

Volume 2 – Agreement

**[Agreement issued post pre-bid meeting, dated 12th
December 2011, which supersedes the RFP issued
on 5th December 2011]**

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This Agreement is mutually agreed and entered into on this ____ day of ____, Two Thousand and Eleven at Pune.

BETWEEN

Pune Mahanagar Parivahan Mahamandal Limited (hereinafter referred as “PMPML”/ “Employer”) having its principal office at PMT Building, Shankarseth Road, Swargate, Pune and represented by the Chairman and Managing Director, which expression shall, unless it be repugnant to the context or meaning thereof, include its administrators, successors and assigns; of ONE PART.

AND

_____, a company incorporated under the provisions of the Indian Companies Act, 1956, having its registered office at <<_____>>, hereinafter referred to as the “Operator” which expression shall unless repugnant to the context include its successors and permitted assigns, of the OTHER PART.

WHEREAS,

- A. Pune Mahanagar Parivahan Mahamandal Limited (PMPML) had invited competitive proposals from eligible Bidders for "selection of bus Operator in Pune Metropolitan Area for Procurement and Operation & Maintenance of Air Conditioner (AC) buses on a Public Private Partnership (PPP) basis". In response thereto PMPML had received proposals from several Bidders including the Operator for implementing the Project.
- B. PMPML, after evaluating the aforesaid Proposals, accepted the Proposal submitted by the <<details of company/consortium>> for developing the Project, now formed SPC/ SPV named as _____.
- C. Thereafter PMPML had issued a Letter of Intent (LoI) bearing No. _____ dated _____, to the Operator and which has been acknowledged by Operator's letter bearing No. _____ dated ____.
- D. The Operator shall undertake the following activities as part of the Project:
- i. Procure 50 (fifty) air conditioned (AC) buses as per the specification prescribed by PMPML
 - ii. Operate Buses along routes specified by PMPML and as per an Operations Plan prescribed by PMPML.
 - iii. Maintain Buses as per norms prescribed by PMPML.
 - iv. Ensure safety of buses during operations and also provide parking areas,
 - v. Adhere to performance based parameters as specified by PMPML.
- E. PMPML has executed this Agreement, to assign to the Operator, its rights and obligations.
- F. The Operations Period shall be a maximum period of 10 (ten) years from the date of the signing of the Agreement. However, the period shall be limited to the date of the termination of this Agreement or the expiry of the Agreement, whichever is earlier.
- G. PMPML confirms the receipt of first instalment of the Royalty Charges in the form of a demand draft/ cheque for an amount of Rs. _____/- (Rupees _____ only) from the Operator.
- H. PMPML confirms the receipt of a Performance Security in the form of a Bank Guarantee dated _____ for an amount of Rs. _____/- (Rupees _____ only) as Performance Security, for the performance of the obligations of the Operator under this Agreement

As per the terms of the Letter of Intent, the Parties hereto are required to enter into the Agreement being these presents to record the terms, conditions and covenants.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1 DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

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

1. “**Additional Cost**” shall mean the additional capital expenditure and / or the additional operating costs or both as the case may be, which the Operator would be required to incur as a result of Change in Law.
2. “**Affected Party**” shall mean the Party claiming to be affected by a Force Majeure Event in accordance with Article 10.
3. “**Agreement**” shall mean this Agreement as of date hereof, with its recitals, schedules hereto as amended, supplemented or modified in accordance with the provisions hereof.
4. “**Applicable Law**” means and includes any statute, law, bye-law, rule, regulation, ordinance, judgment, order, decree, injunction, writs or orders of any court of record, clearance, directive, guideline, policy, requirement, or other governmental restriction or any similar form of decision of, or determination by, or any interpretation or administration having the force of law of any of the foregoing, by any Government Agency having jurisdiction over the matter in question, whether in effect as of the date of this Agreement or thereafter.
5. “**Applicable Permits**” shall mean all clearances, permits, authorisations, consents and approvals required to be obtained or maintained by the Operator under Applicable Law, in connection with the operation and maintenance of the Project during the subsistence of this Agreement.
6. “**Appointed Date**” shall mean the date of the signing of this Agreement between the Operator and PMPML.
7. “**Bidders**” shall mean a Bidding Company or Bidding Consortium, as defined below that has submitted a Bid in response to this RFP Document.
8. “**Bus/Buses**” shall mean the 100 (one hundred) semi-low-floor air conditioner buses procured by the Operator, and which are as per the specifications mentioned under Schedule IV.
9. “**Change in law**” shall have the meaning as ascribed under Article 10.
10. “**Conditions Precedent**” shall have meaning as ascribed under Article 2.
11. “**Contractor**” shall mean any Person with whom the Operator has entered into or may enter into any material contract in relation with the operation and maintenance of any components for the Project.
12. “**Consortium**” means the consortium to which the Project has been awarded, consisting of <<details of bidders in case of a Consortium>> formed and acting pursuant to the Joint Deed Agreement.

13. **"Emergency"** shall mean a condition or situation that is likely to endanger the safety of the individuals and or persons on the Buses or which poses an immediate threat of material damage to any of the Project Facilities.
14. **"Encumbrance"** shall mean any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, physical encumbrances, claims for any amounts due on account of taxes, cesses, electricity, water and other utility charges and encroachments on the Project Facilities.
15. **"Financial Assistance"** means all funded and non-funded credit assistance including but not limited to loans, advances, lease assistance and guarantees required for the Project.
16. **"Financial Closure"** means the legally binding loan documentation entered into between the Operator and Lenders to mobilise the financial requirements of the Project, as set out in the Scope of Work.
17. **"Financing Documents"** means, collectively, the documents executed in favour of or entered into with the Lenders by the Operator in respect of the Financial Assistance relating to the financing (including any re-financing) for the Project and includes any document providing security for the Financial Assistance.
18. **"Financial Year"** shall mean the period commencing from April 1 of any given year to March 31 of the succeeding year.
19. **"Force Majeure" or "Force Majeure Event"** shall mean an act, event, condition or occurrence as specified in Article 10 of this Agreement.
20. **"Good Industry Practice"** shall mean the exercise of that degree of skill, diligence, prudence, integrity 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 or any of them of a project similar to that of the Project.
21. **"Government Agency"** shall mean Government of India (GoI), Government of Maharashtra (GoM), PMPML or any state government or governmental department, commission, board, body, bureau, agency, authority, instrumentality, court or other judicial or administrative body, central, state, or local, having jurisdiction over the Parties, the Project Facilities or any portion thereof, or the performance of all or any of the services or obligations of the Operator under or pursuant to this Agreement.
22. **"Insurance Cover"** shall mean the aggregate of the maximum sums insured under the insurance taken out by the Operator pursuant to Article 5.4.
23. **"Joint Deed Agreement (JDA)"** shall mean a duly stamped and registered agreement which was submitted by the Consortium during the Request for Proposal (RFP) stage and annexed as Schedule II of this Agreement.

24. **"Lead Consortium Member (LCM)"** shall mean <<name of the LCM>>, which is the consortium member having 51% stake in the paid up equity capital of the Special Purpose Company (SPC/SPV).
25. **"Lenders"** means financial institutions, banks, funds or trusts, who provide or refinance the debt component of the cost of the Project (including guarantees, letters of credit, risk participation facility, take-out facility and other forms of credit enhancement) and include subscribers to / trustee for the holders of debentures / bonds or other securities issued by the Operator to meet the cost of the Project.
26. **"Letter of Intent (LoI)"** shall mean the letter issued by PMPML to the Operator bearing No. _____ dated _____.
27. **"Material Adverse Effect"** shall mean a material adverse effect on (a) the ability of the Operator to exercise any of its rights to perform/discharge any of its duties/obligations under and in accordance with the provisions of this Agreement and/or (b) the legality, validity, binding nature or enforceability of this Agreement.
28. **"Material Breach"** shall mean a breach by either Party of any of its obligations under this Agreement which has or is likely to have a Material Adverse Effect on the Project and which such Party shall have failed to cure.
29. **"Operator"** shall mean the <<details of the selected bidder>> having its registered office at <<address>>.
30. **"Operations Period"** shall mean the period of 10 (ten) years from the Appointed Date, during which the Operator shall abide by the conditions of this Agreement and as mentioned under Article 3.2.
31. **"Operations Plan"** shall mean the plan elaborated by PMPML for operations of the Buses by Operator and as modified by PMPML from time to time to ensure efficient functioning of the public transportation system.
32. **"Parties"** shall mean the parties to this Agreement and "Party" shall mean either of them, as the context may admit or require.
33. **"Performance Security"** shall mean the amount of Rs. _____/- (Rupees _____ only) provided by the Operator as a guarantee for the performance of its obligations in accordance with Article 5.1.1.
34. **"Person"** shall mean (unless otherwise specified or required by the context), any individual, company, PMPML, partnership, joint venture, trust, unincorporated organisation, government or government body or any other legal entity.
35. **"Preliminary Notice"** shall mean the notice of intended termination by the Party entitled to terminate this Agreement to the other Party setting out, inter alia, the underlying Event of Default.
36. **"Project"** shall mean
- a. Procure 100 AC buses as per the specification prescribed by PMPML

- b. Operate Buses along routes specified by PMPML and as per an Operations Plan prescribed by PMPML.
 - c. Maintain Buses as per norms prescribed by PMPML.
 - d. Ensure safety of buses during operations and also provide parking areas,
 - e. Adhere to performance based parameters as specified by PMPML.
37. **“Project Officer”** shall mean the person nominated by PMPML for being in charge of monitoring all the activities of the Operator.
38. **“Project Facility/ Facilities”** shall mean the any facility provided by the PMPML to the Operator time to time for the Project.
39. **“Project Agreements”** shall mean collectively this Agreement and any other material contract (other than any commercial agreement with the users) entered into or may enter into by the Operator in connection with the Project.
40. **“Proposal / Request for Proposal (RFP)”** shall mean the ‘Request for Proposal Document’, dated 5th December 2011 issued by PMPML to the interested bidders in the proposal stage, as amended and modified from time to time together with all Annexures, Schedules, Maps along with such common set of deviations, corrigendum, addendum, amendments which have been issued from time to time.
41. **“Royalty Charge”** shall mean the amount quoted by the Bidder in Rupees per kilometre in lieu of the rights provided by PMPML to the Operator for operating buses on the routes pre-scribed by PMPML and in accordance with terms and conditions of this Agreement. The kilometre distance shall be the summation of the length of the routes given in the package.
42. **“Rupees”** or “Rs.” refers to the lawful currency of the Republic of India.
43. **“Service Quality Performance Parameters”** shall mean the key aspects that need to be satisfied by the Operator during each month of the Operations Period and that shall form the basis of evaluation of the performance of the Operator. The details are presented in Schedule III.
44. **“Special Purpose Company (SPC/ SPV)”** shall mean the company incorporated by the Consortium, under the Companies Act 1956, to implement the Project.
45. **“Standards of Reasonable and Prudent Operator”** means the standards, practices, methods and procedures expected from a person seeking in good faith to perform its contractual obligations and in so doing and in the general conduct of its undertaking, exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced Person engaged in the same type of undertaking under the same or similar circumstances and conditions.
46. **“Tax”** shall mean and includes all taxes including service tax, duties, fees, cesses, levies that may be payable by the Operator under Applicable Law.
47. **“Termination”** shall mean early termination of this Agreement pursuant to Termination Notice or otherwise in accordance with the provisions of this Agreement, but shall not, unless the context otherwise requires, include expiry of this Agreement due to efflux of time in the normal course.

48. "**Termination Date**" shall mean the date specified in the Termination Notice as the date on which Termination occurs.
49. "**Termination Notice**" shall mean the notice of Termination by either Party to the other Party, in accordance with the applicable provisions of this Agreement.

1.2 Interpretation

In this Agreement, unless the context otherwise require:

- a. any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies to, or is capable of being applied to any transactions entered into hereunder;
- b. references to Applicable Law shall include the laws, acts, ordinances, rules, regulations, guidelines or byelaws, which have the force of law;
- c. the words importing singular shall include plural and vice versa;
- d. the headings are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement.
- e. terms and words beginning with capital letters and defined in this Agreement including the Schedules shall be construed accordingly;
- f. the words "include" and "including" are to be constructed without limitation;
- g. any reference to day shall mean a reference to a calendar day;
- h. any reference to week shall mean a period of time between the same dates in successive calendar weeks as may be applicable to the context.
- i. any reference to month shall mean a period of time between the same dates in successive calendar months as may be applicable to the context.
- j. any reference to year shall mean a period of time between the same dates in successive calendar years as may be applicable to the context
- k. the schedules to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement.
- l. any reference at any time to any agreement, deed, instrument, licence, or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference;
- m. references to recitals, articles, sub-articles, clauses, or schedules in this agreement shall, except where the context otherwise requires, be deemed to be references to recitals, articles, sub-articles, clauses and schedules of or to this Agreement;
- n. any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this agreement from or by any Party shall be valid and effectives only

- if it is in writing under the hands of duly authorised representative of such Party as the case may be, in this behalf and not otherwise;
- o. any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days or dates; and
 - p. In case of ambiguities or discrepancies within this agreement, the following shall apply:
 - i. between two articles of this Agreement, the provisions of specific articles relevant to the issue under consideration shall prevail over those in other articles;
 - ii. between the articles and the Schedules, the articles shall prevail, save and except as expressly provided in the Agreement or the Schedules;
 - iii. between the written description on the drawings and detailed engineering and the Specifications and Standards, the latter shall prevail; and
 - iv. between any value written in numerals and that in words, the latter shall prevail
 - q. The documents forming part of the bidding process leading to this Agreement shall be interpreted in the following descending order of priority:
 - 1. This Agreement
 - 2. The Schedules to this Agreement,
 - 3. The Lol issued to the Operator
 - 4. The written clarifications issued to the bidders
 - 5. The written common set of deviations issued to the bidders
 - 6. Written corrigendum to the RFP
 - 7. The RFP

2 Conditions Precedent

The Agreement shall be invalid in case of non-fulfilment of such Conditions Precedent.

2.1 Operator’s Responsibilities

The Operator shall fulfil the following conditions precedent within 120 (one hundred and twenty) days from the Appointed Date:

- a. The Operator shall have executed a Performance Security in favour of PMPML for the Project at the time of signing of the Agreement.
- b. The Operator shall have achieved the Financial Closure for the Project and established the necessary financial evidence.
- c. The Operator shall have registered the Buses with the concerned transport authority. The cost of registration shall be borne by the Operator.

- d. The Operator shall have paid the road tax to the appropriate authority.
- e. The Operator has furnished Insurance certificates to PMPML.
- f. The Operator shall have furnished all resolutions adopted by the Board of Directors of the Operator (certified as true copies by a Director of the Operator) authorizing the execution, delivery and performance by the Operator of this Agreement;
- g. The Operator shall have provided trained bus-drivers having valid driving license, in sufficient numbers, for operating the Buses as per the Operations Plan prescribed by PMPML.
- h. The Operator shall have received necessary approvals and clearances under relevant laws applicable for this Project from competent government agency.

2.2 PMPML's Responsibilities

PMPML shall fulfil the following conditions precedent within 120 (one hundred and twenty) days from the Appointed Date:

- a. PMPML shall have provided by the Operations Plan to the Operator as per the terms and conditions mentioned here under this Agreement.
- b. PMPML shall on its best effort basis have provided support to the Operator in obtaining timely approvals, permissions and authorisations for performance of obligations for the project.

2.3 Cost of satisfying the Conditions Precedent

The cost of satisfying the above Conditions Precedent shall be borne by the respective Parties responsible for satisfaction of the Conditions Precedent.

2.4 Non- fulfilment of the Conditions Precedent

- a. In case of non-fulfilment of the Conditions Precedent attributable to reasons beyond the control of the Operator or PMPML, the period for satisfaction of Conditions Precedent may be extended by mutual consent of the Operator and PMPML. However PMPML shall not extend the period for compliance of Conditions Precedent beyond a period of 120 (one hundred and twenty) days from the Appointed Date.
- b. If any of the Conditions Precedent contemplated under Articles 2.1 (a) to (h) and 2.2 (c) to (a) has not been satisfied in full or has not been waived by respective Parties, within the time stipulated or from such extended time that the Parties may agree upon, then and in such event, the party other than the defaulting party shall have the right to terminate this Agreement by giving 30 (thirty) days notice in writing to the other party, given at any time thereafter, but prior to such Conditions Precedent being satisfied or waived, and if the Conditions Precedent are not satisfied or waived within such notice period, upon expiry of such notice, this Agreement shall automatically stand terminated.
- c. If the Agreement is terminated due to non-satisfaction of Conditions Precedent set forth in Article 2.1 (a) to (h), the Operator shall not be compensated in any manner whatsoever and the Performance Security shall be forfeited and en-cash by PMPML.

- d. If the Agreement is terminated due to non-satisfaction of Conditions Precedent set forth in Article 2.2 (c) to (a), then PMPML shall release the Performance Security.
- e. Upon the termination of this Agreement under this Article 2.4, the access to or possession of the Buses granted to the Operator pursuant to Section 4.1 shall forthwith terminate, the Operator and the Persons claiming through or under it shall immediately hand-over the Buses, without any demur or delay upon the termination shall immediately revert to PMPML, free and clear from any Encumbrances, irrespective of any outstanding mutual claims between the Parties or claims of any person.

3 Grant of Rights

3.1 Grant of Rights for Operation and Maintenance of Buses

Subject to and in accordance with the terms and conditions set forth in this Agreement, PMPML grants and authorises the Operator to operate and maintain Buses as per the Operations Plan. And to exercise and enjoy the rights, powers, benefits, privileges, authorisations and entitlements as set forth in this Agreement.

3.2 Grant of Rights for Collection of Passenger Tariff and Advertisement Revenue

The private operator shall have the right to retain the earnings from the ticket collection and advertisements from the said buses provided by the Operator.

The passenger tariff shall be determined by PMPML and this shall be 50% (fifty percent) more than the tariff determined by PMPML for other public transport buses operated by PMPML on its own or through other parties. The operator shall adhere to such tariff and undertake revenue collections in accordance. PMPML reserves the right to increase or decrease the passenger tariff at its own discretion and the Operator shall have no rights for determination of tariff policy.

PMPML shall allow the Operator to sell the ticket passes from the PMPML's counter's provided the Operator shall pay a service charge of 1% (one percent) on each pass issued to passenger from PMPML's counter.

3.3 Period of Operations Rights

The Operator shall have the Operations Rights for a maximum period of 10 (ten) years from the date of Appointed Date.

3.4 Acceptance of Rights

In consideration of the rights, privileges and benefits conferred upon the Operator, and other good and valuable consideration expressed herein, the Operator hereby accepts the rights granted for the Operation and Maintenance and agrees and undertakes to perform / discharge all of its obligations in accordance with the provisions hereof.

3.5 Exclusivity of the Contract Period

The Operator shall be the sole and exclusive person entitled to undertake the Project in the Project Area in line with the scope of work assigned to the Operator in this Agreement and PMPML agrees that no agreement or arrangement permitting such activities by any other party shall be entered into by PCMC during the Contract Period.

4 Buses

4.1 Rights, Title and Use of the Buses

- a. The Operator shall have the right to use the Buses in accordance with the provisions of this Agreement.

Provided that the Operator shall not have the right to disturb the specifications, arrangements and the functionality in the deployed Buses

- b. The Operator shall have the ownership rights on all the Buses at all times.
- c. PMPML or/ and GoM or its authorised representative shall have the right to access the Buses for installing or maintaining any accessories or components which they feel necessary to improve the operations of the public transportation system as PMPML or/ and GoM may specify.
- d. The Operator shall have the right to collect and retain the revenues generated from issuance of tickets to passengers.
- e. The Operator shall have the right to display advertisement inside and outside the Buses and retain revenues from such activities.

Provided that such access or use shall not result in a Material Adverse Effect.

Provided further, that to the extent such access and use allowed by the Operator affects the performance of any of its obligations hereunder, the Operator shall not be deemed or construed to be in breach of its obligations nor shall it incur / suffer any liability on account thereof.

- f. The Operator shall not use the Buses for any purpose other than for the purpose of the Project during the Operation Period and purposes incidental or ancillary thereto.

4.2 Peaceful Possession

PMPML hereby warrants that:

- a. The necessary right of way and route plan for Buses
 - have been provided through the due process of law
 - are vested with PMPML
- b. PMPML has the full power to hold, dispose of and deal with the same consistent, inter alia, with the provisions of this Agreement.

4.3 Applicable Permits

The Operator shall obtain and maintain the Applicable Permits and adhere to the Laws in such sequence as is consistent with the requirements of the Project. The Operator shall be in compliance with the terms and conditions subject to which Applicable Permits have been issued.

5 Operator’s Obligations

In addition to and not in derogation or substitution of any of its other obligations under this Agreement, the Operator shall have the following obligations. PMPML shall impose fines/penalties, as detailed out in Schedule III, on the Operator for not fulfilling the obligations.

5.1 Financial Obligations

The Operator shall at its cost; expenses and risk make such financing arrangements as would be necessary to implement the Project and to meet all of its obligations under this Agreement, in a timely manner.

5.1.1 Performance Security

- a. The Operator shall simultaneously at the time of signing of the Agreement provide a Performance Security in the form of a bank guarantee for due and punctual performance of its obligations hereunder relating to the Project. The Performance Security shall be furnished in the form of a bank guarantee from a nationalised bank which is recommended and acceptable to PMPML, in favour of PMPML, in the form as set out in Schedule I, (“Performance Security”) as per following details.
- b. The computation of amount of Performance Security shall be as per the below formulae.

$$P_s = T_{km} \times B_n \times R_{km} \times D_n$$

where

P_s – Performance Security

T_{km} – Total number of kilometers to be operated by one AC Bus, which shall be 5000 (five thousand) kms

B_n – Number of AC Buses, which shall be 50 (fifty) numbers

R_{km} – Royalty Charges in Rupees per kilometre quoted by the Operator in the Commercial Offer

D_n – Number of months, which shall be 3 (three) months

- c. The Performance Security shall be kept valid for a period of 3 (three) months from its issuance date. The Performance Security shall be renewed for the subsequent 3 (three) months, 30

(thirty) days before the expiry of the previous Performance Security. The Operator shall in that manner provide Performance Security throughout the Operation Period to PMPML.

- d. All charges, fees, costs and expenses for providing the Performance Security in the form of a bank guarantee shall be borne and paid by the Operator.
- a. The decision of PMPML as to any breach/ delay having been committed, liability accrued or loss or damage caused or suffered shall be conclusive, absolute and binding on the Operator. PMPML will provide reasons to the Operator of any amount of liability accrued or loss or damages caused or suffered by PMPML under this Agreement, if required to be provided in connection with any demand made by the PMPML to recover such compensation through encashment of the Performance Security under this Agreement and that no document or any action shall be required other than the PMPML's written demand as aforesaid.
- b. In the event of encashment of the Performance Security by the PMPML, in full or part, the Operator shall within 15 (fifteen) days of receipt of the encashment notice from PMPML provide a fresh Performance Security or replenish the Performance Security to the original amount, as the case may be. The provisions of this Article 5.1.1 shall apply mutatis mutandis to such fresh Performance Security. The Operator's failure to comply with this provision shall constitute an Operator Event of Default which shall entitle PMPML to terminate this Agreement in accordance with the provisions of Articles 11 hereof.

Provided that if the Agreement is terminated due to any event other than an Operator Event of Default, the Performance Security if subsisting as of the Termination Date shall, subject to PMPML's right to receive amounts, if any, due from the Operator under this Agreement, be duly discharged and released to the Operator.

- e. The Performance Security shall be refunded after completion of Operations Period provided that the Operator has paid all dues to PMPML and other concerned statutory authorities. For this purpose, the Operator shall produce a “no dues” certificate.

5.2 Pre – Engagement Obligations

- a. PMPML shall allow the Operator to commence partial operations as per the terms and conditions of this Agreement. The Operator shall deploy all the 50 (fifty) buses within 365 (three hundred and sixty five) days from the signing of the Agreement.
- b. The Operator shall procure and start the partial operations within 60 (sixty) days of signing of the Agreement.
- c. The Royalty Charges payable to PMPML by the Operator during the period of partial operations shall be computed in proportion to the number of Buses in operation.
- d. The PMPML shall, in the presence of Operator, undertake a joint-inspection of the Buses procured by the Operator, to assess their condition and identify any defects. Any discrepancies identified shall be noted and a decision on way forward taken by mutual discussions.

5.3 Operations Obligations

- a. The Operator shall strictly adhere to the Operations Plan prescribed by PMPML.
- b. The Operator shall at all times during the Operations Period operate atleast 90% (ninety percent) of the Buses on the prescribed routes in accordance with the Operations Plan.
- c. It is hereby clarified that, on a daily basis, the Operator shall make an entry into the register maintained by PMPML the start time, end time of each of the trip for each of the Bus on the designated routes. If the Operator is not operating a Bus on a particular day, then the Operator shall make an entry into the register maintained by PMPML mentioning the Bus registration number and the reason for non-deployment. Failure to do so, PMPML shall consider that the Buses have operated during the day for a minimum of 200 (two hundred) kilometers per Bus per day and the Operator shall be liable to pay Royalty Charges for such number of total kilometers during the month.
- d. The Operator shall be responsible for sourcing of fuel required to operate the Buses at his own expense and bear all cost towards this. PMPML shall allow the Operator to fuel the Buses from PMPML's depot at the prevailing market rates.
- e. The Operator supply, at its own cost, all the necessary lubricants, oil, tyres and tubes, battery, spare parts, etc required for running the Buses smoothly.
- f. The Operator shall undertake regular preventive maintenance and break down repairs.
- g. The Operator shall bear all cost of AMC at all times during the Operations Period.
- h. PMPML shall undertake inspections of the Buses as and when it feels appropriate to ensure the adherence to this Agreement.
- i. The Operator shall establish the necessary facilities for routine maintenance, washing, parking, etc of the Buses, at its own cost. PMPML shall endeavour to arrange a parking space however, PMPML does not guarantee any commitment for making parking space available to the Operator. In the event the parking space is made available by PMPML to the Operator, then it shall charge to the Operator for providing such parking space. The parking charges shall be determined by PMPML at the time of providing the parking space to the Operator.
- j. The Operator shall have the right for display of advertisements inside/outside the Buses as per terms and conditions finalized by PMPML. These advertisements may include various types of displays including electronic displays.
- k. The Operator shall provide trained bus-drivers, in sufficient numbers, for operating the Buses as per the Operations Plan prescribed by PMPML. The drivers shall have a valid driving license. The drivers shall be trained by the Operator before being allowed to drive the Buses.
- l. The Bus drivers deployed by the Operator shall follow a dress uniform as prescribed by PMPML. All expenses and cost towards driver's uniform shall be borne by the Operator at all times during the Operations Period.
- m. The Operator shall provide trained and skilled staff for operation, maintenance and supervision of the Buses and other facilities related thereto, at its cost for services as per the agreement,

- n. The Buses shall be kept road-worthy in accordance with Chapter VII of the Motor Vehicle Act 1988 and Rules made there under from time to time. The Operator shall procure fitness certificates of the Buses from the Regional Transport Authority from time to time. The cost of procurement of fitness certificate shall be borne by the Operator.
- o. The Operator shall abide by all statutory provisions including those made under various Labour enactments such as Workmen’s Compensation Act, Payment of Gratuity Act, ESI Scheme and all such other enactments and/or by-laws applicable to PMPML and defend the driver in Criminal and/or Civil Court in any Criminal and/or Civil liability arising out of any action of Court on the part of the driver.
- p. The Operator shall exercise all due caution to protect and maintain data collected from trips operated. All information, data, records, documents, etc. as required by PMPML from time to time, shall be recorded by the Operator. The Operator shall not share, sell or in any manner use the data created while undertaking the operations of Buses.
- q. The Operator shall pay all dues of PMPML without any delays.
- r. The Operator shall arrange and pay for Insurance Policy in accordance with the provisions of Article 5.4.
- s. Obtain stage carriage permit for buses and its own cost and expenses.
- t. Pay for Octroi and VAT levied by Government Agency.
- u. PMPML, may, by written notice, require the Operator to suspend forthwith the whole or any part of the operations, if in its reasonable opinion the same is being carried on in a manner that is not in conformity with the specifications under this Agreement.
- v. The Operator shall operate Buses with stoppage locations at bus-stops and points designated by PMPML in the Operations Plan.
- w. The Operator shall at all times procure at its own cost and maintain first aid kit and fire extinguisher units in each Bus in operational manner.
- x. The Operator shall immediately intimate PMPML of any complaints registered against Operator’s operations from general public, for facilitating PMPML to resolve such complaints.
- y. The Operator shall not be allowed to use any Bus of any other specifications for the operations under this Agreement without prior approval of PMPML.
- z. The Operator shall make Buses available for a minimum of 16 (sixteen) hours every day throughout the Operations Period.
- aa. In case of an accident where the Bus is detained by police authorities or impounding of Bus by any other statutory authority, no penalty will be imposed for the period for which the Bus is detained or impounded by the authorities. Proof for detention in support of the claim shall be submitted by the Operator.
- bb. The Operator shall not divert the Buses for any personal use or gains of any other business during the Operations Period.
- cc. The Operator shall not assign or sub-let or sub-contract the operations under this Agreement.

- dd. The Operator shall at its own cost and expenses obtain fitness certificate of the Buses provided by PMPML from Road Transport Office (RTO) as and when applicable.
- ee. Bear all cost of operation and maintenance of the Project.

5.4 Insurance

- a. The Operator shall, at its cost and expense, purchase and maintain during the subsistence of this Agreement insurance to cover against any liability to third parties and any other insurance that may be necessary under and in accordance with the Financing Documents, Laws and Good Industry Practices to protect the Operator and its employees and others including all Force Majeure Events that are insurable and not otherwise covered in items above.
- b. The Operator shall obtain the insurance jointly name of PMPML and its name at all times during the term of this Agreement.
- c. The insurance policy shall include a clause that the Buses are owned by the Operator and the Operator is operating the vehicles under this Agreement.
- d. For the sake of brevity, the aggregate of the maximum sums insured under the insurance taken out by the Operator pursuant to this Article are herein referred to as the “Insurance Cover”.
- e. The Operator shall be responsible for making annual premium payments for the Insurance Cover taken.
- f. Evidence of Insurance Cover: The Operator shall provide to PMPML copies of all insurance policies (or appropriate endorsements, certifications or other satisfactory evidence of insurance including copies of all premium payment receipts, renewals) obtained by him in accordance with this Agreement from time to time.
- g. Such insurance shall not be cancelled, changed or terminated until the expiry of at least 45 (forty five) days after written notice of such cancellation, change or termination has been given to PMPML in writing.
- h. The Operator shall appear in the Motor Accident Claim Tribunal (MACT) Court in Pune jurisdiction on filing of application by the petition in respect of the Buses and the Operator hereby indemnifies PMPML from any liability arising from such claims.
- i. The Operator shall indemnify PMPML for all accident compensation claims even after expiry of this Agreement.

5.5 Accidents and Safety

- a. The Operator shall develop, implement and administer a surveillance and safety program for the Project and the users thereof and its labour and personnel engaged in the provision of any services under any of the Project Contracts, including correction of safety violations and deficiencies, and taking of all other actions necessary to provide a safe environment in accordance with Applicable Laws and Good Industry Practice.
- b. The Operator shall take all reasonable precautions for the prevention of accidents on or about the Buses and provide all reasonable assistance and emergency medical aid to accident victims.

- c. Maintain liaison with emergency service providers and seek necessary police assistance on payment of applicable charges for the provision of such services as are not provided in the normal course or are available only on payment.

5.6 Environmental Compliance

The Operator shall, at all times, ensure that all aspects of the Project Facilities and processes employed in the development thereof shall conform with the laws pertaining to environment, health and safety aspects, policies and guidelines related thereto. The Operator shall obtain and maintain from time to time all necessary clearances from empowered Government Agencies.

5.7 Shareholding

The shareholding pattern of Lead Consortium Member shall be minimum 51% and that of the Technical Consortium Member shall be of minimum 26% in the total paid up equity capital of the SPC. The Lead Consortium Member can dilute its paid up equity capital from 51% to 26% only after 5 (five) years from the Appointed Date. And the Technical Consortium Member has to maintain its paid up equity capital up till 5 (five) years from the Appointed Date.

5.8 Taxes and Charges

The Operator shall pay in a timely manner all taxes, duties, levies, cess and charges including but not limited to income tax, sales tax, service tax, road tax, excise duty, customs duty and property tax and other rates and taxes that may be levied, claimed or demanded from time to time by any Government Authority including any increase therein effected from time to time from any Government Authority, in respect of the Project.

5.9 Post Operation & Maintenance Obligations

Upon expiry or earlier termination of the Agreement, the Operator shall return back the possession of Project Facilities and such other assets, handed over to Operator by PMPML for the implementation of this Project.

5.10 General Obligations

The Operator shall at its own cost and expense:

- a. comply with the Applicable Permits and approvals of Government Agencies;
- b. comply with the requirements, guidelines etc laid down by the relevant and applicable laws in India;
- c. Procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project;
- d. Make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of its obligations under this Agreement and shall be solely

responsible for compliance with all labour laws and solely liable for all possible claims and employment related liabilities of its staff employed in relation with the Project and hereby indemnify PMPML against any claims, damages, expenses or losses in this regard and that in no case and shall for no purpose PMPML be treated as employer in this regard;

- e. Be solely liable for all possible losses and claims in relation to any environmental damages caused during the operations of Buses and hereby indemnify PMPML against any claims, damages, expenses or losses in this regard.
- f. Make its own arrangements for procuring materials and observe and fulfil the environmental and other requirements under the Law and Applicable Permits;
- g. Ensure that the Project Facilities remains free from any encroachments and take all steps necessary to remove encroachments that are at the site subsequently, if any;
- h. Allow access to the Buses to the authorised representatives of the PMPML, GoM and Government Agency for the purpose of ascertaining compliance with the terms, covenants and conditions of this Agreement;
- i. Pay all Charges applicable pertaining to the Buses and Project Facilities;

5.11 No Breach of Obligations

The Operator shall not be considered to be in breach of its obligations under this Agreement nor shall it incur or suffer any liability if and to the extent performance of any of its obligations under this Agreement is affected by or on account of any of the following:

- i. Force Majeure Event, subject to Article 10;
- ii. PMPML Event of Default;
- iii. Compliance with the instructions of PMPML or the directions of any Government Agency other than instructions issued as a consequence of a breach by the Operator of any of its obligations hereunder.

6 PMPML’s Obligations

In addition to and not in derogation or substitution of any of its other obligations under this Agreement, PMPML shall have the following obligations:

- a. PMPML shall at its best endeavour plan the schedule for each of routes in such a way that atleast 5000 (five thousand) kms are operated per Bus in a month.
- b. PMPML shall before issuing the Operations Plan to the Operator shall intimate the Operator the route and the route distance. A joint survey of the route distance can be undertaken by PMPML and the Operator at a method generally acceptable to PMPML.
- c. PMPML shall deploy official or may appoint any external party for monitoring the Service Quality Performance Parameters as elaborated under Schedule III.

- d. Provide the Operations Plan for the bus operations to the Operator. PMPML may, from time to time, change/modify the bus schedules and frequencies along designated routes provided in the Operations Plan. The operator(s) along that particular route shall adhere to the modified plan within a period of one day.
- e. Monitor, through its own team or through representatives the Project.
- f. Facilitate clearances from Government Agencies on a reasonable effort basis.
- g. Facilitate in a timely manner all such authorisations which the Operator may require or is obliged to seek from PMPML under this Agreement, in connection with the implementation of the Project and the performance of its obligations.

7 Computation of monthly Royalty Charges

- a. The formulae for computation of Royalty Charges payable by Operator to PMPML shall be in the following manner

$$M_R = [(O_{km} \times R_{km}) + P] \times S_{tax}$$

where

M_R - Monthly Royalty Charges payable by the Operator to PMPML

O_{km} – Total kilometres operated by the 50 AC buses during the month

R_{km} – Royalty Charges in Rupees per kilometre quoted by the Operator in the Commercial Offer

P – Penalties imposed by PMPML as per Schedule_____

S_{tax} – Applicable service tax at the time of payment of monthly Royalty Charge by the Operator
PMPML on a daily basis shall maintain a record of each AC Bus operated by the Operator on the designated routes to compute O_{km} which shall be computed in the following manner.

$$O_{km} = RL_{km} \times T_{B1} \times B_n \times D_n$$

where

RL_{km} – Route length in kilometers

T_{B1} – Number of trips per Bus per day. For avoidance of doubt, one trip shall imply operation from start point to end point and end point to start point.

B_n – Number of Buses operated during the day

D_n – Number of calendar days during the month

8 Payment of Royalty Charges to PMPML

- a. The Operator shall pay to PMPML the Royalty Charges as quoted in the Commercial Proposal for the Operation Period.
- b. The Operator shall pay the Royalty Charges to PMPML on a monthly basis within 7 (seven) calendar days from the start of each month.
- c. Any delay in making any payment by the Operator in accordance with the payment schedule shall, in addition and without prejudice to any other consequences under this Agreement, entail penalty for the delay in payment computed at a rate of 1.5% per month on the amount due from the payment due date to the actual payment date.
- d. All payments by the Operator to the PMPML shall be made by way of demand draft from a scheduled or a nationalised bank in favour of, “Managing Director, PMPML” payable at Pune.

9 Indemnity

- a. The Operator agrees to indemnify and hold harmless PMPML and its officers and employees (each known as “PMPML Indemnified Party”) promptly upon demand at any time and from time to time, from and against any and all losses, claims, damages, liabilities, costs (including reasonable attorneys' fees and disbursements) and expenses (collectively known as “Losses”) to which PMPML Indemnified Party may become subject, insofar as such Losses directly arise out of, in any way relate to, or result from:
 - i. any mis-statement or any breach of any representation or warranty made by Operator or
 - ii. the failure by Operator to fulfil any agreement, covenant or condition contained in this Agreement, including without limitation the breach of any terms and conditions of this Agreement by any employee or agent or Contractors of the Operator or
 - iii. any claim or proceeding by any third party against PMPML arising out of any act, deed or omission by the Operator.
 - iv. all liabilities arising from any decision of the tribunal, including Motor Accident Claim Tribunal (MACT) or any court of law.

For the avoidance of doubt, indemnification of Losses pursuant to this article shall be made in an amount or amounts sufficient to restore each PMPML Indemnified Party to the financial position it would have been in had the Losses not occurred.

- b. PMPML agrees to indemnify and hold harmless the Operator and its officers and employees (each known as “Operator Indemnified Party”) promptly upon demand at any time and from time to time, from and against any and all losses, claims, damages, liabilities, costs (including reasonable attorneys' fees and disbursements) and expenses (collectively known as “Losses”) to which Operator Indemnified Party may become subject, insofar as such Losses directly arise out of, in any way relate to, or result from:
 - i. any mis-statement or any breach of any representation or warranty made by PMPML or

- ii. the failure by PMPML to fulfil any agreement, covenant or condition contained in this Agreement, including without limitation the breach of any terms and conditions of this Agreement by any employee of PMPML or
- iii. any claim or proceeding by any third party against Operator arising out of any act, deed or omission by the PMPML.

For the avoidance of doubt, indemnification of Losses pursuant to this article shall be made in an amount or amounts sufficient to restore each Operator Indemnified Party to the financial position it would have been in had the Losses not occurred.

- c. Any payment made under this Agreement pursuant to an indemnity or claim for breach of any provision of this Agreement shall be net of applicable Taxes.

10 Force Majeure and Change in Law

10.1 Force Majeure

10.1.1 Force Majeure Event

Force Majeure shall mean any event or circumstance or combination of events or circumstances set out below that materially and adversely affects any Party in the performance of its obligations in accordance with the terms of this Agreement, but only if and to the extent that such events and circumstances pertains to the Project or has a direct effect on the operations of the Buses, which are not within the Affected Party's reasonable control, and/or the effects of which the Affected Party could not have prevented through prudent business practices or, through reasonable skill and care, including through the expenditure of reasonable sums of money;

- a. Natural Force Majeure
 - i. earthquake, flood, inundation and landslide
 - ii. storm, tempest, hurricane, cyclone, lightning, thunder or other extreme atmospheric disturbances
 - iii. fire caused by reasons not attributable to the Operator or any of the employees, Contractors or agents appointed by the Operator for purposes of the Project;
- b. Indirect Political Force Majeure
 - i. acts of terrorism;
 - ii. strikes, labour disruptions or any other industrial disturbances not arising on account of the acts or omissions of the Operator
 - iii. War, hostilities (whether declared or not), invasion, act of foreign enemy, rebellion, riots, weapon conflict or military actions, civil war, ionising radiation, contamination by radioactivity from nuclear fuel, any nuclear waste, radioactive toxic explosion, volcanic eruptions, any failure or delay of a Contractor caused by the events mentioned in this sub clause 10.1 b (iii) for which no offsetting compensation is payable to the Operator by or on behalf of the Contractor.

- iv. early termination of this Agreement by PMPML for reasons of national emergency or national security.
- c. Direct Political Force Majeure action of a Government Agency having Material Adverse Effect including but not limited to
 - i. acts of expropriation, compulsory acquisition or takeover by any Government Agency of the Project / Buses or any part thereof or of the Operator's or the Contractor's rights in relation to the Project when there exists no default by the Operator,
 - ii. any judgement or order of a court of competent jurisdiction or statutory authority made against the Operator or the Contractor in any proceedings which is non-collusive and duly prosecuted by the Operator, and
 - iii. any unlawful, unauthorised or without jurisdiction refusal to issue or to renew or the revocation of any Applicable Permits, in each case, for reasons other than Operator's breach or failure in complying with the specifications mentioned under this Agreement, the Operations Plan, Applicable Laws, Applicable Permits, any judgement or order of a Governmental Agency or of any contract by which the Operator or the Contractor as the case may be is bound.

10.1.2 Exclusions from Force Majeure Event

Force Majeure shall expressly not include the following conditions, except to the extent resulting from a Force Majeure:

- a. Unavailability, late delivery or changes in cost of machinery, equipment, materials, spare parts or consumables for the Project;
- b. A delay in the performance of any contractor or supplier
- c. An indirect effect on the operations of the Project
- d. Non- performance resulting from normal wear and tear typically experienced in a Project of this kind; and non- performance caused by, or connected with, the non-confirming party's (a) negligent or intentional acts, errors or omission (b) failure to comply with any of the Laws of India, or (c) breach of, or default under this Agreement.
- e. Failure to follow Good Industry Practices

10.1.3 Notice of Force Majeure Event

- a. As soon as practicable and in any case within 7 days of the date of occurrence of a Force Majeure Event or the date of knowledge thereof, the Affected Party shall notify the other party of the same setting out, inter alia, the following in reasonable detail:
 - i. the nature and extent of the Force Majeure Event;
 - ii. the estimated Force Majeure Period;
 - iii. the estimated period of impact of such Force Majeure Event;

- iv. the nature of and the extent to which, performance of any of its obligations under this Agreement is affected by the Force Majeure Event;
 - v. 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 performance of such of its obligations affected thereby; and
 - vi. any other relevant information concerning the Force Majeure Event, and / or the rights and obligations of the Parties under this Agreement.
- b. As soon as practical and in any case within 5 days of notification by the Affected Party in accordance with the preceding clause (a), the Parties shall if applicable meet and hold discussions in good faith and where necessary conduct physical inspection of the Buses and the Project Facilities in order to:
- i. assess the impact of the underlying Force Majeure Event,
 - ii. to determine the likely duration of Force Majeure Period and,
 - iii. 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.
- c. The Affected Party shall during the Force Majeure Period provide to the other Party regular (not less than weekly) reports concerning the matters set out in the preceding clause (b) as also any information, details or document, which the other Party may reasonably require.

10.1.4 Performance of Obligations

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 obligations 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 by the preceding Article 10.1.3;
- b. the excuse from performance shall be of no greater scope and of no longer duration than is necessitated by the impact period of such Force Majeure Event;
- c. the Affected Party has taken all reasonable efforts to avoid, prevent, mitigate and limit damage, if any, caused or is likely to be caused to the Facilities / as a result of the Force Majeure Event and to restore the Facilities, in accordance with the Good Industry Practice and its relative 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 a 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 for 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 this 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.

10.2 Change in Law

- a. Change in Law shall mean the occurrence or coming into force of any of the following, after the Agreement Date:
 - i. enactment of any new Applicable Law;
 - ii. the repeal in whole or in part (unless re-enacted with the same effect) or modification of any existing Applicable Law;
 - iii. enactment of any other tax applicable in lieu of service tax to be paid or payable on the payment due to the PMPML;
 - iv. the change in interpretation or application of any Applicable Law;
 - v. the imposition of a requirement for an Applicable Permit (s) (other than for cause) not required on the date of this;
 - vi. after the date of grant of any Applicable Permit (s), a change in the terms and conditions attaching to such Applicable Permit (s) (other than for cause) or the attachment of any new terms and conditions to an Applicable Permit (s)(other than for cause);
- b. Provided that Change in Law shall not include:
 - i. coming into effect, after the Appointed Date, of any provision or statute which is already in place as of the Appointed Date,
 - ii. 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 Appointed Date which is a matter of public knowledge,
 - iii. any change in the rates of the taxes except service tax or the imposition of new tax.
- c. Subject to Change in Law resulting in Material Adverse Effect and subject to the Operator taking necessary measures to mitigate the impact or likely impact of Change in Law on the Project, if as a consequence of a Change in Law, the Operator is obliged to incur Additional Costs or if the Operator enjoys a reduction in the cost and/ or is financially benefited, then, the Parties may by mutual consent modify the terms of the Agreement.
- d. Upon occurrence of a Change in Law, the Operator may, notify PMPML of the following:
 - i. the nature and the impact of Change in Law on the Project
 - ii. in sufficient detail, the estimate of the Additional Cost likely to be incurred by the Operator on account of Change in Law

- iii. the measures, which the Operator has taken or proposes to take to mitigate the impact of Change in Law, including in particular, minimising the Additional Cost
- iv. the relief sought by the Operator
- g. Upon receipt of the notice of Change in Law issued by the Operator pursuant to preceding sub-article (d), PMPML and the Operator shall hold discussions and take all such steps as may be necessary as to determine the quantum of relief to be provided by the PMPML to the Operator. However, in case the Operator has a desirable impact and has benefited through such Change in Law then PMPML shall again determine the quantum of amount to be deducted from the payments to be made to the Operator.

11 Events of Default

11.1 Events of Default

Event of Default shall mean either the Operator Event of Default or the PMPML Event of Default or both as the context may require.

11.1.1 Operator Event of Default

Any of the following events shall constitute an Event of Default by the Operator ("Operator Event of Default") unless such event has occurred as a result of one or more reasons set out under Article 5.11.

- a. The Operator has failed to procure and deploy the Buses as per the Agreement
- b. The Operator fails to provide the Performance Security or replenish the amount as mentioned under Article 5.1.1.
- c. The Operator fails to pay the Royalty Charge amount due to the PMPML within further period of 30 (thirty) days from the expiry of number of days.
- d. The Operator has failed to operate at least 90% (ninety percent) of the buses for more than 5 (five) days in a month and in accordance with the Article 5.3 (b).
- e. The Operator fails to procure and maintain the Insurance Cover as mentioned under Article 5.4.
- f. The Operator fails to obtain and maintain the Applicable Permits and clearances from concerned authorities under applicable Laws and ensure legal compliance with labour laws and other statutes applicable.
- g. The Operator fails to adhere to the specifications for Project Facilities under this Agreement, the Obligations under this Agreement, the Operations Plan during the course of the implementation of the Project.
- h. The Operator fails to adhere with the key principles and specifications of operating and maintaining the Buses as prescribed in the Operations Plan.
- i. The Operator is found interfering or causing damage to the properties of PMPML or others during the course of Operations Period.

- j. The Operator is in a Material Breach of any of its obligations and the same has not been remedied for more than 60 (sixty) days from the date of Notice of Intent to Terminate.
- k. Any representation made or warranty given by the Operator under this Agreement is found to be false or misleading.
- l. The Operator abandons the Project.
- m. The Operator has unlawfully repudiated this Agreement or has otherwise expressed an intention not to be bound by this Agreement.
- n. The Operator has suffered an attachment levied on any of its assets which has caused or is likely to cause a Material Adverse Affect on the Project and such attachment has continued for a period exceeding 90 days.

11.1.2 PMPML Event of Default

Any of the following events shall constitute an event of default by PMPML ("PMPML Event of Default"), when not caused by an Operator Event of Default or a Force Majeure Event:

- a. PMPML is in Material Breach of any of its obligations under this Agreement and has failed to cure such breach within 60 (sixty) days of receipt of notice thereof issued by the Operator.
- b. PMPML has unlawfully repudiated this Agreement or otherwise expressed its intention not to be bound by this Agreement.
- c. Any representation made or warranties given by the PMPML under this Agreement has been proved to be false or misleading.

12 Termination

12.1 Termination Procedure

- a. In case of Force Majeure
 - i. If a Force Majeure Event continues or is in the reasonable judgement of the Parties likely to continue beyond a period of 365 days, the Parties may mutually decide to terminate this Agreement or continue this Agreement on mutually agreed revised terms. If the Parties are unable to reach an agreement in this regard, the Affected Party shall after the expiry of the said period of 365 days, be entitled to terminate this Agreement.
 - ii. Notwithstanding anything inconsistent contained in this Agreement, if a Force Majeure Event is an event described under Articles 10.1.1 (c) and the same subsists for a period exceeding 365 days, then either Party shall be entitled to terminate this Agreement. Provided that PMPML may at its sole discretion have the option to terminate this Agreement any time after the occurrence of any event described under Articles 10.1.1 (c).
- b. For Operator Event of Default

- i. Without prejudice to any other right or remedy which PMPML may have in respect thereof under this Agreement, upon the occurrence of a Operator Event of Default, PMPML shall be entitled to terminate this Agreement in the manner as set out under the subsequent sub clause.
 - ii. If PMPML decides to terminate this Agreement pursuant to preceding Article 12.1 (b) (i), it shall in the first instance issue a Notice of Intent to Terminate to the Operator. Within 30 (thirty) days of receipt of the Notice of Intent to Terminate, the Operator shall submit to PMPML in sufficient detail, the manner in which it proposes to cure the underlying Event of Default if any (the “Operator’s Proposal to Rectify”). In case of non-submission of the Operator’s Proposal to Rectify within the said period of 60 (sixty) days, PMPML shall be entitled to terminate this Agreement by issuing a Termination Notice.
 - iii. If the Operator’s Proposal to Rectify is submitted within the period stipulated thereof, the Operator shall have further period of 60 (sixty) days from the date of submission of Operator’s Proposal to Rectify to remedy / cure the underlying Event of Default (“Cure Period”). If, however the Operator fails to remedy / cure the underlying Event of Default within such further period allowed, PMPML shall be entitled to terminate this Agreement, by issue of a Termination Notice.
- c. For PMPML Event of Default
- i. Without prejudice to any other right or remedy which the Operator may have in respect thereof under this Agreement, upon the occurrence of PMPML Event of Default, the Operator shall be entitled to terminate this Agreement by issuing a Termination Notice.
 - ii. If the Operator decides to terminate this Agreement pursuant to preceding Article 12.1 (c) (i) it shall in the first instance issue Notice of Intent to Terminate to PMPML. Within 30 (thirty) days of receipt of Notice of Intent to Terminate, PMPML shall forward to the Operator its proposal to remedy / cure the underlying Event of Default (“PMPML’s Proposal to Rectify”). In case of non submission of PMPML’s Proposal to Rectify within the period stipulated thereof, the Operator shall be entitled to terminate this Agreement by issuing a Termination Notice.
 - iii. If PMPML’s Proposal to Rectify is forwarded to the Operator within the period stipulated thereof, PMPML shall have a further period of 60 (sixty) days from the date of submission of PMPML’s Proposal to Rectify to remedy / cure the underlying Event of Default. If, however PMPML fails to remedy / cure the underlying Event of Default within such further period allowed, the Operator shall be entitled to terminate this Agreement by issuing a Termination Notice.

12.2 Termination Notice

If any Party, having become entitled to do so, decides to terminate this Agreement pursuant to the preceding Article 12.1, it shall issue a Termination Notice setting out;

- i. in sufficient detail the underlying Force Majeure Event / Event of Default as applicable;
- ii. the Termination Date which shall be a date occurring not earlier than 30 (thirty) days from the date of Termination Notice;
- iii. the estimated Termination Payment including the details of computation thereof and;

- iv. any other relevant information.

12.3 Obligation of Parties

Following the issue of Termination Notice by either Party, the Parties shall promptly take all such steps as may be necessary or required to ensure that;

- i. until Termination, the Parties shall, to the fullest extent possible, discharge their respective obligations so as to maintain the continued operation of the Buses and Project Facilities;
- ii. the Termination Payment, if any, payable by PMPML in accordance with the following Article 12.5 is paid to the Operator on the Termination Date and
- iii. the Facilities are handed back to PMPML as instructed by PMPML, by the Operator on the Termination Date free from any Encumbrance.

12.4 Withdrawal of Termination Notice

Notwithstanding anything inconsistent contained in this Agreement, if the Party who has been served with the Termination Notice cures the underlying Event of Default to the satisfaction of the other Party at any time before the Termination occurs, the Termination Notice shall be withdrawn by the Party which had issued the same. Provided that, the Party in breach shall compensate the other Party, for any direct costs / consequences, occasioned by the Event of Default, which caused the issue of the Termination Notice.

12.5 Termination Payment and Effect

12.5.1 Payment during Operator Event of Default

- a. If the Agreement is terminated due to Operator Event of Default then notwithstanding anything to the contrary contained in this Agreement, the Parties hereby agree that the Lenders shall without prejudice to any other remedy available to them, have the option to propose to PMPML the substitution of the Operator by another suitable operating company (i.e. a Proposed Operator) having similar or better experience than the Operator. Upon the receipt of the Lender's proposal, PMPML shall at its discretion have the right to accept such substitution of the Operator on such terms and conditions as it may deem fit.
- b. Operator shall not be entitled to receive any termination payment from PMPML.
- c. PMPML shall forfeit and en-cash the entire Performance Security of the Operator. In the event, the amount to be recovered from the Operator is not fulfilled from the Performance Security, then, PMPML shall have the right to hypothecate the assets to the extent of outstanding amount.
- d. PMPML shall take exclusive possession and control of Project Facilities,
- e. PMPML shall prohibit the Operator and any person claiming through or under the Operator from entering upon the Project Facilities as mentioned in the above sub clause and dealing with or any part thereof.

12.5.2 Payment during PMPML Event of Default

- a. Occurrence of PMPML event of default within 5 (five) years from the commencement of the Operations Period:
 - i. If the Agreement is terminated due to PMPML Event of Default, then the Performance Security of the Operator shall be released, provided PMPML shall be entitled to deduct any amounts as per the provisions mentioned in this Agreement before the Operator can appropriate. Further the Operator shall be paid an amount equivalent to the amount of the Performance Security within a period of 30 days from the date of Termination.
 - ii. PMPML shall takeover the debt due to the extent of the principal of the debt amount and further states that it shall not be liable to pay any interest, charges, penalties or any other liability incurred by the Operator on the debt or debt due amount.
 - iii. The Operator shall pay Royalty Charges due to PMPML as per this Agreement when the Termination notice is served.
- b. Occurrence of PMPML event of default after 5 (five) years from the commencement of the Operations Period:
 - i. If the Agreement is terminated due to PMPML Event of Default, then the Performance Security of the Operator shall be released, provided PMPML shall be entitled to deduct any amounts as per the provisions mentioned in this Agreement before the Operator can appropriate. Further the Operator shall be paid an amount equivalent to 50% (fifty) the amount of the Performance Security within a period of 30 days from the date of Termination.
 - ii. PMPML shall takeover the debt due to the extent of the principal of the debt amount and further states that it shall not be liable to pay any interest, charges, penalties or any other liability incurred by the Operator on the debt or debt due amount.
 - iii. The Operator shall pay Royalty Charges due to PMPML as per this Agreement when the Termination notice is served.

12.5.3 Payment in case of Force Majeure Event

If the termination is due to any Force Majeure Event mentioned under Article 10.1.1(a), (b) and (c) then PMPML shall release the Performance of the Operator after deducting any amounts as per the provisions mentioned under this Agreement. Also PMPML shall undertake to takeover the debt due to the extent of the principal of the debt amount and further states that it shall not be liable to pay any interest, charges, penalties or any other liability incurred by the Operator on the debt amount.

12.6 Liability for other losses, damages etc.

Save and except as expressly provided in this Article 10, neither Party hereto shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event.

12.7 Accrued Rights of Parties

Notwithstanding anything to the contrary contained in this Agreement, Termination pursuant to any of the provisions of this Agreement shall be without prejudice to accrued rights of either Party including its right to claim and recover money damages and other rights and remedies which it may have in law or contract. The rights and obligations of either Party under this Agreement, including without limitation those relating to the Termination Payment, shall survive the Termination but only to the extent such survival is necessary for giving effect to such rights and obligations.

13 Handback of Project Facilities

The Operator shall at the end of the Operations period hand back the Project Facilities to PMPML free of cost and in good operable condition.

- a. At least 3 months before the expiry of the Operation Period a joint inspection of the the Project Facilities shall be undertaken by PMPML, Project Officer and the Operator. PMPML/ Project Officer shall, within 15 days of such inspection prepare and furnish to the Operator a list of works/ jobs, if any, to be carried out. The Operator shall promptly undertake and complete such works/ jobs at least 1 month prior to the expiry of the Operations Period and ensure that the Project Facilities continue to meet such requirements until the same are handed back to PMPML.
- b. PMPML/ Project Officer shall within 15 (fifteen) days of the joint inspection undertaken under preceding clause (a) prepare and furnish to the Operator a list of items, if any, with corresponding distinctive descriptions, which are to be handed back to PMPML..
- c. The Operator hereby acknowledges PMPML's rights upon termination of this Agreement, PMPML shall upon making the termination payment, if any, to the PMPML have the power and authority to:
 - i. Enter upon and take possession and control of the Project Facilities forthwith;
 - ii. Prohibit the Operator and any person claiming through or under the Operator from using/dealing with the Project Facilities;
 - iii. Notwithstanding anything contained in this Agreement, PMPML shall not, as a consequence of termination or otherwise, have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment, continuance or regularisation of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by the Operator in connection with the project, and the handover of the Project Facilities by the Operator to PMPML shall be free from any such obligation.
- d. The ownership of the Buses shall rest with Operator at all time during and after the Operations Period. All Buses, including all improvements made therein, by the Operator, shall at all time vest with the Operator.

14 Dispute Resolution

14.1 Amicable Resolution

- a. Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in relation to this Agreement, including those arising with regard to acts, decision or opinion of the Project Officer (the "Dispute") shall in the first instance be attempted to be resolved amicably in accordance with the procedure set forth in sub clause (b) below.
- b. The Parties may refer such Dispute to the Joint Managing Director of PMPML and the Managing Director of the Operator, for amicable settlement. Upon such reference, the Parties 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 settled within 15 (fifteen) days of such meeting between the two Parties, then either Party may refer the Dispute to the Chairman and Managing Director of PMPML and if still the Dispute is not amicably settled within 15 (fifteen) days of issue referred to the Chairman and Managing Director of PMPML, then the Parties agree to refer the Dispute to the Divisional Commissioner of Pune Division.
- c. The place of dispute resolution shall ordinarily be Pune but by agreement of the Parties, the proceedings, if required, may be held elsewhere.
- d. The Parties agree that the decision or award resulting from arbitration shall be final and binding upon the Parties and shall be enforceable subject to the rights of the aggrieved parties to secure relief from any higher forum.

14.2 Performance during Dispute

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

15 Miscellaneous

15.1 Governing Law and Jurisdiction

This Agreement shall be governed by the laws of India. The Courts at Pune shall have jurisdiction over all matters arising out of or relating to this Agreement.

15.2 Waiver

- a. Waiver by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:
 - i. shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligations under this Agreement;

- ii. shall not be effective unless it is in writing and executed by a duly authorised representative of such Party; and
 - iii. shall not affect the validity or enforceability of this Agreement in any manner.
- b. Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation hereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver / breach of any terms, conditions or provisions of this Agreement.

15.3 Survival

Termination of this Agreement

- a. shall not relieve the Operator or PMPML of any obligations already incurred hereunder which expressly or by implication survives Termination hereof, and
- b. except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

15.4 Amendments

This Agreement and the Schedules together constitute a complete and exclusive understanding of the terms of the Agreement between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless agreed to by all the Parties hereto and evidenced in writing.

15.5 Notices

Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term, breach of any term of this Agreement and termination of this Agreement, shall be in writing and shall be given by hand delivery, recognised international courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

If to the PMPML:

Authorised Representative

The,
The Chairman and Managing Director
Pune Mahanagar Parivahan Mahamandal Limited,
PMT Building, Shankarseth Road, Swargate,
Pune – 411037
Maharashtra, India
Ph: 020-24440417, Fax: 020-24445490

If to the Operator:

Authorised Representative,

Or such address, telex number, or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered

in the case of any communication made by letter, when delivered by hand, by recognised international courier or by mail (registered, return receipt requested) at that address, and

in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

15.6 Severability

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

15.7 Language

All notices required to be given under this Agreement and all communications, documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

15.8 Exclusion of Implied Warranties etc.

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

15.9 Counterparts

This Agreement may be executed in 3 counterparts, each of which when executed and delivered shall constitute an original of this Agreement but shall together constitute one and only the Agreement.

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

SIGNED SEALED AND DELIVERED

For and on behalf of PMPML by:

(Signature)

(Name)

(Designation)

For and on behalf of Operator by:

(Signature)

(Name)

(Designation)

In the presence of:

1)

2)

Schedule I. Performance Security

(Proforma of Bank Guarantee)¹

THIS DEED OF GUARANTEE executed on this the _____ day of _____ at _____ by _____ (*Name of the Bank*) having its Registered office at _____ and which has a branch in Pune at _____ hereinafter referred to as “the Guarantor” which expression shall unless it be repugnant to the subject or context thereof include successors and assigns;

In Favour of

Pune Mahanagar Parivahan Mahamandal Limited (hereinafter called “PMPML”), having its principal office at PMT Building, Shankarseth Road, Swargate, Pune – 411037, which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns;

Whereas

By the Agreement (“the Agreement”) being entered into between PMPML and _____, a company incorporated under the Companies Act, 1956, having its registered office at _____, (“the Operator”), the Operator has been granted the operations rights to operate the Project for the **Selection of Bus Operator in Pune Metropolitan Area for Procurement and Operation & Maintenance of Air Conditioner (AC) Buses on a Public Private Partnership (PPP) basis** (hereinafter referred to as “the Project”).

- A. In terms of Article 5.1.1 of the Agreement, the Operator is required to furnish to PMPML, an unconditional and irrevocable bank guarantee for an amount of Rs. _____/- (Rupees _____ only) as security for due and punctual performance / discharge of its obligations under the Agreement.
- B. At the request of the Operator, the Guarantor has agreed to provide bank guarantee, being these presents guaranteeing the due and punctual performance / discharge by the Operator of its obligations relating to the Project.

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS:

Capitalised terms used herein but not defined shall have the meaning assigned to them respectively in the Agreement.

1. The Guarantor hereby irrevocably guarantees the due and punctual performance by M/s _____ (hereinafter called “the Operator”) of all its obligations relating to the Project and in connection with achievement of obligations of the Operator in accordance with the Operator Agreement.
2. The Guarantor shall, without demur, pay to PMPML sums not exceeding in aggregate Rs. _____/- (Rupees _____ only), within five (5) calendar days of receipt of a written demand

¹ To be issued by a Scheduled/ Nationalised Bank in India

thereof from PMPML stating that the Operator has failed to meet its obligations under the Agreement. The Guarantor shall not go into the veracity of any breach or failure on the part of the Operator or validity of demand so made by PMPML and shall pay the amount specified in the demand notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Operator or any other Person. The Guarantor's obligations hereunder shall subsist until all such demands are duly met and discharged in accordance with the provisions hereof.

3. In order to give effect to this Guarantee, PMPML shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the Agreement or other documents or by the extension of time for performance granted to the Operator or postponement/ non exercise / delayed exercise of any of its rights by PMPML or any indulgence shown by PMPML to the Operator and the Guarantor shall not be relieved from its obligations under this Guarantee on account of any such variation, extension, postponement, non exercise, delayed exercise of any of its rights by PMPML or any indulgence shown by PMPML, provided nothing contained herein shall enlarge the Guarantor's obligation hereunder.
4. This Guarantee shall be irrevocable and shall remain in full force and effect until _____² unless discharged / released earlier by PMPML in accordance with the provisions of the Agreement. The Guarantor's liability in aggregate be limited to a sum of Rs. _____/- (Rupees _____ Only).
5. This Guarantee shall not be affected by any change in the constitution or winding up of the Operator / the Guarantor or any absorption, merger or amalgamation of the Operator / the Guarantor with any other Person.
6. The Guarantor has power to issue this guarantee and discharge the obligations contemplated herein, and the undersigned is duly authorised to execute this Guarantee pursuant to the power granted under _____.

IN WITNESS WHEREOF THE GUARANTOR HAS SET ITS HANDS HEREUNTO ON THE DAY, MONTH AND YEAR FIRST HEREINABOVE WRITTEN.

SIGNED AND DELIVERED

by _____ Bank

by the hand of Shri _____

its _____ and authorised official.

² Six months from the date of signing of the Agreement

Schedule II. Joint Deed Agreement

Note: Annex the duly registered and stamped Agreement which was submitted during the RFP stage.

Schedule III. Service Quality Performance Parameters and Penalties

S. No.	Performance Parameters	Amount of Penalty for event of occurrence in a month (Rs)			
		First occurrence	Second occurrence	Third occurrence	Fourth occurrence
1.	Withdrawal of Bus for one day without permission (Penalty per day)	300	400	500	Liabe for Termination of the Agreement
2.	Withdrawal of Bus for more than one day continuously without permission (Penalty per day)	300	400	500	Liabe for Termination of the Agreement
3.	Non-operation of a Bus for more than 10 (ten) days continuously	Liabe for Termination of the Agreement			
4.	Disobedience and misbehaviour on part of driver and/or any staff of the Operator	100	150	200	300
5.	Not stopping of Bus at designated stop for checking purposes without justifiable cause	100	150	200	300
6.	Non-compliance to schedules of trips	150	250	350	500
7.	Deliberate non-adherence of schedule timings/routes/bus-stop	Driver shall be changed for the next working day			
8.	Any activity detrimental to PMPML or public interest	100	150	200	300
9.	Deliberate non-reporting to duty on time	100	200	300	400
10.	Insurance policy not in force, anytime during the Operations Period	100	200	300	400
11.	Any other offence	As fixed by PMPML from time to time			

Schedule IV. Technical Specifications of Buses

S. No.	Particular	Details
1	Seating Capacity	43 passengers
2	Chassis Length	12 meter long
3	Floor height	900 mm
4	Door Opening	The Bus should have door opening on both right and left side of the Bus for passengers to board and alight
5	Others	Air Condition Buses