.
- 9.3. The Operator shall provide free of charge all facilities at The Bus Body Builder/ Bus Bus Manufacturer's premises viz. Working space, equipment, tools, labours, gauges, drawings and specifications required for this purpose without extra charge to the inspecting officer for proper performance of his work on inspecting and testing of work under this Agreement.
- 9.4. The Authority shall not conduct any laboratory test if the material procurement certificates are submitted by the Contractor at the time of inspection of buses. Notwithstanding with above, if found necessary, the Authority may conduct material test at any stage for prototype or any other buses, at its own cost. If the material fails the test, entire cost of testing shall have to be borne by the Operator. The Authority might conduct lab testing mostly for following material.

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 &Hallow Part and IS:738-1977 or latest for Drawn Tubes, Alloy 63400, tempering WP.
6.	Paint	PU Paint as per relevant IS: 13213:1991 (or latest) & any other relevant BIS Standards. For Matt Black Paint the Gloss Value is upto 30 units.

7.	LT Wire	BIS: 2465-1984(or latest). DIN 72551- Dimensional Test JIS C 3406- Spark, Immersion & Conductor Resistance Test' SAE recommended J 1127 & J 1128
8.	Aluminium Sheet	BIS:737-1986(or latest), Aluminium Alloy H-2/31000
9.	CR sheets	BIS:513-2008(or latest)
10.	GI Sheets	BIS:277-2003 (or latest),Class-VIII Medium Coatingof Zinc Nominal Weight120 grams/M2.
11.	Passenger Seat Assembly	As per AIS-023, Bus Code & BIS Standards. For MS components two weeks (336 hours) Salt Spray test for both in accordance with ASTM procedure B117 with no structural detrimental effect to normally visible surfaces & no weight loss of over 1%.
12.	Marine Board / other floor material	BIS: 710-1976 (or latest) IS:5509-2000 (or latest) for Flammability.

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

9.6. Operator shall take approval from Authority for certain components and materials such as seats, pipes and tubes and AC systems before installing in the prototype buses.

10. DELIVERY OF CONTRACTED BUSES

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

Milestone	Timeline
Fully Built Prototype Bus Inspection for all four types of Staff and School Buses	Within 30 days from date of LOA
Delivery of the Buses	Within 60 days of approval of prototype

10.2. Operator shall deliver buses at Akrimota Thermal Power Station near Dayapar, Dist Kutch not later than the dates/schedule specified in the Agreement.

10.3. Authority shall be entitled to levy damages as per clause 16 of the Agreement to the Operator upon failing to perform as per Clauses above.

10.4. Operator shall intimate Authority at least 7 days prior to any inspection at Bus Bodybuilder’s premises. Delay in delivery of buses on account of late inspection and delay in submission of inspection report by the Authority for the affected quantity shall be entirely attributable to the Authority.

11. ON SITE INSPECTION OF CONTRACTED BUSES

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

12. COST OF INSPECTION

12.1. All the costs associated with the inspection of prototype buses and other buses, including travelling and conveyance expenses of representatives of the Authority shall be borne by the Bus Operator.

13. PROVISIONAL RECEIPT CERTIFICATE

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

14. REMOVAL AND REPLACEMENT OF REJECTED BUSES

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

14.2. The Operator shall immediately transport such rejected buses back to the Bus Bodybuilder's premises at it's own cost and risk.

15. FINAL ACCEPTANCE CERTIFICATE

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

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

- 16.1. If the Operator fails to complete the supply of Contracted Buses within the delivery schedule specified in the clause 10.1 above, the Authority shall, without prejudice to other remedies under the Agreement, levy/deduct pre-estimated liquidated damages at 0.37% of the Performance Security per Bus per day of delay.
- 16.2. The amount of pre estimated liquidated damages to be charged under the contract, in terms of Clause 16 of Contract Conditions shall not exceed amount of Performance Security.
- 16.3. In the event of the delivery of all Contracted Buses is delayed beyond the stipulated Delivery Schedule as per clause 10.1 and within the period of additional 30 days after expiry of the delivery schedule, the Authority shall consider it as Operator Event of Default unless such occurrence (delay in bus) is not attributable to Force Majeure Events.
- 16.4. In case, the Operator is able to deliver more than 50% but not the complete quantity of the contracted buses within the additional period of 30 days, the Authority shall retain the right to reduce the contract size to the delivered buses only at its sole discretion.

17. DEPLOYMENT OF CONTRACTED BUSES

- 17.1. Subject to issuance of Final Acceptance Certificate from the Authority, the Operator shall commence Bus Service of the 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 (“Final Commercial Operations Date” or “FCOD”).
- 17.2. In the event the Operator is not able to start operations of the Contracted Buses as per above clause for reasons not attributable to the Authority or to a Force Majeure Event, and which in the opinion of the Authority can be attributable to the Operator, the Operator shall pay liquidated damages at 0.74% of the Performance Security per Bus per day of delay till additional 15 days to achieve FCOD. Capping of LDs and consequences shall be as per clauses 16 of this Agreement.

18. OWNERSHIP OF CONTRACTED BUSES

- 18.1. The ownership of the Buses shall remain fully with the Operator during the entire term of the Agreement. All the Contracted Buses shall be registered in the name of Operator.

19. HANDOVER OF PARKING SPACE

- 19.1. For the purposes of maintenance, cleaning and parking of Contracted Buses, the Authority shall endeavour to provide a Parking Space to park at Akrimota Thermal Power Station OR at any Mining Site within Service Area for the Contracted Buses in accordance with the terms contained herein.
- 19.2. 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.
- 19.3. It is hereby clarified that the ownership of the Parking Spaces shall remain vested solely with the Authority at all times. The Operator shall only be provided the limited right to use the Parking Spaces, and on Termination, the Operator shall vacate and hand back such Parking Spaces as per the terms contained herein. Upon termination, the Operator shall not remove any permanent structure created by him to fulfil the obligations as per the terms of this Agreement.
- 19.4. The Operator shall not have any right to display advertisement in the Parking Spaces provided by the Authority.
- 19.5. The Operator shall:
- a. at his own cost and expense maintain the area of Parking Space provided by the Authority to it under the terms of the agreement and the terms contained herein in good working condition;
 - b. not cause any damage in the area of the Parking Space provided by the Authority to it under the terms of the agreement and the terms contained herein or do any act which will in any way be prejudicial to the rights of Authority or other users/occupants of the same.
 - c. only be responsible to maintain the area of the Parking Spaces which has been specifically allocated and handed over to him by the Authority under this Agreement.
- 19.6. The Operator shall arrange a parking space at its own cost and risk at the Bus Service Origin point not located within a township or mining site. The Authority shall assist the Operator to arrange such parking space, however not out of any Obligation under the Agreement. The Operator shall bring the Buses, which are

originating from points other than ATPS, for routine maintenance at nearby maintenance facility at own cost or arrange a facility at the Bus Service originating point at own cost. The Operator shall indemnify the Authority for any third party claim, dispute and litigations arising out of such arrangement of Parking Space arranged by the Operator on its own. 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 Parking Space arranged at its own cost.

20. OPERATION PLAN, ROUTES AND SCHEDULE

- 20.1. The operation plan including routes and schedules of the Contracted buses shall be as per Annexure 2 of the Agreement (**“Operation Plan”**).
- 20.2. 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.
- 20.3. The Authority shall have the exclusive discretionary power to determine Routes, frequency and schedules of the Contracted Buses as a part of the Fleet Deployment Plan throughout the Contract Period.
- 20.4. The Operator shall ensure that the Contracted Buses are operated on the said Routes, frequency and schedules as per Operation Plan and as specified by the Authority from time to time in accordance with the operation and maintenance standards specified herein.
- 20.5. 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.
- 20.6. 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 Operation Plan or specific instructions notified by the Authority in relation thereof, it shall be liable for the Liquidated Damages set forth in this Agreement.
- 20.7. The operator shall be permitted to interchange the buses with bus of the same capacity and specifications (for ex. A 56-seater bus with a 56-Seater bus) and for the

same application (for ex. A staff bus for a staff bus) under this contract, however without any delay in the required Bus Services as specified in the RFP.

21. RESTRICTIONS WITH REGARD TO FARE COLLECTION AND UNAUTHORISED BUS USERS.

- 21.1. The Authority shall provide list of Bus Users for each trip. The Operator shall transport only Authorised Bus Users.
- 21.2. The Operator shall not collect and retain any fare from the Authorised Bus users.
- 21.3. Operator shall not be permitted to onboard any unauthorised Bus Users and collected and retain fare from them.
- 21.4. The Authority shall collect pre-decided liquidated damages as per Annexure 1 in case of violation of above requirements.

22. DISPLAY OF CONTENT, GRAPHICS AND MEDIA ON THE BUSES

- 22.1. The Authority shall reserve rights to display printed and electronic media content inside or outside bus as per its requirements.
- 22.2. The Operator shall not be permitted to display any advertisement or content or unnecessary/religious content inside or outside the Bus.
- 22.3. In case of non compliance of above requirement, The Authority shall collected pre-decided Liquidated Damages as per Annexure 1.

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 Operation Plan.
 - b. Distance travelled by a Contracted Bus, which is outside the Operating Plan but approved by the Authority for specific and special requirements.
- 23.2. Bus Kilometres shall not constitute the following
 - a. Distance travelled by the Contracted Bus from the Parking Space to the first point of loading passengers at the commencement of its service on a day and Distance travelled by the Contracted Bus from its last stop as per the Operating Plan to the Parking Space at the end of the day's service.\

- b. Distance travelled by a Contracted Bus for fuel refilling (two ways) not exceeding 5 KM from the Parking space.
- c. Any kilometres travelled by the Contracted Bus to a maintenance facility other than that set up by the Operator at the Parking Space provided for by Authority or for any travel not authorized by Authority.
- d. Service KM not travelled by any buses due to breakdown at the beginning or during the operation.

23.3. The Authority shall compute and provide to the Operator, for every Payment Period, from when Contracted Buses commences service, the total number of kilometres that the Contracted Buses have travelled for the aforesaid period. Such calculation shall be made manually with the supervision of the Authority staff and using Global Positioning System (GPS), if Authority introduces such system at later stage during the Contract Period. 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 Year Price of Fuel per Unit and the Base Year Wholesale Price Index (WPI) and the applicable minimum wages as prevailing in the state of Gujarat and as amended from time to time shall be used for determining the Applicable Kilometre Charge throughout the agreement period are as follows:

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

Bus No.	Service	Size of Bus	no. of buses	Rates (Rs/km) Inclusive of all taxes and charges bus exclusive of GST
	A	B	C	E
1	AC -Staff Bus	10-12 mtr	1	
2	AC -Staff Bus	7 – 9 Mtr	1	
3	NAC -School Bus	10-12 mtr	1	
4	NAC -School Bus	7 – 9 Mtr	1	

Base Year Price of Fuel/Unit: Rs ____per Liter, being the prevailing price of fuel as available from the cheapest legal source in the vicinity of the Parking Space being prices of a week immediately prior to the last date of submission of the RFP Base Year Wholesale Price Index for all commodities: _____for Calander/Financial Year 2022-23].

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

Base applicable Minimum Daily Wages for relevant Skilled Labour category/Schedule Rs. _____ stipulated by Government of Gujarat /Competent Authority and effective before one week prior to Bid Due Date.

23.5. Payment Terms

a. Invoicing Period:

For each Contracted Bus that has been put into regular operations from the date of FCOD, the Operator shall submit an invoice within 10 days at the end of every month (“**Invoicing Period**”) specifying:

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

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

The Operator shall submit invoice for Bus number 1 and 2, as per the Operation Plan specified in the agreement, to GMDC Ltd at the concerned project of offices of the above buses. The Invoice of Bus number 3 and 4 (School Buses) shall be submitted in the name of GMDC- GVT at the corporate office of the Authority at Ahmedabad in the CSR department.

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

b. Payment Period

The Authority shall, within a period of **10 (ten) days** of the receipt of invoice (**“Payment Period”**), make part payment of **100%** of the total invoiced amount for each Monthly payment cycle after verifying the records that it has on the Bus operations and evidence of salary paid to employee and making adjustment against liquidated damages or other adjustments as may be applicable against the invoice under the terms of the Agreement.

In case of expiry the agreement in the normal course of time, complete payment of last month of operation shall be made on the last day of the Agreement.

All payments shall be made by the Authority to the Operator after making any tax deductions at source under Applicable Law. The payments, adjustments, deduction of Liquidated Damages and reconciliation of the Annual Assured Km as per the provisions of the RFP for Bus number 1 and 2 shall be done by the project office of the respective mines/sites AND for bus number 3 and 4 shall be made by GMDC-GVT as per the provisions of the RFP.

c. Method for Calculation of Aggregate Payment

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

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

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

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

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

d. Guarantee to operate particular number of kilometres

The Authority hereby assures the Operator that the Operating Plan will be formulated so as to ensure that the average number of Bus Kilometres travelled by each of the Contracted Buses from FCoD and then onwards on Annual basis, shall be no fewer than as follows; [**“Annual Assured Bus Kilometres”**]

Bus No.	Service	Size of Bus	no. of buses	Annual Assured km per Bus
1	AC -Staff Bus	10-12 mtr	1	64605
2	AC -Staff Bus	7 – 9 Mtr	1	35953
3	NAC -School Bus	10-12 mtr	1	25200
4	NAC -School Bus	7 – 9 Mtr	1	18240
Total			4	143998

Note:

: The total working days for the school buses in the entire year shall be around 240. Balance 125 days shall be Non-Working Days including 1) Sundays, 2) Public Holidays 3) Diwali Vacation and 4) Summer Vacation as stipulated through notification by the competent authority. The Authority shall pay Standing Charge to the Bidder for the Diwali and Summer Vacations only as per the provisions of the RFP. **The above annual assured km shall be considered for the Annual reconciliation of the Assured km as per clause 23.5(e).*

The Authority shall review, reconcile, calculate and pay the adjustment of any unutilised or excess kms on Annual basis as per provision below.

e. Annual Assured Payment after reconciliation

i. Payment for Unutilised Kilometres:

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

Annual Assured Payment Amount for Unutilised Kms = $0.70 \times (T_y - T_a) \times$
Applicable Kilometre Charge

where

Ty = Annual Assured Bus Kilometres for each type of Bus x 12 Months X
Type of Contracted Bus made available for Service by Operator.

Ta = Actual Bus Kilometres Operated by all Contracted Buses of a particular
type comprising the Available Fleet during the relevant year that has
triggered this provision

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

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

ii. Payment for Excess Kilometres

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

Annual Assured Payment Amount for Excess Kms = $0.60 \times (Ta - Ty) \times$
Applicable Kilometre Charge

where

Ta = Actual Bus Kilometres Operated by all Contracted Buses of a particular
type comprising the Available Fleet during the relevant year that has
triggered this provision.

Ty = Annual Assured Bus Kilometres for each type of Bus x 12 Months x Type
of Contracted Bus made available for Service by Operator.

iii. The Authority agrees that any payment for the excess km operated by
each bus for the trips outside the Operation Plan but authorised by the
Authority shall be made in the same month of occurrence of such trip
at 60% of per km rate/charges as provided in the Agreement for the
respective bus type.

iv. The Applicable Kilometre Charge for the purpose of the Payment of
Unutilised or Excess Km shall be the applicable Kilometre Charge used in the
relevant payment period.

- v. The determination of whether Annual Assured Payment Amount is due shall be done at the end each Year of Operation starting from FCOD. 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).
 - vi. The Authority shall have right to compute on its own and verify the Annual Assured Kilometres. The Authority shall compute and provide to the Operator, every Year from the FCOD for the respective type of buses, the total number of Kilometres that the Available Fleet has travelled for the aforesaid period. Such calculation shall be made Manually with the help of Authority staff or its authorised agency
 - vii. The Operator shall give the computation of Annual Assured Payment for the preceding Year to the Authority within 10 days of the completion of the foregoing Year.
 - viii. The Momentary Settlement of Annual Assured Payment shall be made by the Authority within 10 days of completion of the Annual reconciliation as per the above provisions. The Monetary Settlement may also involve additional payment to the Operator or recovery of any excess payment from the Operator made during the year. In case of any recovery of excess payment from the Operator, the Authority shall deduct such amount from the next Monthly Payment due to the Operator as per the provision of the Agreement.
 - ix. In the last year of the Contract the computation and reconciliation of the Annual Assured KM shall be done on the last day of Operation. The monetary settlement shall be done within 10 days of the last day of the Contract.
- f. *Basis of Revision of Kilometre Charge***
- The Kilometre Charge shall be reviewed and (if applicable) revised. Kilometre charge for any given payment period shall be called the Applicable Kilometre Charge. It shall be revised;
- a. For Fuel cost, simple average of daily fuel price as prevailing during the invoicing period shall be used for to determine the percentage change in fuel component in the Rate Revision formula provided further in this clause. The fuel price used for invoicing must be consistent with a reliable source acceptable to the Authority such as website of Diesel Supply company etc.

or quotations of supply of fuel for buses for urban bus operations in Kutch. The proportion of fuel price shall be revised at the end of the month in which such revision takes place.

- b. For change in cost of consumables, change in Wholesale Price Index (WPI) from Base WPI, mentioned in this Agreement, published by the Ministry of Commerce, Government of India, or such other body that is reliably entrusted with this task shall be considered. The proportion of consumables cost in the Base Rates shall be revised on every anniversary of the FCOD of Contracted Bus.
- c. For Change in labour/ manpower cost component in the rate revision formula, the change in the applicable minimum wages from base wages mentioned in this agreement for the relevant skill category for the manpower deployed in the Bus Operation and Maintenance shall be applicable as and when revised by the competent Authority in the Central /State Government. Such change in cost shall be made effective from the next invoicing period to notification issued by the competent authority.

Thus, The Kilometre charge shall be revised based on following formula;

$$R_L = [R_L\text{-base}] + [R_L\text{-base} \times 0.30 \times (F - F\text{-base})/F\text{-base}] + [R_L\text{-base} \times 0.15 \times \{(W - W\text{-base})/W\text{-base}\}] + [R_L\text{-base} \times 0.15 \times \{(L - L\text{-base})/L\text{-base}\}]$$

Where,

R_L is the Kilometre charge for each Lot

R-base is the Base Kilometre Charge

F is present Price of Fuel/unit

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

W is the Present Year Wholesale Price Index

W-base is the Base Year Wholesale Price Index

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

- d. In addition to the provisions of the sub clause (c) above, the Authority shall reimburse to the Operator any increase in the RTO taxes, which are applicable to the Staff Buses, at the actual on as and when basis.

- g. In case of the School Buses, the Authority shall provide Standing Charges for each of the School Bus during 1) Diwali Vacation and 2) Summer Vacation as stipulated in the notification of the competent Authority or School Management (**“Vacations”**), throughout the Agreement Period for non-utilisation of the Vehicle (**“Standing Charge”**). The Standing Charges shall be calculated as follows;

Standing Charges = (50% X Per km charge applicable in the relevant time period for the respective school bus) X daily km X no. of Vacation Days.

The Standing Charges shall be calculated and paid by the Authority on an Annual basis at the time of the annual reconciliation of the Assured km Payment as per clause 23.5(e) of the Agreement.

The Operator agrees that in case of any or all the School Buses are moved away from the bus parking designated by the Authority for any time during the Vacations/ Non-Working Days, the Authority shall not pay any Standing Charge.

23.6. Limitations to Liability of Authority for Operations and Maintenance

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

23.7. Liabilities arising from negligent driving and accidents

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

23.8. Fines and Compensation

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

24. TAXES AND STATUTORY LEVIES

- 24.1. The responsibility to pay taxes and statutory charges related to Bus Services would be as mentioned in the responsibility matrix provided in the Annexure 4.

25. OPERATION AND MAINTENANCE STANDARDS

- 25.1. The Operator shall observe the minimum service standards for operations and maintenance of Contracted Buses as provided in the Agreement.
- 25.2. The Operator shall operate and maintain the Contracted Buses in accordance with the Operational 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.
- 25.3. The Operator shall ensure that the following activities are undertaken as part of the maintenance activity of the Contracted Buses without any causing disruption to the frequency or the availability of the Contracted Buses in accordance with the terms contained herein:
- a. Fuelling
 - b. Water topping of radiators
 - c. Checking and topping of engine oils
 - d. Checking of tyres
 - e. Cleaning, sweeping and washing of buses including soap washing every week.
 - f. Attending to defects reported by drivers.
- 25.4. 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.
- 25.5. In the event the Operator fails to maintain the security of the Contracted Buses and there is any theft or damage of bus component/spare parts/hardware/software/instrument, then the Operator shall reinstall/re-instate such bus component/spare parts/hardware/software/instrument of the same or equivalent quality and specification after giving prior written notice to the Authority.
- 25.6. The Authority or representative of the Authority shall monitor the replacement or re-installation done by the Operator and shall determine whether the replaced or re-installed bus component/spare parts/hardware/software/instrument is the same or equivalent quality as originally provided or installed in the Contracted

Bus. In the event that the Authority or representative of the Authority determines that the replaced or re-installed bus component/spare parts/hardware/software/instrument is of an inferior quality then the Authority shall consider this an Operator's Event of Default.

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

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

26.1. Obligations of the Operator

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

26.1.1. Operator shall deploy the Fully built buses in accordance with terms and condition set forth in this Agreement.

26.1.2. Make full payment to the Bus chassis & bodybuilder for bodybuilding work on the Contracted buses.

26.1.3. Operation and Maintenance of Contracted Buses:

- a. Operate and maintain the Contracted Buses in accordance with Specifications, maintenance manual and other information provided in Annexure to the Agreement.
- b. Ensure that all recruited drivers shall hold commercial heavy duty vehicle license valid since the last three years. Licenses of drivers shall be submitted to Authority for verification before deployment. In addition, before deployment of any driver/s, the Operator shall arrange to verify, through appropriate tests, the knowledge, skills and expertise of the proposed drivers and obtain an acceptance certificate from Authority for deployment of each driver. When on duty, the driver shall always carry this certificate. No driver without the said certificate shall ever be deployed on the Buses provided for Bus Service of the Authority. Further, if any driver is found to be wanting in the requisite skills, knowledge, and responsibility, Authority reserves the right to ask for replacement of such a driver by a duly qualified driver and the Operator

shall forthwith comply with this requirement immediately.

- c. 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;
- d. 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;
- e. Ensure safety and security of the Contracted Buses against theft or other forms of damage;
- f. Submit invoices in a timely manner in accordance with the terms contained herein;
- g. 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;
- h. Ensure that the Contracted Buses stop to pick up and allow the passenger to get off at the nominated bus locations;
- i. Provide and maintain (and keep up to date) first aid box in each Contracted Bus during Contract Period;
- j. 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.
- k. 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 by the Authority during the contract

period to enable provision of safer Bus Services to the passengers.

- l. 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.
- m. 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.
- n. Submit the copy of the Employee State Insurance and Provident Fund challans to the Authority every month; and
- o. Agree to comply with all Applicable Laws including labor and local laws, pertaining to the employment of labor, staff and personnel engaged by it for implementing the Project, that are now or may in the future become applicable to Operator's management, operation and maintenance of the Project, and personnel/ drivers, engaged in such operations covered by this Agreement or accruing out of the performance of Bus Services and operations contemplated hereunder. The Operator shall be solely responsible and liable for compliance with all Applicable Laws, including labor and local laws, pertaining to the employment of labor, staff and personnel engaged by it for implementing the Project.

26.1.4. Co-operation with the Authority

- a. 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.
- b. Cooperate with the Authority for the purposes of monitoring and

supervision of the quality, efficiency and adherence of the Operator to other contractual arrangements pertaining to Project.

- c. Maintain log books, bus wise, and all maintenance work / activities pertaining to each bus shall be entered there-in on regular basis. Authority shall be free to inspect logbooks at all times and the Operator shall make log books available to Authority or it's representative and answer all queries to it's satisfaction.
- d. respond to all notices letters communications received from Authority within the given time frame;
- e. provide all information, data, records, documents or information as may be required by Authority or Project Management Consultant , from time to time; and
- f. Participate in all the meetings, discussions as directed by the Authority from time to time.

26.1.5. Compliance with the terms of the Warranty and Good Industry Practice

- a. shall comply with all terms of Warranty and instructions that are provided as a part of the purchase order with each Contracted Bus;
- b. undertake all preventive and corrective maintenance in compliance with terms of the Warranty as provided by the bus manufacturer, standards and instructions as may be notified by the Authority from time to time and in accordance with Good Industry Practice;
- c. carry out major overhauls of the Contracted Buses according to the number of kilometres travelled as per terms of the warranty/purchase order as provided by the bus manufacturer and Bus Bodybuilder, standards and instructions as may be notified by the Authority from time to time and in accordance with Good Industry Practice;
- d. shall comply with all the literature provided by bus manufacturer in terms of manuals, operating, and maintenance and safety instructions/manual to the Operator. The Operator shall be responsible for understanding the working of Contracted Buses allotted to it in all aspects specified above including safety features. Operator shall abide by the instructions specified in the operating, and maintenance and safety instructions/manual all times during the Contract Period. The inspection procedures for the frequency and type of the inspection for

each technical condition criteria as specified therein for Contracted Buses shall be complied by the Operator;

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

26.1.6. Annual Maintenance Contract

- a. 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 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.

26.1.7. Repair and Replacement

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

26.1.8. Appointment of Drivers and Staff

- a. appoint: (i) drivers holding a valid licence for a period of [3 (three)] years before the Execution Date in accordance with the Motor Vehicles Act, 1988; and submit the license of all appointed drivers to the Authority before deployment of the Contracted Buses; and (ii) appoint either on a temporary, permanent or contractual basis trained and skilled staff for

operation, maintenance, and supervision of the Contracted Buses and other facilities related thereto at his cost for services as per the Agreement.

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

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

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

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

- c. ensure that all drivers, personnel and staff shall wear uniform as approved by Authority and are well behaved with passengers and officials of Authority. The Operator shall at its own cost and expense provide uniforms and shall ensure that clean uniforms shall be worn by drivers and any other personnel and staff employed at all times when they are on duty and doing any act in relation to providing the Bus Service under this Agreement.
- d. hold periodic training sessions for drivers, staff and all personnel (temporary or on contractual or permanent basis) so as to ensure to implementation of Bus Services efficiently.
- e. ensure that the drivers and other personnel engaged by the Operator do

not involve in any subversive activities, disruption in normal services and inconvenience or/and harassment to the commuters/users. The drivers and other personnel engaged by the Operator are required to be police verified.

- f. be responsible for all the costs and expenses of maintenance, operation, employment of drivers and other personnel including but not limited to travel, training of its employees, and vendors engaged by the Operator in connection with the implementation of this Agreement.
- g. make efforts to maintain harmony and good industrial relations among the labor and personnel employed in connection with the performance of the Operator's obligations under this Agreement and shall at all times be the principal employer in respect of such labor and personnel.

26.1.9. Appointment of Operator's Manager

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

26.1.10. Payment of Taxes and Duties

Subject to Clause 24, make timely payment of all taxes and duties due and payable under Applicable Law.

26.1.11. Payment of Fines

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

26.1.12. No Alterations or Modifications of the Contracted Buses

- a. ensure that there are no alterations in the Contracted Buses or any part thereof made at any point of time including the colour of such Contracted Buses without the prior written approval of the Authority.

26.1.13. Complaints Redressal

- a. maintain a complaints register on every Contracted Bus, and shall ensure that the Complaint Register is not tampered with in any manner

at any point of time.

- b. take appropriate action as per the instructions notified by the Authority in relation to any complaint made by the passenger or user of the Contracted Bus or any third person in relation to the Bus Service.

26.2. Rights of the Operator

The Operator shall have right to:

- 26.2.1. receive Operator Payment from the Authority as per the terms mentioned in this Agreement;
- 26.2.2. receive support for obtaining required permits and sanctions from the government 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;
- 26.2.3. use Parking Space subject to the terms provided herein this Agreement ;
- 26.2.4. Expect Possession and ownership of Contracted Buses during the Contract Period and after completion of contract as per the terms specified in Clause 36 of the Agreement.

26.3. Authority's Rights and Responsibilities

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

- 26.3.1. Provide adequate infrastructure for water and electric supply to the Parking Space during the Agreement Period;
- 26.3.2. Provide to the Operator the Parking Space right to use to the Operator in accordance with the terms of this Agreement.
- 26.3.3. 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) during the course of the Agreement, as and when required.
- 26.3.4. Instruct the Operator to deploy the Buses in the operations/ trips outside the Operation Plan as and when required.
- 26.3.5. 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;
- 26.3.6. have the right to levy Liquidated damages as provided in this Agreement and in the event the Operator fails to make payments of such Liquidated

Damages , the Authority shall have the right to deduct the same from the payments for Km charge and / or Performance Security

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

27. INSURANCE

27.1. Insurance During the Contract Period

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

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

27.1.3. 100% replacement cost for any loss and damages to Authority's Property/Project Asset/Premises with Authority as beneficiary. Shortfall in insurance cover, if any, shall be borne by the Operator.

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

27.1.5. An insurance cover of equal to Rs 10 lakh person would need to be taken out to cover any incident of death to the employee, Authorised bus user or to any third party due to accident occurring during Operation for unlimited occurrences with Authority as co- beneficiary.

27.1.6. Comprehensive third party liability insurance.

27.1.7. 100% insurance of employee compensation and other liability as per Workmen's Compensation Act 1923.

27.1.8. 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 (1) to (6) with the Authority as beneficiary/co-beneficiary.

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

27.1.10. Apart from above, Any liabilities arising out of or incidental to accidents in which Contracted Buses are involved shall be on account of the Operator and shall have to borne by the Operator including any compensation payable, whether such compensation payments becomes claimed, or paid during or after the currency of the contract. Authority shall not be responsible for payment of any such compensation to aggrieved parties on accounts of accidents of any kind involving the Contracted Buses.

27.2. Evidence of Insurance Cover

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

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

27.3. Application of Insurance Proceeds

27.3.1. 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.

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

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

27.4. Validity of Insurance Cover

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

28. DAMAGE TO CONTRACTED BUSES DUE TO VANDALISM

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

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

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

29. MONITORING

29.1. Evaluation of Performance of Operator

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

Sr. No.	Performance Parameter	Appraisal Time Period	Mode of appraisal
1	Bus Maintenance	Monthly and Random Checking	Physical checking
2	Bus Operations	Daily basis	Through manual register, to be maintained by the Operator and Authority.
3	Staff Behaviour	Through random checking	Physical checking during operation hours, complaint from staff members and Schools/Students/Parents.

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

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

30. CONFIDENTIALITY OBLIGATIONS OF OPERATOR

30.1. Protection of Confidential Information

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

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

Confidential Information shall not include information which:

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

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

31. EVENT OF DEFAULT AND TERMINATION

31.1. 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:

31.1.1. Operator is in breach of any of its obligations under this Agreement and the same has not been remedied for more than 60 (sixty) days;

31.1.2. A resolution for voluntary winding up has been passed by the shareholders of the Operator;

31.1.3. Any petition for winding up of Operator has been admitted and liquidator or provisional liquidator has been appointed or Operator has been ordered to be wound up by Court of competent jurisdiction, except for the purpose of amalgamation or reconstruction, provided that, as part of such amalgamation or reconstruction the amalgamated or reconstructed entity has unconditionally assumed all surviving obligations of the Operator under this Agreement;

31.1.4. Operator fails to comply with the Applicable laws, rules and regulations.

31.1.5. Any representation made or warranties given by the Operator under this Agreement or under the RFP document is found to be false or misleading.

31.1.6. Operator fails to maintain/ refurbish/ replenish the Performance security as per terms of this Agreement.

31.1.7. Operator stands incapable of supply of fully built buses as per the specifications.

31.1.8. Operator suspends or abandons the operations of Contracted Buses without the prior consent of Authority, provided that the Operator shall be deemed not to have suspended/ abandoned operation if such suspension/ abandonment was (i) as a result of Force Majeure Event and is only for the period such Force Majeure is continuing, or (ii) is on account of a breach of its obligations under this Agreement by the Authority.

31.1.9. The Operator repudiates this Agreement or otherwise evidences an intention not to be bound by this Agreement.

- 31.1.10. The Operator failed to make any payments/damages/damages due to Authority within period specified in this Agreement or indicated by Authority without any valid reason.
- 31.1.11. The Operator failed to perform any of the Operator's obligations, which has a Material Adverse Effect on the Agreement
- 31.1.12. Operator creates an Encumbrance over the Parking Spaces.
- 31.1.13. Operator fails to adhere to the timelines set forth in the Agreement for performance of Operator's obligations there under; and reason thereof damages as provided in Clause 29 exceeds value of Performance Security;
- 31.1.14. Repeated occurrence of breach of Operator's obligations specified in this Agreement and which shall not be remedied in Remedial Period specified by Authority; and
- 31.1.15. Any other default/breach of its obligation by the Operator, for which default/breach termination has been prescribed in terms of this Agreement.
- 31.1.16. The Operator fails to repay any debt / loan raised by the Operator for the purpose of financing the Bus Body Building from institutional Lenders such as Banks.

32. AUTHORITY'S EVENT OF DEFAULT

- 32.1. Any of the following events shall constitute an Event of Default by the Authority (Authority's Event of Default) unless such event has occurred as a result of a Force Majeure Event:
- 32.1.1. The Authority is in Material Breach of any of its obligations under this Agreement and has failed to cure such breach within 60 (sixty) days of occurrence thereof.
- 32.1.2. The Authority has unlawfully repudiated this Agreement or otherwise expressed its intention not to be bound by this Agreement.

33. TERMINATION DUE TO EVENT OF DEFAULT

33.1. Termination for Operator's Event of Default

- a. Without prejudice to any other rights or remedies, which the Authority may have under this Agreement, upon occurrence of an Operator Event of Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Operator; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Operator of its intention to issue such Termination Notice and grant minimum 45 (Forty Five) days or such other reasonable period as the Authority deems fit at its sole discretion to the Operator to remedy the default ("**Remedial Period**") and/or make representations, and may after the expiry of such Remedial Period on non remedy of breach/default to the satisfaction of the Authority, whether or not it is in receipt of such representation, issue Termination Notice and then terminate the Agreement.
- b. In the event of termination for an Operator Event of Default, the Authority shall:
 - i. In case such termination occurs due to non supply of buses/ Before FCOD as per agreement conditions,
 - a. Release bus(es) supplied to Authority to the Operator
 - b. Be entitled to invoke and retain the Performance Security amount in full;
 - ii. In case such event occurs after FCOD
 - a. Takeover peaceful possession without any Encumbrance of Parking Space provided to the Operator.
 - b. Be entitled to invoke and retain the Performance Security amount in full;
 - c. Release bus(es) under operation from the duty.

33.2. Termination for Authority's Event of Default

- a. Without prejudice to any other right or remedies which the Operator may have under this Agreement, upon occurrence of Authority's Event of Default, the Operator shall be entitled to terminate this Agreement by

issuing a Termination Notice to the Authority; provided that before issuing the Termination Notice, the Operator shall by a notice inform the Authority of its intention to issue such Termination Notice and grant 45 (Forty Five)days or reasonable period to the Authority to remedy the default and/or make representations, and may after the expiry of such Remedial Period on non remedy of breach/default, issue a Termination Notice.

- b. Upon Termination of this Agreement on account of Authority's Event of Default, the Authority shall:
 - i. Pay any sum due and payable as the Operation Payment by the Authority till date of such termination
 - ii. Takeover peaceful possession without any Encumbrance of Parking Space provided to the Operator
 - iii. Refund/ release of performance security in full provided there are no outstanding dues off the Authority on the Operator

34. FORCE MAJEURE AND CHANGE OF LAW

34.1. Force Majeure

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

34.1.2. A soon as practicable and in any case within Fifteen (15) 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.

34.1.3. As soon as practicable and in any case within 7 (Seven) days of notification by the Affected Party in accordance with the preceding sub-clause (a), the Parties shall, hold discussions in good faith in order to:

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

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

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

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

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

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

- a) Pay any sum due and payable as the Operation Payment by the

Authority till date of such termination

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

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 Execution 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 Effective Date which is a matter of public knowledge;
 - c. Any change in taxes, duties, levies, cess or any other form of charges;
 - d. Non availability of any spare part, equipment, component due to price escalation or otherwise
- 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
 - 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. 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, Parking Spaces, and any other assets installed or developed by Authority including without limitation any and all hardware, software, firmware, and deliverables in sound condition.
- 36.3. The Operator shall have no right to seek the transfer of the Parking Spaces or any other Movable or immovable asset that may be provided by the Authority to the Operator, and the Authority shall retain the title, and ownership in relation to such assets at all times.
- 36.4. 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 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 GMDC Ltd for amicable settlement. Upon such reference, both the Parties and the Competent Authority of GMDC Ltd 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. Arbitrator

In the event of any dispute arising between the Parties in relation to or under this Contract, the same shall be settled by arbitration conducted by an arbitration tribunal consisting of Sole Arbitrator to be appointed by both the Parties.. The decision of the Arbitrator shall be final and binding.

37.2.2. Place of Arbitration

The place of arbitration shall be City of Ahmedabad.

37.2.3. Language

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

37.2.4. Procedure

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

37.2.5. Enforcement of Award

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

37.2.6. Fees and Expenses

The fees and expenses of the arbitrator and all other expenses of the arbitration shall be initially borne and paid by respective Parties equally subject to determination by the arbitrator. The arbitrator 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.

37.2.7. Performance during Arbitration

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

38. SUB CONTRACT

- 38.1. The Operator shall not be allowed to sub contract any part of this Contract except activities related to major bus maintenance with prior approval from the Authority.

39. INDEMNITY

- 39.1. The Operator shall at all times, i.e. during the Contract Period and at any time thereafter, defend, indemnify and hold the Authority harmless from and against all claims (including without limitation claims for infringement of intellectual

property, breach of contract, death or injury to person or injury to property, or other tort claims) and expenses (including costs incurred in defending itself in court proceedings) arising out of or relating to the breach by Operator of any covenant representation or warranty or from any act or omission of the Operator or his agents, employees or sub-contractors.

- 39.2. The Operator shall be liable for and make good any damages which may be caused to Authority or to third parties, for non-compliance of any of its statutory/contractual obligations and responsibilities with respect to any party.
- 39.3. The Operator shall be liable and make good to Authority any damages or statutory claim like Motor Accident Claim which may be caused to Authority for any negligence on the part of Operator or its employees.
- 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 total payment received by the Operator in that Operation 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 Ahmedabad 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 Authority

(Name of the Concerned Official)

GMDC Ltd.

If to the Operator

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 Contract Period.

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

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

40.8. No Partnership

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

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 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 authorise the execution, delivery and performance of this Agreement;
- c. Nothing in this Agreement conflicts with its Memorandum and Articles of Association or any other agreement, understanding or arrangement or any judgment, decree or order or any statute, rule or regulation applicable to it; and
- d. this Agreement will be valid, legal and binding against it under the Applicable Law.

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.

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 GMDC Ltd

(Phone No.)

Email:

SIGNED, SEALED AND DELIVERED

For and on behalf of by: _____

ANNEXURE 1: DEFICIENCY AND INCIDENT WISE DAMAGES/ FINES

Sr.No	Service Levels	Liquidated Damages per incident of not maintaining the service levels
1	Availability	
(a)	No or partial Fleet Availability during each Shift.	100% km charge for unoperated daily km for number of buses not made available.
(b)	No provision of alternative bus of similar type and specification	Actual cost of emergency arrangement made by GMDC to provide the Bus Service.
(c)	Non-Adherence to the Operation Plan	Rs. 500 per incident.
2	Reliability	
(a)	Deviating from the route of Operation Plan or scheduled by the Authority.	1000 per such deviation
(b)	Delayed Trips on a given Route due to reason attributable to Operator.	
(i)	More than 5 and less than 10 Minutes Delay in start of the Bus Trips as against Scheduled Trip	200
(ii)	More than 10 Minuets Delay in start of the Bus Trips as against Scheduled Trip for every Minute	100
(c)	Letting passengers access bus at locations other than designated Points	Rs. 200 per such stop
3	User Comfort and Aesthetic (Weekly/Fortnightly supervision)	
(a)	Dirty vehicle(i.e. dusty handrails, chairs and floor, litter of any kind on floor, foul odour; dirty windows and glass panels, Spots) inside or outside, at the time of start of first shift in the morning	500
(b)	Broken/damaged windows, fixed glass, front windshield or rear windshield	500
(c)	Malfunctioning passenger door	500
(d)	Broken/Loose/Missing Passenger Seat	500
(e)	Loose or missing handrails, roof grab rails and/or with Sharp edges	500
(f)	Visible dents more than 6" beyond 1 week on the bus exterior	500
(g)	Placing any decorative article/religious figure or symbol or political symbol inside or outside the bus without prior approval of the AUTHORITY	500
(h)	Placing any poster/advertisement/stickers or similar items inside or outside the bus which may or may not generate any revenue for the Operator unless authorized by Authority	500
(i)	Malfunctioning/Broken Light in the passenger compartment	500
(j)	Modification of the design or paintwork of the exterior or interior of the bus without the authorization of Authority	1000

Bus Operator Agreement for Selection of Bus Operator for Staff and School Buses for GMDC Ltd

Sr.No	Service Levels	Liquidated Damages per incident of not maintaining the service levels
(k)	Missing bus body panels on the exterior/interior of the bus	1000
4	Safety	
(a)	Each instance of fatal accident which occur due to irresponsible driving(The damages to be paid over and above the insurance Proceeds specified in Agreement)	30000
(b)	Each instance of Non fatal accident which occur due to irresponsible driving (The damages to be paid over and above the insurance Proceeds specified in Contract)	5000
(c)	Any damage to the fixed infrastructure including third party infrastructure during the operation due to irresponsible driving (The damages to be paid over and above the insurance Proceeds specified in Contract)	At actual
(d)	Fire Extinguisher missing or beyond expiry date	1000
(e)	Defective or malfunctioning headlights, rear lights, brake light, turning indicators and parking lights, broken mirrors at the time of Bus Operations .	500
(f)	Defective break and clutch	1000
(g)	Damaged Tyre	1000
(h)	Leakage of Oil and diesel	500
(i)	Driving above speed limit set by Authority	1000
(j)	Operating bus with Defective/Broken Headlights, Rear lights, Brake lights, Turning indicators, Parking lights	1000
(k)	Use of electronic equipment like Radio or Music system unless authorized by Authority	1000
(l)	Use of Cell phone by Driver while driving	1000
(m)	Driver in drunken state	5000
(n)	Non-operating pneumatic doors, operating buses with open doors, hanging passengers	1000
5	Driver's Behavior	
(a)	Driver not wearing clean uniform as designed by Authority	500
(b)	Misbehavior by driver with Authority officials /Passengers	1000
(c)	Driver not responding to more than 3 consecutive directions sent by Authority Control Centre.	5000
6	Breakdown	
(a)	Bus breakdown during operating hours	1000
(b)	Abandoning bus during operating hours on Road more than an hour	2000
7	Regulatory	
(a)	Driving with a Defective Number Plate	5000
(b)	The driver is not carrying a proper driving license	5000
(c)	Not Maintaing Insurance Policies as per MV Act	5000
(d)	Non Compliance in payment of Applicable Tax as per regulation and as specified in RFP	5000

ANNEXURE 2: DETAILS OF CONTRACTED BUSES

Details of Buses

Sr. No.	Manufacturer and Bus Type	Model Number	Registration	Date of Deployment
1				
2				
3				
4				
5				
6				
7				
8				

Bus Operator Agreement for Selection of Bus Operator for Staff and School Buses for GMDC Ltd

ANNEXURE 3: OPERATION PLAN

Bus No.	Type of Bus	Size of bus	Daily km	No: of single trips	Route	Tentative Shift timing	
						From Origin	From Destination
1	Staff	10-12m	177	6	Origin: ATPS Township Destination: Plant	1)4:45 2)8:45 3)20:45	1)5:00 2)9:00 3)21:05
				6	Origin: ATPS Township Destination: Vermanagar	1)6:20 2)10:00 3)12:00	1)8:15 2)18:20 3)20:00
2	Staff	7-9m	99	2	Origin: ATPS Township Destination: Vermanagar School	1)7:15	1)14:10
				2	Origin: ATPS Township Destination: Plant - Vermanagar	1)16:20	1)17:45
				1	Origin: Plant Destination: ATPS - Township	1)18:05	Night parking
3	School	7-9m	76	2	Origin: ATPS Township (via Kapurashi - Kaiyari) Destination: Vermanagar School	1)6:30	1)12:30
				1	Origin: ATPS School Destination: Moti Chher - Khengarpar	1)13:35	1)14:05
4	School	10-12m	105	4	Origin: ATPS Township (via Nani Chher - Moti Chher - Khengarpar - Koriyani) Destination: Vermanagar School	1)6:30 2)11:40	1)7:30 2)12:30
				3	Origin: ATPS Township Destination: ATPS School	1)8:20	1)11:30 2)13:30

Note: All payments shall be made by the Authority to the Operator after making any tax deductions at source under Applicable Law. The payments, adjustments, deduction of Liquidated Damages and reconciliation of the Annual Assured Km as per the provisions of the RFP for Bus number 1 to 5 shall be done by the project office of the respective mines/sites AND for bus number 6,7 and 8 shall be made by GMDC-GVT corporate office, Ahmedabad as per the provisions of the RFP.

ANNEXURE 4: LIST OF AUTHORITY CLEARANCES AND OPERATOR CLEARANCES

Sr. No.	Permission/ Clearance	Party responsible
1	Vehicle Registration	Operator
2	Insurance for Vehicle and other Authority owned assets like Depot	Operator
3	Pollution Under Control Certification	Operator
4	Road worthiness Certificate	Operator
5	Contract Carriage permit charges (monthly/annual)	Operator