

Request for Qualification and Proposal for Selection of Private Operator for City Bus Operations in Faridabad

**CNG Fuelled AC & Non-AC 650 mm
Floor Height Midi (BS-IV) Buses (90)**

RFQP – Part II

Draft Concession Agreement

Tender Reference No. – FSCL/2019/740

Date – 01.08.2019

Faridabad Smart City Limited

PART II – DRAFT CONCESSION AGREEMENT

CONCESSION AGREEMENT

between

FARIDABAD SMART CITY LIMITED

(“FSCL”)

and

<Name of the Concessionaire>

(“Concessionaire”)

FOR CITY BUS OPERATIONS IN FARIDABAD

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This Concession Agreement is mutually agreed and entered into on this ___ day of _____, 20XX at Faridabad.

BETWEEN

Faridabad Smart City Limited, a company duly incorporated under the provisions of the Companies Act, 2013 with CIN --- having its office at Plot No. 35, Nain Sadan, Sector 20A, Behind EF3 Mall, Near Old Faridabad Metro Station, Faridabad, Haryana 121002 (hereinafter referred to as “**FSCL**” which expression shall unless repugnant to the context or meaning hereof mean and include its successors and assigns) of the First Part;

AND

<Name of the Concessionaire>, a company duly incorporated under the provisions of the Companies Act, 2013 with CIN _____ having its registered office at _____(hereinafter referred to as “**the Concessionaire**”, which expression shall unless repugnant to the context hereof mean and include the administrators, successors and permitted assigns) of the Second Part.

WHEREAS

- A. As part of its on-going efforts to provide a safer, efficient, reliable and better quality bus based public transport system for the benefit of commuters, Government of Haryana decided to set up FSCL and vesting therein the power/function to ensure provision of city bus service as contemplated hereunder.
- B. FSCL has appointed an entity as the program manager to manage and oversee the operations of the Project on its behalf (hereinafter referred to as the “Program Manager” or “PM”).
- C. FSCL had vide Request for Qualification and Proposal (RFQP) Document dated _____ 2019 invited proposals from eligible entities for undertaking the Project. Based on the qualification and other requirements, proposals were evaluated and those found eligible were shortlisted for evaluation of their price proposals.
- D. Consequent thereof and after due evaluation of the proposals received in response to the aforesaid RFQP Document, FSCL had accepted the proposal submitted by <Name of the selected bidder /Consortium> and issued its Letter of Acceptance No. _____ dated _____ (hereinafter called the “LOA”) to <Name of the selected bidder/Consortium> requiring, inter alia, the execution of this Concession Agreement within 30 (thirty) days of the date of issue thereof.
- E. {The selected bidder/ Consortium has since promoted and incorporated the Concessionaire as a limited liability company under the Companies Act 2013, and} has requested the FSCL to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the {selected bidder/

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Consortium under the LOA,} including the obligation to enter into this Concession Agreement pursuant to the LOA for undertaking the Project.

- F. {By its letter dated _____ the Concessionaire has also joined in the said request of the selected bidder/ Consortium to the FSCL to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the selected bidder/ Consortium including the obligation to enter into this Concession Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the selected bidder/ Consortium for the purposes hereof and has delivered to the FSCL a legal opinion with respect to the authority of the Concessionaire to enter into this Concession Agreement and the enforceability of the provisions thereof.
- G. The FSCL has agreed to the said request of the selected bidder/ Consortium and the Concessionaire, and has accordingly agreed to enter into this Concession Agreement with the Concessionaire for implementation of the Project, subject to and on the terms and conditions set forth hereinafter.

NOW THEREFORE IN CONSIDERATION OF THE PREMISES AND THE COVENANTS, TERMS AND CONDITIONS SET FORTH HEREINAFTER, THE SUFFICIENCY AND ADEQUACY OF WHICH THE PARTIES HEREBY ACKNOWLEDGE, THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATIONS

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

1.1. Definitions

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

“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. It also means this Concession Agreement including its Schedules and Annexures attached hereto, as of the date hereof or as may be amended or supplemented, from time to time, in accordance with the provisions hereto

“Annual Assured Bus Km” shall have the meaning as ascribed thereto in Clause 1.6 (e) of the Agreement.

“Annual Assured Payment Amount” shall have the meaning as ascribed thereto in Clause 1.6 of the Agreement

“Aggregate Fines” shall have the meaning as ascribed thereto in the Agreement.

“Assured Fleet Availability” shall have the meaning as ascribed thereto in the Agreement.

“Available Fleet” mean the Buses made available by the Operator to Authority for operations to meet the Assured Fleet Availability as per Agreement.

“Authority” means **Faridabad Smart City Limited (FSCL)** or its authorized representatives.

“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 **Error! Reference source not found.** to this Agreement.

“Authority’s Event of Default” shall have the meaning as ascribed thereto in the Agreement.

“Additional Service” means a Stage Carriage Service which the Concessionaire will provide to FSCL in accordance with the terms of this Agreement in addition to the Basic Services.

“Applicable Laws” includes any enactment, law, bye-law, rule, regulation, ordinance, scheme, notification, judgment, order, decree, injunction, writs or orders of any court of record, clearance, directive, guideline, policy, requirement, or any other governmental restriction or any similar form of decision of, or determination by, or any interpretation or administration or action 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 including any amendment/ modification made therein from time to time. It also includes 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.

“Applicable Clearances or Approvals” mean all clearances, authorizations, licenses, consents and approvals as defined hereinafter, required to be obtained or maintained under or pursuant to Applicable Laws, in order to implement the Project during the subsistence of this Agreement.

“Appointed Date” means the date of this Agreement.

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

“CBS” means City Bus Services,

“Bus Delivery Schedule” shall have the meaning as ascribed thereto in the Clause ----- of the Agreement.

“Bus Kilometre” means a kilometre travelled by a Contracted Bus as per this Agreement or as directed by the Authority

“Base Kilometre Charge Rate” 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

“Bus Permit” means the permit for operating Contracted Buses as required under Motor Vehicles Act, 1988 or any other Applicable Law from time to time.

“Bus Services” means the CBS bus services in Bus Service Area being implemented by the Authority in one or more phases in accordance with the terms of this Agreement.

“Bus Specification/Technical Specifications” shall mean the specifications of Contracted Buses including but not limited to design, power and ITS equipment on-board such as GPRS, GPS and PIS, Driver Console, CCTV cameras, etc. and other IT equipment and other details stipulated by the Authority during purchase of such buses.

- 1) **“Business Entity”** shall mean either of the following:
 - (i) a company (a public / private limited company, partnership, proprietary firms) in India incorporated under the Companies Act, 1956 or Companies Act, 2013, but excluding companies covered under Section 617 of the Companies Act, 1956 or Section 2(45) of the Companies Act, 2013; or
 - (ii) any Company incorporated outside India under equivalent law.

“Bus Stop/stations” means designated points as determined by the Authority, from time to time and notified to the Operator in writing, and such Bus Stops/stations are where Buses may stop for a short duration for passengers to embark onto the Bus or disembark from the Bus.

"Basic Services" means Stage Carriage Services provided by the Concessionaire.

“Bid” or “Proposal” means the documents in their entirety comprised in the bid submitted by the Successful Bidder/ Consortium in response to the RFQP in accordance with the provision thereof.

“Central /Depot Control Centre” means computerised central monitoring unit setup, audited and supervised by the Authority for supervision, monitoring and control of the Bus Service.

“Commercial Operations Date”/“COD” for each Lot of Contracted Buses, be the date of deployment on roads for operations of each such Lot of Contracted Buses by the Operator after submission of requisite Performance Security and shall have the meaning specified in clause 9 of this Agreement. It also includes the “Commencement Date” or “COD” means the date in terms of Schedule 4: Implementation Plan

“Contracted Bus(es)” means one or more of passenger bus units contracted from the Operator by the Authority from time to time for purposes of operation and maintenance in the Bus Service Area in accordance with the terms of this Agreement, and which shall include but not be limited to including ITS equipment on-board such as GPRS, GPS and PIS, Driver Console, CCTV cameras, etc. and other IT equipment and other details stipulated by the Authority for such Buses such as the type, category registration number is provided in detail in Vol-III to this Agreement at later stage

“Change in Equipment Specification,” means modification, addition, deletion in the Equipment Specification, based on written communication of FSCL or PM from time to time.

“Change in Law” means the occurrence of any of the following, after the date of Bid submission:

- i. the enactment of any new Indian law;
- ii. the repeal, modification or re-enactment of any existing Indian law;
- iii. the commencement of any Indian Law which has not entered into effect until the date of Bid;
- iv. a change in the interpretation or application of any Indian law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the date of Bid;
- v. any change in the rates of any of the Taxes that have a direct effect on the Project; or

“Concession” / agreement shall have the meaning as assigned to it under Clause 2.1

“Concessionaire Assets” means the assets used by the Concessionaire for the purpose of delivering Stage Carriage Services excluding FSCL Infrastructure Facilities.

“Concession Period”/“Contract Period/ Agreement Period” means a period commencing from the Commencement Date and ending on Termination Date or Expiry.

“Conductor” in relation to a stage carriage, means a person engaged in collecting fares from passengers, regulating their entrance into, or exit from, the stage carriage and performing such other functions as may be prescribed.

“Wholesale Price Index (WPI)” or “WPI” means Wholesale Price Index Numbers, which measure a change over time in prices of a fixed basket of goods and services, as are compiled and maintained by the Labour Bureau, Government of India. Applicable index for the purpose of this Agreement shall be index numbers as compiled for GoI. The base value of WPI is 120.1 as on Dec, 2018 (Base Year : 2011-12 = 100) and shall be indexed, in terms of index value reported in GoI or website [www.labourbureau.nic.in/http://eaindustry.nic.in](http://eaindustry.nic.in) published with a time lag of one month and shall include any index, which substitutes the WPI.

“Cure Period” means the period specified in this Agreement for curing any Breach or Event of Default of any provision of this Agreement by the Party responsible for such Breach or Event of Default.

“KCR” means the Kilometre Charge Rate (KCR) in terms of Rs per bus kilometre to be charged by the Concessionaire for operation of Stage Carriage Services in terms of Schedule 1: Project Operation Detail.

“Depot” means land, buildings, structures and other facilities used by the Concessionaire in terms of Depot License Agreement.

“Depot License Agreement” means an agreement for the use of a Depot on license basis between FSCL and the Concessionaire where such licence allows the Concessionaire use of Depot for the purpose of parking, repair, maintenance, cleaning and office space required for providing Stage Carriage Services. Further such aforesaid agreement shall expressly deny the Concessionaire the right to sub-let, construct, alter or modify any part of the Depot without specific written prior approval of FSCL, and such approval can be withheld or denied by FSCL at FSCL’s sole discretion, without providing any reason thereof for such decision of FSCL.

“Designated Account” means an account which shall be opened and maintained as per the provisions of this Agreement with a nationalized bank or a scheduled commercial bank authorized to undertake government business in accordance with the provisions of this Agreement.

“Dispute” means any dispute, difference or controversy between the parties of this agreement as provided in Clause 22.1.

“Dispute Resolution Procedure” means the procedure for Dispute resolution set forth in Clause 22.

“Driver” means a person having valid Heavy Motor Vehicle Driving License and complying with other specific guidelines/ regulations issued by the State/Regional Transport Authority, GoH such as Driver Badge, etc.

“Driving License” means a licence issued by a competent authority under the Motor Vehicles Act, 1988, authorizing a person to drive a Heavy Motor Vehicle.

“**Duty Plan**” means the itinerary of each Stage Carriage for any operational day.

“**Duty Schedule Memo**” means the Trip schedule plan for the day comprising multiple planned Trips with details of route/s to be plied, scheduled start time, scheduled end time, duration, distance, route via etc. in accordance with the route planning.

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

“**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, cess, electricity, water and other utility charges and encroachments on FSCL Infrastructure Facilities. It includes include physical encumbrances, including utilities both under and above the ground and encroachments.

“**End Date**” means the respective date(s), as specified in **Schedule 4: Implementation Plan** on which each of the Project Milestones is to be achieved by the Concessionaire in accordance with the terms of this Agreement.

“**Equipment Specifications**” means the specifications and standards relating to equipment required for the Project and to be provided, operated and maintained by the Concessionaire and as set forth in Schedule 2: Specifications for AC & Non-AC City Bus And schedule 6: Plant and equipment

“**Equity**” means the sum expressed in Indian Rupees representing the equity share capital and shall include the funds advanced by any member of the Consortium or by any of its shareholders to the Concessionaire for meeting the equity component of the Project.

“**Event of Default**” means an event of default as defined in Clause 17.1.

“**Expiry**” means the expiry of the Concession at the end of Eight(8) years from the Commencement Date OR nine (9) years from the Appointed Date, whichever is earlier.

“**Expiry Date**” means the date on which the Expiry of this Agreement occurs.

“**Fare**” means an amount payable by a passenger to the Conductor or FCS for Stage Carriage Services in accordance with the fare schedule notified by GoH and as applicable from time to time.

“**Fare Collection System**” or “**FCS**” means the ticketing system for the collection of Fares, or any other system by which it is replaced by FSCL from time to time.

“**FCS Provider**” means the Person(s) appointed by FSCL for providing and managing FCS on behalf of FSCL.

“**Fine**” means a penalty or monetary sum imposed as a penalty charged for violation of any rules/provisions and imposed, in accordance with the Permit Conditions or any other Applicable Law, by the State/Regional Transport Authority, GoH, police or any other government agency/ department, courts or any other Authority and does not include Performance Deductions envisaged in this Agreement. It shall also have the meaning as ascribed thereto in the Agreement

“**Force Majeure**” or “**Force Majeure Event**” shall have the meaning ascribed thereto in Clause 16.

“**FSCL Collectibles**” means collections made by the FSCL from:

- a) Fare collected and deposited in the Designated Account by the FCS Provider; and
- b) any other sources.

“**FSCL Infrastructure Facilities**” means the infrastructure facilities belonging to GoH, MCF, FMDA (on its constitution) or FSCL as the case may be and licensed or authorized to be used by the Concessionaire for operation of Stage Carriage Services or where such infrastructure facilities are belonging to any other local authorities or local bodies, the FSCL shall provide all reasonable assistance in obtaining permission for usage of facilities for the purpose of operation of Stage Carriage Services.

“**Fleet**” shall refer to total number of Contracted Buses having achieved COD pursuant to this Agreement.

“**Operation Plan**” means the detailed plan as developed and finalized by the Authority from time to time.

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“Global Positioning System (GPS)” means the equipment set installed on the bus to identify its location and monitor its movement on the specified route during the Contract Period.

“Government” means the “Government of Haryana (GoH) or “Government of India (GOI)” as is relevant in the context;

“GoH” means Government of Haryana

“GoI” means the Government of India

“Good Industry Practice” means those practices, methods, techniques, standards, skills, diligence and prudence which are generally and reasonably expected of and accepted internationally from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and acting generally in accordance with the provisions of the Motor Vehicles Act, 1988 and which would be expected to result in the performance of its obligations by the Concessionaire and in the operation and maintenance of Private Stage Carriage Services in accordance with this Agreement, Applicable Laws, Applicable Clearances or Approvals, reliability, safety, environment protection, economy and efficiency

“Government Instrumentality” means any department, division or sub-division of the government or the state government and includes any commission, board, authority agency or municipal and other local authority or statutory body including panchayat under the control of the government or the state government, as the case may be, and having jurisdiction over the Project or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement

“HMVR” means Haryana Motor Vehicles Rules, 1993.

"Idle Run" means to and fro journey undertaken by a Stage Carriage when not engaged in carriage of passengers and includes:

- a) a trip from a Depot to the point of origin of a Route;
- b) a trip from the point of destination of a Route to a Depot; and
- c) a trip from the point of destination of one Route to the point of origin of another.

“IGAAP” means the Accounting Standards specified by The Institute of Chartered Accountants of India.

“Indemnifying Party” means the Party obligated to indemnify the other Party pursuant to Clause 20.

“Indirect Political Event” shall have the meaning ascribed thereto in Clause 16.

"Intellectual Property Rights" means any copyright, patents, design rights, trademarks, trade names, trade secrets, know how, and other forms of intellectual property rights, and includes any right to apply for registration of any of those rights.

“Invoice Amount” shall have the meaning specified in Clause 1.6 of schedule 3 of this Agreement.

“LED Display” shall mean the light emitting diode display installed on the bus which would show name and number of designated Routes and other details of the respective Contracted Buses and which shall be used for the public information system.

“Letter of Award” means the letter of award issued by the Authority to the Selected Bidder for the purpose.

“Lot of Contracted Buses” or “Lot” means any Lot of Contracted Buses and New Lot of Contracted Buses and details of which have been provided in Clause 1.6 of schedule 3 of this Agreement.

“Breach” means a breach by a Party of any of its obligations under this Agreement which has or is likely to have a Adverse Effect on the Project or the other Party and which such Party shall have failed to cure.

“MCF” means Municipal Corporation of Faridabad.

“AC & Non-AC Services” means Stage Carriage Services provided by the Concessionaire, which are:

- a) part of Time Table;
- b) serving the Duty Plan; and

by the Stage Carriages having Equipment Specifications as set out in Schedule 2: Specifications for AC & Non-AC City Bus.

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“Manufacturer” means the bus manufacturer supplier of Contracted Buses to the Authority.

“Midi Bus Chassis” means chassis for BS IV compliant CNG fuelled air conditioned and non-air conditioned 650mm floor height midi buses procured by operator as per technical specifications.

“Non-Political Event” means the events as specified in Clause 16.

“Non-working Day” means a day which is a Saturday, a Sunday or a public holiday in Haryana under the list of holidays issued by GoH from time to time.

“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.

“Operations Manager” shall have the meaning ascribed to it in the agreement.

“Operating Plan” or “Operation Plan” means the detailed Route plan and trip schedule for the Bus Service, which is developed and finalised by the Authority from time to time.

“Operator” shall have the meaning as ascribed thereto in the array of Parties in the Recitals above.

“Operator Clearances” means the clearances which are required to be procured by the Operator in accordance with Applicable Laws.

“Operator’s Event of Default” shall have the meaning as ascribed thereto in Clause 17 of the Agreement.

“Operator’s Payment” means payment given to the Operator for providing operating and maintenance services in accordance with Clause 4 of this Agreement.

“Owner” means a Person in whose name a Motor Vehicle stands registered, and in relation to a Motor Vehicle which is the subject of a hire-purchase agreement, or an agreement of lease or an agreement of hypothecation, the Person in possession of the vehicle under that agreement.

“Parking Spaces” shall mean the spaces provided by the Authority for parking and maintenance of Contracted Buses.

“Payment Period” shall have the meaning as ascribed thereto in Clause 1.6 of schedule 3 of this Agreement.

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

“Pass” means a seasonal ticket issued by or on behalf of the FSCL.

“Person” means and includes natural person, partnership, firm, company, corporation, trusts, society or any other entity (whether or not having separate legal entity).

“Performance Adjustment” means the Performance Incentive or Performance Deduction.

“Performance Deduction” means the deduction recoverable from the Concessionaire for sub-optimal performance or non-compliance or non-performance as described in Adjustments.

“Performance Incentive” means the incentive payable to the Concessionaire for better performance as described in Schedule 2: Operational Parameters, Monitoring and Performance Adjustments.

“Performance Security” means the security given by the Concessionaire as per Clause9.

“Performance Standards” means the standard as provided in under Schedule 2: Operational Parameters, Monitoring and Performance Adjustments.

“Permit” means a permit issued by appropriate authority in terms of The Motor Vehicles Act, 1988 authorising the use of a motor vehicle as a Public Service Vehicle.

“Permit Conditions” means the conditions imposed by the State/Regional Transport Authority, GoH/ appropriate authority under the Motor Vehicle Act, 1988 for operation of Stage Carriage services in in the Project Area and includes any subsequent amendments, modifications, revisions, thereof.

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“**Political Event**” shall have the meaning ascribed thereto in Clause 16.

“**Program Manager**” or “**PM**” means an entity appointed by FSCL as the program manager to manage and oversee the operations of the Project on its behalf.

“**Project**” means and includes development, investment, financing, procurement, operation, maintenance, management of Stage Carriage Services including use of FSCL Infrastructure Facilities in accordance with the terms and conditions of this Agreement.

“**Project Area**” means areas/ routes for provision of Stage Carriage Service within Faridabad city and between Faridabad & Delhi/ NCR towns, as amended by the FSCL from time to time.

“**Project Milestones**” means the milestones as described in Clause 10.

“**Project Milestone Certificate**” means the certificate issued to the Concessionaire by PM and more particularly described in Clause 10.

“**Public Service Vehicle**” means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxi cab, a motor cab, contract carriage, and stage carriage.

“**Revenues**” has the meaning as assigned to it under Clause 4.

“**Route**” means a line of travel which specifies the area which may be traversed by a motor vehicle between one terminus and another and as may be specified by STA/RTA from time to time. It also 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 on such Routes/route network as finalised by the Authority from time.

“**Rs.**” Or “**Rupees**” means the lawful currency of the Republic of India.

“**RTO**”/ “**RTA**” means Regional Transport Office/ Regional Transport Authority (RTA) of the Project Area.

“**Remedial Period**” shall have the meaning specified in Clause 17 of this Agreement.

“**Selected Bidder**” means the Bidder to whom the Authority issues the Letter of Award for undertaking the Project.

“**STA**” means State Transport Authority of the Project Area.

“**Stage Carriage**” means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or just reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey and where a Permit has been issued in terms of Section 72 of The Motor Vehicles Act, 1988

“**Stage Carriage Services**” mean services to be provided by the Concessionaire for carriage of passengers as part of the Project including the Basic Services.

“**Statutory Auditor**” means an independent, recognized and reputable firm of Chartered Accountants duly licensed to practice in India acting as independent statutory auditor of the Concessionaire under the provisions of the Companies Act, 1956 including any statutory modification or re-enactment or replacement thereof, for the time being in force.

“**Third Party**” means any person other than the Authority and the Operator.

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

“**Trip**” means one completed journey of Stage Carriage along any given Route for the purpose of delivering the Stage Carriage Services and during which it is available for use by passengers and, for the removal of doubt:

- a) one to and fro journey shall be two Trips;
- b) no part of an Idle Run is part of a Trip;
- c) if a Stage Carriage embarks on a Trip after completing an Idle Run, that Trip is to be treated as a separate Trip from any which preceded the Idle Run; and
- d) including AC & Non-AC Services.

“**Termination**” means early determination of this Agreement pursuant to Termination Notice.

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“Termination Date” means the date on which this Agreement and the Concession is terminated.

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

“Ticket” means an instrument including a Pass in a form approved by the FSCL which is purchased by a passenger for availing Stage Carriage Services.

“Ticket and Revenue Procedures Manual” means the document issued by PM, from time to time, which sets out procedures relating to the operation of the FCS and revenue reconciliation process.

“Time Table” means the daily, weekly, monthly, yearly schedule for operation of Stage Carriages specifying the time and frequency for bus operation by the Concessionaire for the Project as revised from time to time.

“Training Period” shall have the meaning as ascribed thereto in Clause 1.6 of schedule 3 of this Agreement.

“Validity Period” means the period for which the Performance Security and or any other security has to be maintained in accordance with Clause 9 of this Agreement.

“Vandalism” shall have meaning specified in Clause 2.3 of Schedule 2 of this Agreement.

“Vehicle Tracking System” is the satellite and or other communication system or any other procedure or device that allows locate/track the position of vehicles at all/any times.

“Working Day” means a day which is not a Saturday, a Sunday or a public holiday in Haryana under the list of holidays issued by GoH from time to time.

“WPI” means the wholesale price index published by the Ministry of Industry, GoI and shall include any index, which substitutes the WPI.

1.2. Interpretation

- a) The words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal entity);
- b) 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;
- c) the words "include" and "including" are to be construed without limitation;
- d) any reference to day, month or year shall mean a reference to a calendar day, 30 days or 365 days respectively;
- e) the Schedules to this Agreement form an integral part of this Agreement as though herein specifically set forth and produced. In case of any discrepancy between the Schedule and the body of the Agreement, the latter shall prevail.
- f) any reference at any time to any Agreement, deed, instrument, license or document of any description shall be construed as reference to that Agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference provided that this clause shall not operate so as to increase liabilities or obligations of FSCL hereunder or pursuant hereto in any manner whatsoever;
- g) references to recitals, Clauses, or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, Clauses and Schedules of or to this Agreement;
- h) any Agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effectual only if it is in writing under the hands of duly authorised representative of such Party in this behalf and not otherwise;
- i) 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;

- j) references to Indian law shall include the laws, acts, ordinances, rules, regulations, or bye laws which have the force of law in any State or Union Territory forming part of the Union of India;
- k) terms and words beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein and the terms and words defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules;
- l) any reference to any period of time shall mean a reference to that according to Indian Standard Time; any reference to day shall mean a reference to a calendar day; and
- m) the damages payable by either Party to the other as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty.

1.3. Priority of contract documents and errors/discrepancies

In case of ambiguities or discrepancies within this Agreement the following shall apply:

- a) between Clauses of this Agreement, the provisions of the specific Clause relevant to the issue under consideration shall prevail over those in other Clauses.
- b) between the Clauses and the Schedules, the Clauses shall prevail save as otherwise expressly set forth in the Clause.
- c) between Schedules of this Agreement, the provisions of the specific Schedule relevant to the issue under consideration shall prevail over those in other Schedules.
- d) between any value written in numerals and that in words, the latter shall prevail.

1.4. The documents forming part of the bidding process leading to this Agreement shall be relied upon and interpreted in the following descending order of priority:

- a) This Agreement;
- b) Schedules to the Agreement;
- c) LOA issued to the Successful Bidder;
- d) Acknowledgment of LOA by the Successful Bidder;
- e) Written addenda to the RFQP;
- f) The RFQP;
- g) Written clarifications issued to the Bidders;
- h) The Successful Bidder's Proposal

2. CONCESSION

2.1. Subject to and in accordance with terms and conditions set forth in the Agreement and in consideration of the KCR based revenues to accrue to the Concessionaire for the Stage Carriage Services agreed to be provided by the Concessionaire, FSCL grants Concession to the Concessionaire and the Concessionaire hereby accepts the Concession for a period of eight(8) years commencing from the Commencement Date or nine (9) years from Appointed Date, whichever is earlier, including the right, license and authority during the subsistence of this Agreement to implement the Project.

2.2. Subject to and in accordance with the terms and conditions set forth in this Agreement, the Concession hereby granted shall entitle the Concessionaire to enjoy, and oblige the Concessionaire to undertake the following in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Clearances or Approvals:

- a) to implement the Project during the Concession Period;

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- b) to use the FSCL Infrastructure Facilities;
- c) perform and fulfil all of the Concessionaire's obligations under this Agreement;
- d) bear and pay all expenses, costs and charges incurred in the fulfilment of all the Concessionaire's obligations under this Agreement;
- e) undertake any other services, activities which are incidental to or required to be undertaken for providing Stage Carriage Services; and
- f) do all such other and further acts, deeds, things and provide all such services as are incidental to or necessary or required for undertaking and completing the Project and performing and fulfilling all of its obligations under the Agreement including provision of Stage Carriage Services pursuant to the Agreement.

2.3. FSCL and the Concessionaire agree that:

- a) three important factors that impact on the capacity of a public transport service to attract customer are :
 - i. its service quality such as regularity, punctuality, reliability, safety, etc;
 - ii. the quality of the amenities it provides; and
 - iii. safety of passengers and road users;

which objectives the Concessionaire shall endeavour to achieve;

- b) more the customers are attracted by a public transport service, for which FSCL is responsible :
 - i. the better the service contributes to the achievement of the FSCL's objectives; and
 - ii. the more revenue FSCL derives from the operation of the service;
- c) conversely if the standard of the service quality including reliability or quality of amenity declines, the FSCL will suffer loss of revenue and the failure of its objectives in providing the service;
- d) therefore whenever the Concessionaire either:
 - i. does not provide a Trip in accordance with the Time Table; or
 - ii. uses a Stage Carriage which does not comply with the standards required by this Agreement,

FSCL will be exposed to loss;

- a) it will be extremely difficult to determine precisely the extent of the loss or to quantify it;
- b) each of the amounts to be deducted under Performance Deduction represents a genuine, fair and reasonable estimate by the Parties of the actual loss or damage which FSCL would sustain as a consequence of the breach giving rise to the FSCL's right to deduct the amount;
- c) each of the amounts to be paid out as Performance Incentive represents a genuine, fair and reasonable estimate by the Parties of the actual benefit accruing to FSCL, as a consequence of improved reliability and quality of services rendered;
- d) the amounts to be deducted under the Performance Deduction are not and must not be construed as penalties for the purposes of any rule of law or equity; and
- e) FSCL and the Concessionaire are both negotiating and contracting at arms-length, having equal bargaining power, possessing relevant experience and expertise and having had access to independent legal, accounting, financial, economic and other professional advice in relation to their rights and obligations under this Agreement.

2.4. The Services

2.4.1. The Concessionaire:

- a) shall provide the Stage Carriage Services in accordance with this Agreement;
- b) acknowledges that it has sufficient information about the Project including but not limited to project requirements, equipment and their vendors, operational requirements related to the Project,

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service standards, Specifications, performance measurements parameters and the resultant deductions or incentive thereof, statutory requirements and specific/ general laws in relation to this Project and that it has made all appropriate and necessary enquiries to enable it to perform the Stage Carriage Services in accordance with this Agreement;

- c) shall neither be entitled to any additional payment nor excused from any obligation other than as specifically provided under this Agreement or liability under the Agreement due to any misinterpretation or misunderstanding by the Concessionaire of any fact relating to the Project or otherwise to this Agreement;
- d) shall comply with all lawful and reasonable directions of the FSCL/PM relating to its performance of the Stage Carriage Services; and
- e) shall raise finances for the Project at its own risk.

2.5. Notwithstanding anything to the contrary in this Agreement, the FSCL discretion in carrying out its statutory duties shall not be fettered or otherwise constrained or affected by any provision of this Agreement;

2.6. The Concessionaire shall provide the Stage Carriage Services:

- a) with the high degree of skill, care and diligence normally exercised by professional firms or by highly skilled and experienced Concessionaires providing services of a similar scope, type and complexity to the Stage Carriage Services and with sufficient resources including project management resources;
- b) in conformance in all respects with the Specification and so that they fulfil the purpose indicated by or to be reasonably inferred from the Specification; and
- c) in a safe manner and free from any unreasonable or avoidable risk to any person's health and well-being and in an economic and efficient manner.

2.7. FSCL reserves the right at its option to extend this Concession Agreement by a further period or periods aggregating up to two (2) years by notifying the Concessionaire at least one month prior to the expiry of the period specified in Clause 2.1.

2.8. **Variations**

2.8.1. FSCL may vary this Concession Agreement with the written consent of the Concessionaire save where this Concession Agreement provides that variation or adjustments may be made by FSCL and the consent of the Concessionaire is not expressly required in which case FSCL may vary this Concession Agreement unilaterally on giving written notice to the Concessionaire.

2.8.2. A variation shall take effect:

- a) from the date specified by FSCL in the written notice to the Concessionaire where the Concessionaire's written consent to the variation is not required;
- b) from the date agreed by FSCL and the Concessionaire where the Concessionaire's written consent is required; or
- c) Forthwith where no date is specified.

3. **OPERATION OF THE CONCESSION**

3.1. Stage Carriage Services as part of the Project shall serve the Project Area and shall include any addition, deletion or modification made thereto in terms of this Agreement.

3.2. Without prejudice to anything contained in this Agreement the Parties in general and the Concessionaire in particular agree and undertake to enter into and execute any/all such supplemental and ancillary agreements which the Parties deem expeditious and/or which in the opinion of FSCL/PM is required and necessary for the purposes of a smooth operation of services under this Agreement.

4. **REVENUES**

4.1. Sources of Revenues to the Concessionaire for providing volume of Basic Services shall be based on KCR, quantum of services / operations, Performance Adjustment, incremental Stage Carriage Services provided as Additional Services and Bus Advertisement Marketing Rights granted to the Concessionaire hereunder.

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- 4.2. Payment of KCR based charges shall be released to the Concessionaire by FSCL or PM for and on behalf of FSCL in terms of Schedule 3: Payment of KCR based charges. Actual release of monies to the Concessionaire shall be made on Service Month basis as detailed out in Schedule 3: Payment of KCR based charges.
- 4.3. Concessionaire agrees and confirms that revenue from Fare, Pass and fines from passengers for use of Basic Services and Additional Services as part of Stage Carriage Services shall be collected by FSCL, or any agency authorized by it, and shall be retained by FSCL in the Designated Account. The Concessionaire's claim on payment for Basic Services rendered shall be regulated under Clause 4.1.
- 4.4. Without prejudice to anything else contained in this Agreement, the Concessionaire specifically agrees to enter into an agreement with the CNG supplier for buying CNG from the facility set up by the CNG supplier at the Depot dealing with matters incidental to and connected therewith. The Concessionaire undertakes to pay the CNG supplier on timely basis for the fuel purchased by it from the CNG supplier for the stage carriage buses deployed by it. Concessionaire hereby authorizes FSCL to deduct any sums, from the amounts payable by FSCL to the Concessionaire, for the purpose of releasing payment to the CNG supplier on behalf of the Concessionaire on receiving specific request therefore from the CNG supplier. Whenever under this Agreement any sum of money shall be recoverable from or payable by the Concessionaire, the same may be deducted from any sum then due or which at any time thereafter may become due to the Concessionaire under this Agreement. Any premium / rental payable by the CNG supplier for installation of his facilities in the depot would be received by FSCL.
- 4.5. At the end of each completed year of operations from COD, for the un-utilized components of annual assured kilometres payments, FSCL shall make payment after adjusting all dues payable to the concessionaire as stipulated in Schedule 3.
- 4.6. Performance Adjustment, excluding on account of Accidents as set out in Schedule 2: Operational Parameters, Monitoring and Performance Adjustments, shall not be applied till three months from commencement of each Route.
- 4.7. Based on feedback during this period, Time Table and Performance Adjustments may be revised at the sole discretion of FSCL.
- 4.8. **KCR Variation for Change in Law**
- a) Where, a Change in Law condition leads to proven increase in cost to the Concessionaire that:
- could not have been foreseen at the time when this Agreement was being negotiated;
 - could not reasonably have been avoided by good management practice; and
 - is not expressly or by implication accommodated by the way in which the KCR is constructed, the Concessionaire is entitled to have the KCR amended to recoup its reasonable compliance costs. The adjustment in KCR shall not exceed the increase in cost that was proved by the Concessionaire to the satisfaction of FSCL.
- b) where, a Change in Law condition leading to proven decrease in cost to the Concessionaire that:
- could not have been foreseen at the time when this Agreement was being negotiated; and
 - is not expressly or by implication accommodated by the way in which the KCR is constructed, FSCL is entitled to have the KCR amended so as to reduce it by an amount by which the Concessionaire's costs of providing the services ought reasonably to be reduced.
- c) KCR variation due to Change in Law set out in 4.8(a) and 4.8(b) shall be considered only where the impact is at least 2% of the KCR.
- 4.8. The overall performance reward or penalties are capped. The Concessionaire will be eligible to receive an overall performance reward not exceeding 10% of the monthly payment as per Clause 4. In cases of under - performance the Concessionaire will likewise be eligible for deduction of an overall performance penalty not exceeding 10% of the monthly payment as per Clause 4. For the purpose of determining the aforementioned cap of 10%, performance deductions for the following will not be considered:
- a) failure to perform all the trips that part of a Duty Schedule Memo for any reasons attributable to the Concessionaire, and

- b) fatal accidents and over speeding.

Note: Additional damages for failure to perform all the trips that are part of a Duty Schedule Memo and road safety parameters (fatal accident & over speed) in terms of Schedule 3 will be over and above the aforementioned cap of 10% towards Performance Deduction.

5. OBLIGATIONS OF FSCL

5.1. FSCL agrees to observe, comply and perform the following:

- a) ensure peaceful enjoyment of the Concession by the Concessionaire during the tenure of the Concession subject to the terms and conditions of this Agreement;
- b) manage and enforce Time Table, more particularly explained in Schedule 1: Project Operation Detail and subject to conditions set out in Clause 5.2;
- c) make timely payment of KCR based charges for Services and make payments, if applicable, for GST and applicable cess thereon, and for this purpose agrees to:
 - i. open a Designated Account;
with an initial amount equal to one month of Payment of KCR based charges to be deposited in the Designated Account; and
 - ii. On best effort basis maintain funds in the Designated Account equal to estimated payment of KCR based charges for one month and endeavour to improve it to three months level on best effort basis to top-up the difference between FSCL Collectibles and Payment of KCR based charges in terms of this Agreement by making regular quarterly replenishments (“Top-up Payments”) provide all reasonable assistance in obtaining and renewing Permits for Stage Carriages to the Concessionaire by the State Transport Authority (STA)/Regional Transport Authority (RTA)/competent authority;
- d) make available FSCL Infrastructure Facilities to the Concessionaire for performing his obligations under the Agreement;
- e) provide following facilities to the Concessionaire:
 - i. make available Bus depot for providing services hereunder, upon Concessionaire making a license charges of Rs. 1/- (Rupee one) per year.
 - ii. Free access to passenger facilities such as bus shelters, bus terminals for providing services hereunder;
 - iii. Free entry for stage carriage buses to ISBTs/ bus stations for operating scheduled Stage Carriage Services;
 - iv. FSCL Equipment, if any provided by FSCL, at free of cost for the operator.
 - v. Free access for stage carriage buses through toll plazas for operating scheduled Stage Carriage Services;
 - vi. Till such time depot facilities are handed over to the concessionaire, alternative locations for parking of buses would be made available by the Authority to the concessionaire. At such locations, the concessionaire would make his own temporary arrangement for office space by acquiring porta-cabin etc and for repair and maintenance of buses. The concessionaire would obtain CNG supply from CNG dispensing facilities available at or nearest to such locations. For travel between above parking locations and the nearest CNG filling stations the concessionaire shall be paid for kilometres run at the base KCR.,
 - vii. Evaluate recommendations of the PM and if satisfied, make necessary changes to Time Table and notify such changes.

5.2. **Time Table**

- a) Time Table may be revised from time to time by way of (i) addition/ reduction in the Trips (ii) changes in travel time per Trip, (iii) No. of Trips, and (iv) other such changes, revisions, modifications, amendments.
- b) In cases where in the opinion of FSCL/PM on a specific Route or a group of Routes, on time performance cannot be maintained due to worsening traffic conditions or for other reasons such as construction work, on behalf of FSCL, PM may temporarily adjust the Time Table to accommodate such systemic changes subject to approval of FSCL. In the previously mentioned

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cases, public sector comparator, where available, may be used by FSCL to evaluate such conditions.

- c) Performance Adjustments made before the revision of Time Table in terms of Clause 5.2(a) and 5.2(b) shall not be refunded.
- d) Due to easing of traffic conditions from interventions such as BRT, flyover/ underpass construction, traffic management systems such as synchronized signal free movement on trunk corridors, on recommendation of PM, FSCL has the right to (i) revise the schedule by reducing the total travel time, or (ii) implement revised on-time performance standards for specific routes.
- e) The Concession awarded will co-exist with other modes of transportation like bus services, metro rail, rapid metro, mono rail, light rail etc. in the present or to be introduced in future and accordingly may require revision in the Time Table. This circumstance is declared expressly known to the Concessionaire and the Concessionaire unconditionally accepts and acknowledges the same.
- f) FSCL may ask the Concessionaire to operate Stage Carriages on any route in the operational area and in other routes beyond the operational area on contracted terms and conditions.

6. OBLIGATIONS OF PROGRAM MANAGER

6.1. The Program Manager shall, in addition to and not in derogation of its obligations elsewhere set out in this Agreement, have the obligation to:

- a) monitor compliance of the prescribed Specification in terms of Schedule 2:
Specifications for AC & Non-AC City Bus;
- b) ensure compliance of the Performance Standards in terms of Schedule 2: Operational Parameters, Monitoring and Performance Adjustments by the Concessionaire;
- c) process and apply Performance Adjustments in terms of Schedule 2: Operational Parameters, Monitoring and Performance Adjustments on the Concessionaire;
- d) direct the Concessionaire to display information and logo in terms of instructions issued by the FSCL to Concessionaire from time to time and in terms of locations identified in Schedule 2: Specifications for AC & Non-AC City Bus;
- e) direct the Concessionaire on behalf of FSCL to operate Additional Services in terms as per requirement;
- f) direct the Concessionaire on behalf of FSCL to operate Trips based on revisions made in Time Table subject to approval of the FSCL;
- g) recommend to FSCL termination / suspension of the Concession on occurrence of Concessionaire's Event of Default in terms of the Agreement;
- h) undertake changes in Specifications or altering, deleting, modifying Specifications with approval of FSCL and thereupon direct the Concessionaire to implement the same;
- i) collect data, undertake analysis and monitor Stage Carriage Services within and across packages;
- j) monitor operations of Stage Carriage Services in accordance with Time Table/ prescribed schedules;
- k) recommend changes in Time Table based on traffic conditions, route rationalization, demand etc.; and
- l) manage such facilities necessary to discharge its obligations.

6.2. Towards discharging its obligations, FSCL shall make payment to PM as mutually agreed.

7. RIGHTS AND OBLIGATIONS OF THE CONCESSIONAIRE

7.1. The Concessionaire shall, subject to and in terms of this Agreement, have the right to:

- a) operate Stage Carriage Services in terms of this Agreement;

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- b) raise claim and receive payments for the volume of Stage Carriage Services and subject to Performance Adjustment in terms of timelines set out in Schedule 5: Payment of Service charges; and
- c) use the FSCL Infrastructure Facilities for the Project subject to payment as applicable.

7.2. The Concessionaire shall at its own risk and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement, have the obligation to:

7.2.1. **Statutory Obligations**

- a) comply with the provisions of the Motor Vehicles Act, 1988 and the Rules made there under for providing Stage Carriage Services;
- b) obtain Permit and abide by Permit conditions and any amendment(s) thereof for providing Stage Carriage Services;
- c) ensure that relevant application for renewal of Permits is submitted to STA/RTA/competent authority to ensure continued and uninterrupted Stage Carriage Services;
- d) make, or cause to be made, necessary applications to the relevant Governmental Agencies with such particulars and details, as may be necessary for obtaining all Applicable Clearances or Approvals, and obtain such Applicable Clearances or Approvals in conformity with the Applicable Laws and be in compliance thereof at all times during the Concession Period;
- e) be responsible for making all the statutory payments with respect to Applicable Laws including laws dealing with labour. Neither FSCL nor PM shall be responsible for any liability of the Concessionaire towards the statutory payments to the persons working under them or any other statutory payment;
- f) be liable for any claim arising from the accident be it loss of life or limb, damage, or loss caused during the operation of the Stage Carriage Services. Neither FSCL nor PM shall be responsible for any claim including the claim made in connection with the injuries or loss of life sustained by passengers, staff of FSCL/PO/Any other agency or other road users;
- g) release and indemnify FSCL and PM, their employees, agents and contractors from and against all liability for death or personal injury, loss of or damage to property (including property belonging to FSCL or for which it is responsible and including FSCL Infrastructure Facilities) and any other loss, damage, cost and/or expense which may arise out of or in the course of or by reason of the performance or non-performance of this Agreement by the Concessionaire, its employees or agents whether such injury, loss, damage, cost and/or expense be caused by negligence or otherwise provided always that the Concessionaire shall not be liable to indemnify FSCL and PM for any injury, loss, damage, cost and/or expense to the extent that the negligence of FSCL or PM, their employees, agents or contractors is shown to have contributed to the said injury, loss, damage, cost and/or expense; and
- h) Obtain and maintain in force, on and from the Appointed Date, all insurance of an adequate level in accordance with the provisions of this Agreement and Good Industry Practice.

7.2.2. **Operational Obligations**

- a) furnish and maintain the Performance Security in terms of Clause 9;
- b) undertake at its own risk all activities related to development, investment, financing, operation, maintenance and management of Stage Carriage Services under the Project for the purpose of this Agreement and introduce Stage Carriage Services in terms of Schedule 4;
- c) comply with Time Table and undertake Trips in terms of details set out in Schedule 1:
Project Operation Detail except in case of temporary emergency which the Concessionaire shall notify to PM without delay, of the nature of emergency, its likely duration and proposals for arrangements to deal with the same as soon as is practical in the circumstances;
- d) comply with the requirements set out in Schedule 1: Project Operation Detail in terms of Routes and other provisions;
- e) comply with the Specification in terms of Schedule 2: Specifications for AC & Non-AC City

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- f) comply with Performance Standards in terms of Schedule 2: Operational Parameters, Monitoring and Performance Adjustments;
- g) to operate Additional Services based on instruction of FSCL/ PM;
- h) to operate Trips based on revisions made in Time Table by FSCL;
- i) ensure safety and security of various FSCL Equipment installed on the Stage Carriage by FSCL/ PM or any other agency nominated by FSCL/ PM;
- j) to follow instructions of FSCL/ PM to ensure functioning of all FSCL Equipment;
- k) provide necessary supports, brackets, electrical connections for installation of FSCL Equipment;
- l) induct Stage Carriage only upon installation of FSCL Equipment, unless otherwise explicitly permitted or specified by FSCL or PM;
- m) provide access to and assist operations of FSCL Equipment;
- n) undertake various activities for displaying advertisements on the Stage Carriage provided such activities do not interfere with the operations of the Stage Carriages;
- o) comply with processes and procedures for installation, operation, maintenance and management of FCS based on instructions of PM and Ticket and Revenue Procedures Manual;
- p) pick up and drop passengers on all designated Stage Carriage stops and not unreasonably deny entry or exit to any passenger;
- q) provide all necessary assistance to Persons with Special Needs;
- r) operate Additional Services upon express written/ fax/ electronic instructions of PM / FSCL;
- s) provide access and reasonable assistance to FSCL, PM, FSCL Equipment operator/s, FCS Agent/s, their agents and representatives such as ticket collector, ticket checker, conductor or such persons for the performance of their duties and services; to display information and logo in terms of instructions issued by PM / FSCL to Concessionaire from time to time and in terms of locations identified in Volume III -- Specifications for AC & Non-AC City Bus;
- t) to operate all the Stage Carriage buses under the trade mark or any brand as approved by FSCL;
- u) employ/ arrange necessary manpower for meeting Project requirements and ensure that the personnel so deployed are qualified and competent to undertake the assigned tasks, follow the instructions issued to them and adopt relevant code of practice and conduct by PM/FSCL as applicable;
- v) take all reasonable precautions for the prevention of accidents in the operation of the Project and provide all reasonable assistance and emergency medical aid to accident victims;
- w) ensure necessary infrastructure including posting personnel for strict compliance of Performance Standards;
- x) maintain a complete and correct set of records pertaining to all activities relating to the performance of the Stage Carriage Services and the Concessionaire's obligations under this Agreement and all transactions entered into by the Concessionaire for the purposes of the this Agreement (including data where such records are material to the calculation to the Performance Standards, project monitoring and payment. ("Records"). The aforesaid shall be maintained during the Concession Period and for a period of not less than four (4) years from expiry of this Agreement ("Retention Period") or handed over to FSCL in case of Termination;
- y) give all reasonable assistance to the FSCL / PM or its nominee in conducting inspection of Records during the Retention Period, including making available documents and staff for interview;
- z) where FSCL is bound by a court's decision, law or act including Right to Information Act, provide all necessary assistance to FSCL;
- aa) undertake all activities related to additional facilities such as Depots, running of Stage Carriages from Depot to the origin/ destination in a Route, checking of Stage Carriages for obtaining Permit/ road worthiness testing etc.;

- bb) enter into Depot License Agreement with FSCL for the purpose of obtaining Depot;
- cc) Follow all directions given by PM / FSCL as per the terms of this Agreement for efficient operation and maintenance of the Project;
- dd) notify PM / FSCL within 7 days of any changes to the Concessionaire's directors, senior management and key personnel involved in the Project; and
- ee) The Concessionaire recognizes PM who will be acting on behalf of FSCL, for managing and overseeing the Project. The Concessionaire shall follow all directions given by PM as per the terms of this Agreement for efficient operation and maintenance of the Project.
- ff) The Concessionaire shall be responsible for upkeep and maintenance of Stage Carriages in show-room condition throughout the contract period with completion of all missing components, timely reconditioning of major aggregates/ assemblies/sub-assemblies, replacement of damaged body panels, replacement of cushions of passenger seats etc.

7.2.3. Administrative Obligations

- a) ensure compliance with the instructions, as and when issued by FSCL and /or PM, in relation to the operation, security, safety, quality and functionality of Stage Carriage Service under this Project by its employees, contractors, agents or dependents;
- b) to submit relevant information sought by PM/FSCL such as daily number of trips, time schedules of each Stage Carriage on daily basis, personnel data including biometric records or details of Drivers and other specific persons involved in operations. Concessionaire to install necessary equipment to capture biometric and operational information of the Drivers deployed and to ensure that the biometric of Drivers mapped with associated duty allocation details are integrated with the PM's IT systems;
- c) provide access to documents and information in relation to operation of Stage Carriages and all information adjunct to it upon demand at all time by PM;
- d) agrees to the undisputed and exclusive ownership of any trade mark of the FSCL and the Intellectual Property Rights acquired by FSCL in respect thereof and not to assign or allow the use, in any manner or purpose whatsoever, of the same;
- e) to ensure the shareholding/ composition of the Concessionaire in terms of Schedule 7: Change in Ownership.
- f) accepts and allows FSCL or its authorized agency including the FCS / ITMS / any other service provider to work on buses / other facilities fitted / interacting with their equipment, personnel/ facilities etc;
- g) to provide all necessary and reasonable assistance to PM / FSCL as it may require for performance of its duties and services;
- h) agrees that FSCL/PM on approval of FSCL shall have the right to control and to supervise all dealings with the press and any other media in relation to any incident, event, claim or action concerning Project; and
- i) to make all reasonable efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of the Concessionaire's obligations under this Agreement.

7.2.4. General Obligations

- a) Investigate, study, design, engineer, finance, procure, develop, construct, operate, maintain and manage the Project in accordance with the provisions hereof;
- b) Comply with all Applicable Clearances or Approvals and Applicable Laws in the performance of the Concessionaire's obligations under this Agreement including those being performed by any of the contractors;
- c) Procure and maintain in full force and effect, as required, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project;
- d) To abide by the timelines towards Project Milestones set out in Clause 10;

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- e) Agrees to make payments set out in this Agreement for a delay in achieving the various milestones as specified in Clause 10;
- f) Make such financing arrangement as would be necessary to implement the Project and to meet all of its obligations under this Agreement, in a timely manner;
- g) Prepare and submit with reasonable promptness and in such sequence as is consistent with the Project Milestones, mobilization and project plan to PM/FSCL for review and incorporate such comments received;
- h) Provide all assistance to FSCL and PM as it may require for the performance of its duties and services;
- i) Provide reports to FSCL and PM on regular basis, during the Concession Period in the form and manner set forth in this Agreement or prescribed from time to time;
- j) Obtain and maintain in force, on and from the Appointed Date all insurance in accordance with the provisions of this Agreement and Good Industry Practice;
- k) Ensure and procure that all agreements signed with the contractors, suppliers and agencies deployed for the Project contain provisions that entitle FSCL to step into such agreement in its discretion in place and substitution of the Concessionaire in the event of Termination of this Agreement on account of default or breach by the Concessionaire;
- l) Appoint, supervise, monitor, control and be liable for the activities of contractors, suppliers and agencies deployed for the Project under their respective agreements as may be necessary;
- m) Make reasonable 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 indemnifies FSCL and/ or PM against any claims, damages, expenses or losses in this regard and that in no case and shall for no purpose shall FSCL and /or PM be treated as employer in this regard;
- n) Not to place or create and nor permit any contractor or other person claiming through or under the Concessionaire to create or place any Encumbrance or security interest over all or any part of or on any rights or interest of FSCL under this Agreement, save and except as expressly set forth in this Agreement;
- o) Make its own arrangements for the engagement of the employees and labour engaged for execution of the Project.
- p) Employ adequate number of appropriately qualified, skilled and experienced persons in order to execute the Project. PM and/ or FSCL may require the Concessionaire to remove any person employed on the Project and the Concessionaire shall in such cases appoint suitable replacement/s immediately
- q) Provide and maintain all necessary safety, health and welfare facilities for its staff and employees.
- r) Be responsible for security, environment and safety, soundness and durability and quality of the equipment used for providing Stage Carriage Services;
- s) Upon receipt of a request thereof, afford access to the Stage Carriages and other infrastructure facilities such as Depot to the authorised representatives of FSCL and /or PM, for the purpose of ascertaining compliance with the terms, covenants and conditions of this Agreement and to any government agency having jurisdiction over the Project, including those concerned with safety, security or environmental protection to inspect the Project and to investigate any matter within their authority and upon reasonable notice, the Concessionaire shall provide to such persons assistance reasonably required to carry out their respective duties and functions with minimum disruption to the operation, management and maintenance of the Project consistent with the purpose for which such persons have gained such access to the Project;
- t) Indemnify and hold harmless FSCL and/or PM and their employees from and against all actions, suits, claims, damages, demands and proceedings and any loss or damage or cost or expense that may be suffered by them on account of anything done or omitted to be done by the Concessionaire

in connection with the performance of its obligations under this Agreement or any activity incidental thereto.

- u) In all matters arising in the performance of this Agreement, comply with, give all notices under, and pay all fees required by, the provisions of any national or state statute, ordinance or other law, or any regulation of any legally constituted public authority having jurisdiction over the Project.
- v) Effective from the Appointed Date, pay in terms of Applicable Laws all stamp duties and other applicable taxes, fees, levies and cess in respect of the Project;
- w) Replace or reimburse all costs associated with replacement / repair of FSCL Equipment, where such damage/lost/theft is due to negligence of the Concessionaire and where such equipment are replaced by FSCL/PM/ its agencies, the Concessionaire shall pay at 1.25 times the cost for replacement/repair.
- x) Ensure timely upkeep, repair and maintenance of any or all buses in the operational fleet. However, following repeated occurrence of bus related infraction(s), PM and/or FSCL may require the concessionaire to remove any bus(es) deployed for the project from operation immediately and the concessionaire shall in that case(s) provide suitable replacement forthwith to maintain the scheduled levelled of operation.

8. SERVICE LEVEL REQUIREMENTS

8.1. The Concessionaire shall provide to PM, the reports described in Schedule 2: Operational Parameters, Monitoring and Performance Adjustments at the times specified in that Schedule and must promptly provide to PM/FSCL any other information reasonably required by the PM/FSCL to monitor the Concessionaire's performance.

8.2. Repeated Failure to meet Performance Standards

If the Concessionaire fails to meet any Performance Standards, due to which Performance Deductions exceed 15% of monthly payments in two consecutive months, or it is found that the Performance Standards decline by more than 50% on any day, the Concessionaire must, at no additional cost to FSCL/ PM:

- a) Enquire into the underlying causes of the failure to meet the Performance Benchmark (which underlying causes are the "Performance Problem");
- b) Prepare a report which identifies and addresses the Performance Problem and deliver it to PM/FSCL within 7 working days or earlier, as may be decided by PM/FSCL; and
- c) On being required by PM /FSCL take whatever action is reasonably necessary to minimise the impact of the Performance problem and immediately take that action;
- d) Correct the Performance problem and from then on meet the Performance Standards.

8.3. The aforesaid does not restrict the right of PM to impose repeated Performance Deductions till the failure on part of the Concessionaire is rectified.

8.4. Continued Breach of Performance Standards

8.4.1. In the event that the Concessionaire fails to meet the Performance Standards due to which Performance Deductions exceed 25% of the monthly payments for any two consecutive months or 15% of the monthly payments in any four immediately preceding twelve months period, PM/FSCL may issue a notice to that effect specifying the breach and direct the Concessionaire to cure the breach.

8.4.2. Where the Concessionaire has failed to cure the breach within the Cure Period of 30 days, FSCL shall, without prejudice to any of its other rights and/or remedies under this

Agreement, be entitled to issue the Termination Notice for Concessionaire's Event of Default.

8.4.3. The Concessionaire shall be deemed to be in Breach of the Performance Standards, if FSCL/ PM acting reasonably and in accordance with the provisions of this

Agreement has determined that;

- a) The quality of the services has deteriorated to a level which is below the acceptance level prescribed by the Performance Standards;

- b) There has been a serious or persistent failure to adhere to safety requirements or Performance Standards.

8.4.4. Upon occurrence of a Breach of the Performance Standards, FSCL shall be entitled, without prejudice to and notwithstanding any other consequences provided therefore under this Agreement, to terminate the Concession Agreement in accordance with Clause 17.

8.5. Review of Performance Standards

8.5.1. The Parties and PM/FSCL must meet periodically and at least annually to review the Performance Standards and in good faith, negotiate adjustments, deletions or additions that are appropriate to ensure that the Performance Standards are appropriate to measure the Concessionaire's performance in line with Good Industry Practice. The following rules apply to the reviews undertaken under this Clause:

- a) Nothing in this Clause requires FSCL/PM to negotiate on or agree to adjustments to reflect diminished/ inferior performance capability.
- b) If, by 31 March in any year, the Parties have not agreed on Performance Standards applicable, the Performance Standards for the previous year shall be adhered to by the Concessionaire

8.5.2. Changes in Performance Standards by FSCL

FSCL may change the Performance Standards either in general or in a particular case in case it is considered necessary to achieve the overall objectives set out in Clause 2.3 either to maximize utilization of regular passenger services or to achieve efficiency of resources allocated to regular passenger services.

9. PERFORMANCE SECURITY

9.1. The Concessionaire shall, for due and punctual performance of its obligations hereunder relating to the Project, deliver to FSCL, simultaneously with the execution of this Agreement, Fixed Deposit Receipt or a bank guarantee in favour of FSCL from a nationalized bank or any scheduled bank authorised by RBI to undertake government transactions and acceptable to FSCL, in the form as set forth in Schedule 5, (hereinafter referred to as "**Performance Security**") for a sum equal to 10% of the annual payments to the PO as provided in Schedule 3. This Performance Security shall be kept valid for the contract period plus 90 days The Performance Security is to ensure due performance of all obligations of the Concessionaire under this Agreement against an Event of Default by the Concessionaire and/or any Breach of its obligations hereunder.

9.2. Provided that if the Agreement is terminated due to any event other than a Concessionaire Event of Default, the Performance Security if subsisting as of the Termination Date shall, subject to adjustment of amounts due to FSCL, if any, from the Concessionaire under this Agreement, be duly discharged and released to the Concessionaire.

9.3. Any change in status of the Concessionaire shall not affect the continuance of the Performance Security.

9.4. FSCL may claim the amount of Performance Security in a single demand or in more than one demand from the Bank. If not paid, then it shall subsist as a liability on the Concessionaire till the complete payment of the amount specified in the Performance Security is made.

9.5. Where the Performance Security has been invoked in part or full under the terms of this Agreement, provided the Agreement has not been terminated, the Concessionaire undertakes to forthwith furnish a top up guarantee or replenish the Performance Guarantee in the manner such that the aggregate value of the performance guarantees equals the original value.

9.6. Any deduction for Performance Adjustment required to be made under this Concession Agreement, as per Schedule 2: Operational Parameters, Monitoring and Performance Adjustments or otherwise, shall be made in the following manner:

- a) Deductions against payment to be made to the Concessionaire.
- b) If (a) exceeds the payment to be made then the excess amount shall be deducted from the Performance Security.

10. PROJECT MILESTONES AND COD

- 10.1. The Concessionaire shall, subject to and in accordance with the terms of this Agreement, achieve the Project Milestones set out in **Schedule 4: Implementation Plan**. Upon achieving COD, the Concessionaire shall seek the issuance of a certification in respect thereof.
- 10.2. In exceptional circumstances, on the written request from the Concessionaire for extension of End Dates together with adequate justification thereof, FSCL may consider such requests, and where appropriate, permit suitable extension(s) of End Dates. FSCL shall, consult and will consider the recommendation provided by PM, before accepting or rejecting any request for extension by the Concessionaire. In the event Concessionaire is not able to achieve COD within such extended period, it shall be deemed a Concessionaire Event of Default.
- 10.3. In case, such extension is permitted by FSCL/ PM, the revised dates for Project Milestones shall be treated as scheduled End Date/s.
- 10.4. Upon readiness of completion of respective Project Milestone, the Concessionaire shall request the issue of Project Milestone Certificate in respect thereof. FSCL/PM shall, upon verification of the relevant documentation and site visits, if any, and in any case within five (5) days, cause the issuance of the relevant Project Milestone Certificate.
- 10.5. For any delay in achieving the Project Milestones date/s, the Concessionaire shall pay to the FSCL, compensation (hereinafter referred as “Damages”) to be calculated in the following manner for:
- a) Delay up to ninety (90) days, from the each scheduled End Date, @ Rupees two thousand five hundred only per bus per day, and
 - b) A delay beyond ninety (90) days and up to one hundred and eighty (180) days, from the each scheduled End Date, @ Rupees five thousand only per bus per day.

Notwithstanding the above, in the event of delay beyond one hundred and eighty (180) days of any of the Project Milestones date/s, the FSCL shall be entitled to terminate this Agreement in accordance with the provisions of Clause 17) of this Agreement. In such scenario, FSCL reserves the right, without prejudice to any other rights, which it may be entitled to under this Agreement, to appropriate all or part of Performance Guarantee so furnished by the Concessionaire.

10.6. Change in End Dates of Milestones by FSCL

In specific circumstances, FSCL may change the commencement of services beyond the stipulated time with advance notice of 4 weeks..

11. FINANCING ARRANGEMENTS

- 11.1. The Concessionaire shall at its cost, expenses and risk make such financing arrangement as would be necessary to implement the Project and to ensure the procurement, construction, operation, maintenance and management of the Project and all of its other obligations under this Agreement, in a timely manner.
- 11.2. Upon Termination of this Agreement FSCL shall be entitled to appropriate the Performance Security in terms of Event of Default set out in Clause 17.

12. EMPLOYEE BENEFITS, HEALTH, WELFARE AND SAFETY

12.1. General

The Concessionaire is responsible for ensuring that Employees, including the Drivers:

- a) have necessary qualifications, competence, skills, experience and license/permits, wherever applicable including but not limited to the relevant provisions of the Motor Vehicles Act, 1988;
- b) have good knowledge of routes, timetable, ticketing systems and other relevant systems;
- c) are in sound physical and mental health;

- d) are courteous and helpful to passengers and other road users;
- e) do not discriminate against any passengers;
- f) wear relevant badges, identity cards; and
- g) wear uniform, that conforms to the job requirements and specifications prescribed under Applicable Laws, Applicable Clearances or Approvals and Permit conditions, if any.

12.2. Occupational Health, Welfare and Safety

The Concessionaire shall:

- a) provide and maintain throughout the Term a safe and healthy work environment for all Concessionaire's Staff;
- b) make sure that all Concessionaire's staff engage in safe work practices at all times;
- c) maintain plant, equipment, approved vehicles and Depot in a safe condition;
- d) make sure that all Concessionaire's staff are aware of and comply with any changes to relevant legislation or policy in relation to occupational health, welfare and safety;
- e) provide occupational health, welfare and safety training to Concessionaire's staff in accordance with the requirements of labour and welfare laws; and
- f) develop and maintain a management system which reports, investigates and responds appropriately to any hazard, incident or issue relating to occupational health, welfare and safety, in relation to providing services set out in this Agreement.

13. SAFETY AND SECURITY

13.1. Without limiting any other obligation imposed under this Agreement, the Concessionaire shall take all necessary steps to ensure safety, security and well-being of all persons including:

- a) members of the public;
- b) passengers boarding, travelling on and alighting from the buses used in operating the Services;
- c) all employees, agents and contractors of FSCL and PM whilst on or visiting any of the Concessionaire's buses or premises used in the provision of the Stage Carriage Services for any purpose in connection with this Agreement; and
- d) other road users.

Further, the Concessionaire shall:

- a) promptly report to FSCL and PM or other relevant FSCL any circumstance or thing that may compromise the safety and security of passengers or other members of the public and is known or ought reasonably to be known to the Concessionaire;
- b) cooperate with members of the police or any other law enforcement agency; and
- c) provide the police or any other law enforcement agency with any information, access or other form of assistance reasonably required for the safety and security of passengers or the good management of the public transport system in Project Area.

13.2. The Concessionaire must provide, within three months of Appointed Date, a Safety and Security Plan, comprising but not limited to:

- a) Risk management plan
- b) General security plan, which provides general details of how the safety of the public, passengers and drivers will be ensured.
- c) Preventative security plan
- d) Incident management/emergency response plan
- e) Business continuity and recovery plan

Once the Safety and Security Plan has been accepted by FSCL, the Concessionaire must ensure that the Safety and Security Plan is continually reviewed and updated during the tenure of this Agreement.

14. FARE COLLECTION SYSTEM

14.1. FSCL's Right to Use

The Concessionaire hereby agrees to provide all support to FSCL, or its appointed agents the right to use necessary infrastructure belonging to the Concessionaire for the purpose of implementing FCS at all times during the subsistence of this Agreement.

14.2. Maintenance

The Concessionaire must cooperate with the FSCL, FCS Provider, ITMS service provider etc in all respects to ensure that the FCS/ ITMS are properly maintained and functioning at all times. Where necessary provide its bus towards inspection, maintenance, data loading/ uploading.

Further, necessary staff of FSCL, PM, FCS / ITMS Provider, their agents and representatives such as ticket collector, ticket checker, conductor or such persons shall be carried on board, at no extra cost. The Concessionaire shall also provide full cooperation in terms of instructions of the ticket issuer/ collector, conductor, ticket inspector including halt/ stoppage of Stage Carriage for conducting necessary inspections.

15. INSURANCE

15.1. The Concessionaire shall, throughout the Concession Period, at its cost and expense, take out and maintain by due re-instatement or otherwise all the necessary insurances up to such maximum sums as may be required under and in accordance with the Applicable Laws and such insurance as the Concessionaire reasonable considers necessary or desirable in accordance with Good Industry Practice. The Concessionaire shall also effect and maintain such insurance as may be necessary for mitigating the risks that may devolve on FSCL as a consequence of any act of omission by the Concessionaire during the Concession Period.

15.2. The Concessionaire shall submit to FSCL within thirty (30) days of obtaining such insurance cover, proof of all insurance obtained by the Concessionaire in accordance with this Clause.

- a) The Concessionaire shall furnish to FSCL copies of certificates of insurance, copies of insurance policies signed by an authorised representative of the insurer and copies of all premium payment receipts in respect of such insurance received from each insurance carrier, and such insurance shall not be cancelled, changed or not renewed until the expiration of at least 45 (forty five) days after written notice of such cancellation change of renewal has been received from FSCL. The evidence that the insurances described in this Clause have been effected, and
 - i. Copies of the insurance policies
 - ii. When insurance premium is paid, the Concessionaire shall submit proof of payment to FSCL.
 - iii. The Concessionaire shall comply with the conditions stipulated in each of the insurance policies.
 - iv. If the Concessionaire fails to effect and keep in force any of the insurances required under the Agreement, or fails to provide satisfactory evidence, policies and receipts in accordance with this Clause, the same shall be treated as Concessionaire's Event of Default.
 - v. Nothing in this Clause shall limit the obligations, liabilities or responsibilities of the Concessionaire under the other terms of the Agreement or otherwise. Any amounts not insured or not recovered from the insurers shall be borne by the Concessionaire.
- b) All insurance policies supplied by the Concessionaire shall include a waiver of any right of subrogation of the insurers thereunder against inter alia, FSCL and its assigns, subsidiaries, affiliates, employees, insurers and underwriters and of any right of the insurers of any set off or counter claim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured any such policy.

- c) The Concessionaire hereby further releases assigns and waives any and all rights of recovery against, inter alia, FSCL and PM and its affiliates, subsidiaries, employees, successors, permitted assigns, insurers and underwriters which the Concessionaire may otherwise have or acquire in or from or in any way connected with any loss covered by policies of insurance maintained or required to be maintained by the Concessionaire pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.
- d) The proceeds from all insurance claims shall be applied by the Concessionaire towards meeting his obligations under the Agreement.

16. FORCE MAJEURE

16.1. Force Majeure Event

As used in this Agreement, a Force Majeure Event shall mean occurrence in India of any or all of Non Political Event, Indirect political Event and/or Political Event as defined hereinafter which prevent the Party claiming Force Majeure (the “Affected Party”) from performing its obligations under this Agreement and which act or event (i) is beyond the reasonable control and not arising out of the fault of the Affected Party, (ii) the Affected Party has been unable to overcome such act or event by the exercise of due diligence and reasonable efforts, skill and care, including through expenditure of reasonable sums of money and (iii) has a Material Adverse Effect on the performance of the Affected Party.

16.2. Non Political Force Majeure Events

For purposes of this Clause, Non-Political Force Majeure Events shall mean one or more of the following acts or events:

- a) acts of God or events beyond the reasonable control of the Affected Party which could not reasonably have been expected to occur, exceptionally adverse weather conditions, lightning, earthquake, cyclone, flood, volcanic eruption or fire (to the extent originating from a source external to the Concession premises) or landslide;
- b) Radioactive contamination or ionizing radiation;
- c) Strikes or boycotts (other than those involving the Concessionaire, Concessionaires or their respective employees/ representatives or attributable to any act or omission of any of them) interrupting supplies and services to the public for a period exceeding a continuous period of Thirty (30) days;
- d) any judgment or order of any court of competent jurisdiction or statutory authority in India made against the Concessionaire in any proceedings for reasons other than failure of the Concessionaire to comply with any Applicable Law or Applicable Clearances or Approvals or on account of breach thereof, or of any contract, or enforcement of this Agreement or exercise of any of its rights under this Agreement by FSCL;
- e) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion which prevents or restricts the performance by the Concessionaire of its obligations under this Agreement for a period exceeding a continuous period of Thirty (30) days;
- f) industry wide or State wide or India wide strikes or industrial action which prevent the Concessionaire from providing the services under the Concession Agreement for a period exceeding a continuous period of Thirty (30) days;
- g) Any event or circumstance of a nature analogous to any of the foregoing.

16.3. Indirect Political Force Majeure Events

For purpose of this Clause, Indirect Political Event shall mean an act of war (whether declared or undeclared), invasion, armed conflict or an act of foreign enemy, blockade, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage which prevents the Concessionaire from operating the Stage Carriage Services for a period exceeding a continuous period of seven (7) days in a year.

16.4. Political Force Majeure Events

For purposes of Clause, Political Event shall mean one or more of the following acts or events by or on account GoI, FSCL or any other Governmental Agency:

- a) Change in Law, only when provisions of this Agreement cannot be applied;
- b) Expropriation or compulsory acquisition by any Governmental Agency of the entire Project.

16.5. Notice of Force Majeure Event

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 other party of the same, setting out, inter alia, the following in reasonable detail:

- a) The nature and extent of the Force Majeure Event.
- b) The estimated Force Majeure Period.
- c) The nature of and the extent to which, performance of any of its obligations under this Agreement is affected by the Force Majeure Event.
- d) the measures which the Concessionaire 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
- e) Any other relevant information concerning the Force Majeure Event, and /or the rights and obligations of the Parties under this Agreement.

16.6. 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 to other parties as required by the preceding clauses
- 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 is likely to be caused to the Concession as a result of the Force Majeure Event and to restore the Concession in accordance with the principles of law 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 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;
- f) any insurance proceeds received shall be entirely applied to repair, replace or restore the assets damaged on account of the Force Majeure Event, in accordance with Good Industry Practice, unless otherwise agreed to amongst other parties.

16.7. Termination due to Force Majeure Event

- a) If a Force Majeure Event leads to a situation that in the reasonable judgment of the Parties, the Concession contract cannot be restored ("Total Loss"), the Parties may mutually decide to terminate this Agreement or continue this Agreement on mutually agreed revised terms.
- b) Notwithstanding anything contained in this Agreement, on determination of Total Loss or if a Force Majeure Event subsists for a period exceeding 180 days either Party shall be entitled to terminate this Agreement by a notice in writing in respect thereof.

- c) Following the issue of notice to terminate this Agreement, as provided for in this Clause, the Concessionaire shall promptly take all such steps as may be necessary or required to handover the assets and other facilities given by FSCL/PM to the Concessionaire subject to other provisions of this Agreement.

16.8. Save and except as expressly provided in this Clause, neither of the parties 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 other Force Majeure Event.

17. EVENTS OF DEFAULT AND TERMINATION OF THE CONCESSION

17.1. Termination for the Concessionaire Event of Default

17.1.1. Concessionaire's Event of Default

The following events shall constitute an event of default by the Concessionaire

("Concessionaire Event of Default") unless such Concessionaire Event of Default has occurred as a result of FSCL Event of Default or a Force Majeure Event:

- 1) The Concessionaire fails to achieve any Project Milestone within the period set forth in Schedule 4: Implementation plan or during any extended period as provided in Clause 10.2;
- 2) At any time during the Concession Period, the Concessionaire fails to adhere to the Equipment Specifications or has failed to meet Performance Standards in terms of Clause 8.3 and 8.5 and has failed to remedy the same within 30 days;
- 3) The Concessionaire is in Breach of this Agreement;
- 4) The Concessionaire commits default in complying with any of the terms and conditions of this Agreement, save and except those defaults in respect of which Cure Period has been expressly provided in this Agreement and fails to remedy or rectify the same within the period provided in a notice in this behalf from FSCL which shall:
 - a) require the Concessionaire to remedy the breach or breaches referred to in such notice within 1 (one) month (or such longer period as may be agreed by the FSCL at its absolute discretion); or
 - b) permit the Concessionaire to put forward within 15 days of such notice a reasonable programme for the remedying of the breach or breaches, such programme to specify in reasonable detail the manner in which such breach or breaches is or are proposed to be remedied and the latest date by which it is proposed that such breach or all such breaches shall be remedied.
- 5) The Concessionaire creates any Encumbrance, charges or lien in favour of any person save and except as otherwise expressly permitted under Clause 22.3; The shareholding of the Consortium Members falls below the minimum prescribed under Clause 7.2.3 (e) and the Concessionaire does not *suomotu* cure such default within 90 (ninety) days of its occurrence;
- 6) The transfer, pursuant to law of either (a) the rights and/or obligations of the Concessionaire or (b) all or material part of the assets or undertaking of the Concessionaire except where such transfer in the reasonable opinion of FSCL does not affect the ability of the Concessionaire to perform, and the Concessionaire has the financial and technical capability to perform, its obligations;
- 7) A resolution is passed by the shareholders of the Concessionaire for the voluntary winding up of the Concessionaire;
- 8) The Concessionaire is adjudged bankrupt or insolvent or if a trustee or receiver is appointed for the Concessionaire or for any of its property that has a material bearing on the Project;
- 9) Any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction or the Concessionaire is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction provided that, as part of such amalgamation or reconstruction, the property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and provided that:

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- a) the amalgamated or reconstructed entity has the technical capability and operating experience necessary for the performance of its obligations under this Agreement; and
 - b) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and has a credit worthiness at least as good as that of the Concessionaire as at the Financial Close.
- 10) The Concessionaire abandons the operations of the Project for more than 15 (fifteen) consecutive days without the prior consent of FSCL, provided that the Concessionaire shall be deemed not to have abandoned such operation if such 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 by FSCL;
 - 11) The Concessionaire repudiates this Agreement or otherwise evidences an intention not to be bound by this Agreement;
 - 12) The Concessionaire suffers an execution being levied on any of its assets/ equipment causing a Material Adverse Effect on the Project and allows it to be continued for a period of 15 (fifteen) days;
 - 13) The Concessionaire is using the FSCL Infrastructure Facilities for any purposes other than as provided in this Agreement;
 - 14) Any representation made or any warranty provided by the Concessionaire under this Agreement or the proposal is found to be false or misleading.
- 17.1.2. Save and except as otherwise provided in Clause 17.2, and without prejudice to any other right or remedy which FSCL may have in respect thereof under this Agreement, upon a report from PM or otherwise about the occurrence of any breach or default by the Concessionaire under this Agreement including any Concessionaire Event of Default,
- FSCL shall be entitled to terminate this Agreement by a communication in writing (the “Termination Notice”) to the Concessionaire if the Concessionaire has failed to cure such breach or default within the period provided for the same in this Agreement provided that before issuing the Termination Notice, FSCL shall by a notice in writing inform the Concessionaire of its intention to issue the Termination Notice (the “Preliminary Notice”) and grant 15 (fifteen) days’ time to the Concessionaire to make its representation, if any, against such intended Termination Notice and shall after the expiry of said 15 (fifteen) day period whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice
- 17.1.3. Subject to Clause 17.2, the following shall apply in respect of cure of any of the defaults and/or breaches of this Agreement.
- i. The Cure Period shall commence from the date on which a notice in writing is delivered by FSCL to the Concessionaire asking the latter to cure the breach or default specified in such notice;
 - ii. The Cure Period provided in this Agreement shall not relieve the Concessionaire from liability for Damages caused by its breach or default;
 - iii. The Cure Period shall not in any way be extended by any period of suspension under this Agreement;
 - iv. If the cure of any breach by the Concessionaire requires any reasonable action by Concessionaire that must be approved by FSCL or PM hereunder the applicable Cure Period (and any liability of the Concessionaire for damages incurred) shall be extended by the period taken by FSCL or PM to accord their required approval.
- 17.2. Notwithstanding anything to the contrary contained in this Agreement, in the event of the Concessionaire being in default under any of the provisions hereof expressly providing for Termination under or in accordance with this Clause 17, FSCL shall be entitled to terminate this Agreement forthwith by issuing a Termination Notice to the Concessionaire and upon issue of such Termination Notice by FSCL this Agreement shall stand terminated forthwith. Provided, however, that prior to such Termination, FSCL shall by notice grant to the Concessionaire a Cure Period up to one (1) month for curing the relevant breach or default of the provisions of this Agreement.

17.3. Termination for FSCL Event of Default

17.3.1. The Concessionaire may after giving 90 (ninety) days' notice in writing to FSCL terminate this Agreement upon the occurrence and continuation of any of the following events (each a "FSCL Event of Default"), unless any such FSCL Event of Default has occurred as a result of Concessionaire Event of Default or due to a Force Majeure Event.

- 1) FSCL is in breach of this Agreement and such breach has a Material Adverse Effect on the Concessionaire and FSCL has failed to cure such breach or take effective steps for curing such breach within 90 (ninety) days of receipt of notice in this behalf from the Concessionaire;
- 2) FSCL repudiates this Agreement or otherwise evidences an irrevocable intention not to be bound by this Agreement;
- 3) GoI or GoH or any Governmental Agency have by an act of commission or omission created circumstances that have a Material Adverse Effect on the performance of its obligations by the Concessionaire and have failed to cure the same within 90 (ninety) days of receipt of notice by FSCL in this behalf from the Concessionaire;
- 4) FSCL has unreasonably withheld or delayed grant of any approval or permission which the Concessionaire is obliged to seek under this Agreement, and thereby caused or likely to cause Material Adverse Effect;
- 5) Any representation made or warranties given by FSCL under this Agreement have been found to be false or misleading.

17.3.2. Termination for Authority's Event of Default

- a. Without prejudice to any other right or remedies which the concessionaire may have under this Agreement, upon occurrence of Authority's Event of Default, the concessionaire shall be entitled to terminate this Agreement by issuing a Termination Notice to the Authority; provided that before issuing the Termination Notice, the concessionaire shall by a notice inform the Authority of its intention to issue such Termination Notice and grant 45 (Forty Five)days or reasonable period to the Authority to remedy the default and/or make representations, and may after the expiry of such Remedial Period on non-remedy of breach/default, issue a Termination Notice.
- b. Upon Termination of this Agreement on account of Authority's Event of Default, the Authority shall:
 - i. Pay any sum due and payable as the operation Payment by the Authority till date of such termination
 - ii. Takeover peaceful possession without any Encumbrance of all Depots, Terminals, and/or Parking places, any equipment / fitments etc provided by the authority and or its other contractors / service providers on-board ; Computer software, electronic hardware or any Intellectual Property, pertaining to Bus Operation and maintenance, provided to the concessionaire.
 - iii. Refund/ release of performance security in full provided there are no outstanding dues of the Authority from the concessionaire.
 - iv. Release bus (es) under operation from the duty along with all hardware and software installed on the bus by the concessionaire.

17.4. Upon Termination of this Agreement for any reason whatsoever, FSCL shall:

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- a) take possession and control forthwith of any and all of its infrastructure, equipment, materials, office space, implements, stores etc. on or about the Project;
- b) restrain the Concessionaire and any person claiming through or under the Concessionaire from use of FSCL Infrastructure Facilities;
- c) subject to the provisions of this Agreement, enter into a Concession Agreement with any Person on such terms and conditions as it may deem fit;

17.5. Termination Payments for concessionaire event of default

Upon termination for concessionaire event of default, FSCL shall make payment of performance guarantee submitted by the concessionaire after deduction of all penalties, and any other sums recoverable from the concessionaire and on obtaining the proof of payment of all statutory dues of his staff / employees till date; payment of all bills for utilities and for any other item; recovery for damages caused to FCTS assets and not repaired besides recovery of any and all other sums payable by the concessionaire to FSCL, ITMS equipment supplier and or the Revenue collection agency, etc.

17.6. 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 Termination Notice.

17.7. Miscellaneous

On termination of this Agreement, FSCL or PM shall not be liable to the Concessionaire for any loss of profit, loss of contract or any other losses and/or expenses of whatsoever nature arising out of or in connection with such termination.

18. REPRESENTATIONS, WARRANTIES AND DISCLAIMER

18.1. Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants that:

- a) It has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- b) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation;
- c) It has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transaction contemplated hereby;
- d) It has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement;
- e) It has the financial standing and capacity to undertake the Concession;
- f) This Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- g) It is subject to civil and commercial laws of India with respect to this Agreement and it hereby expressly waives any immunity in any jurisdiction in respect hereof;
- h) It has no knowledge of any violation of default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any governmental agency which may result in any Material Adverse Effect or impairment of the Concessionaire's ability to perform its obligations and duties under this Agreement;

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- i) There are no actions, suits, proceedings or investigations pending or to the Concessionaire's knowledge threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may constitute Concessionaire's Default or which individually or in the aggregate may result in Material Adverse Effect;
- j) It has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect;
- k) No bribe or illegal gratification has been paid or will be paid in cash or kind by or on behalf of the Concessionaire to any person to procure the Concession;
- l) Without prejudice to any express provision contained in this Agreement, the Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has after a complete and careful examination made an independent evaluation of the Concession and the information provided by FSCL, and has determined to its satisfaction the nature and extent of risks and hazards as are likely to arise or may be faced by the Concessionaire in the course of performance of its obligations hereunder, such examination/ review having included but not limited to the following:

The Concessionaire also acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth above and hereby confirms that FSCL/PM shall not be liable for the same in any manner whatsoever to the Concessionaire;

- m) The Concessionaire shall comply with requirements set out in Clause 7.2.3 (e) of this Agreement;
- n) The Concessionaire have the financial standing and resources to fund the required equity share capital of the Concessionaire and to raise the debt necessary for undertaking and implementing the Project;
- o) The existing shareholding of the promoters/Consortium Members in the Consortium is in accordance with requirements set forth in Clause 7.2.3 (e) and conforms to the representations made by the Consortium Members at the time of LOA;
- p) the information submitted in the Proposal and updated as on or before the issue of LOA is true and accurate as on the date of this Agreement;

there has been no change in the control of any Consortium Member whose technical and/or financial capacity was taken into consideration for the purposes of short listing and prequalification for the submission of the Proposal pursuant to the RFQP as on date of this Agreement;

- q) the <Name of the selected bidder/Consortium>:
 - i. met at the time of submission of Proposal and continues to meet the prequalification conditions to be eligible for the award of LOA and for the Concessionaire to enter into this Agreement;
 - ii. has not made any material misrepresentation in the Proposal or any of the submissions made thereafter or in this Agreement;
 - iii. has no conflict of interest which affected in any way the Bidding Process (as defined in the "RFQP"); and
 - iv. has not engaged in before or after the submission of Proposal or at any time thereafter and will not engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice; and for the purposes hereof the expression "corrupt practice", "coercive practice", "undesirable practice" and "restrictive practice" shall have the meaning ascribed thereto in the RFQP; and
- r) The Concessionaire is organized and validly existing under the laws of the jurisdiction of its incorporation and has requested and agreed with the FSCL pursuant to the LOA to enter into this Agreement and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement.

18.2. Representations and Warranties of FSCL

FSCL represents and warrants that:

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- a) FSCL has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- b) It has the right to grant the Concession and has also complied with all the Rules and Regulation under the Motor Vehicles Act, 1988 to enter into this Agreement,
- c) PM shall act on its behalf to control, manage and regulate the Concession for Operation of Stage Carriage Services in the Project Area. FSCL represents and warrants to the Concessionaire that FSCL has taken all necessary action to authorize the execution, delivery and performance of this Agreement;
- d) This Agreement constitute its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- e) FSCL is subject to civil and commercial laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any sovereign immunity in any jurisdiction in regard to matters set forth in this Agreement; and
- f) FSCL shall simultaneously make all efforts towards creating necessary infrastructure to manage the Project since as part of the overall plan to support city bus service in the Project Area by the FSCL.

18.3. **Obligation to notify change**

In the event that any of the representations or warranties made/given by a Party ceases to be true or stands changed, the Party who had made such representation or given such warranty shall promptly notify the other of the same.

19. **HANDBACK**

19.1. **Project Facilities Ownership**

- a) Without prejudice and subject to the Concession, the ownership of the FSCL Infrastructure Facilities shall at all time rest with FSCL/ concerned government agency.
- b) Without prejudice and subject to the Concession, the ownership of assets belonging to the Concessionaire and used for the Project, shall remain with the Concessionaire.

19.2. **Obligations of Parties**

a) **Concessionaire's Obligations**

- i. The Concessionaire shall on the date of Expiry by efflux of time or Termination, as the case may be, hand back vacant and peaceful possession of the FSCL Infrastructure Facilities to FSCL / concerned government agency free of cost and in good operable condition.
- ii. At least 2 months before the expected Expiry or within one week of issue of Termination Notice, a joint inspection of the FSCL Infrastructure Facilities shall be undertaken by FSCL, Concessionaire and PM. FSCL and PM shall, within 15 days of such inspection prepare and furnish to the Concessionaire a list of works/ jobs ("FSCL Infrastructure Facilities Hand back Requirements"), if any, to be carried out so as to conform to the Good Industry Practices and acceptable conditions subject to normal wear and tear. The Concessionaire shall promptly undertake and complete such works/jobs at least one month prior to the expected date of Expiry or Date of Termination and ensure that the FSCL Infrastructure Facilities continue to meet such requirements until the same are handed back to FSCL/ concerned government agency.
- iii. FSCL/ PM shall, within 15 days of the joint inspection undertaken under preceding clause (i) prepare and furnish to the Concessionaire a list of items, if any, with corresponding distinctive descriptions, which are to be compulsorily handed back to FSCL in terms of Clause 19.1(a) and 19.1(c) as applicable.
- iv. The Concessionaire hereby acknowledges FSCL's rights specified in Clause 17.1 & 17.4 enforceable against it upon Termination and its corresponding obligations arising therefrom. The Concessionaire undertakes to comply with and discharge promptly all such obligations.

b) FSCL's Obligations

FSCL shall, subject to FSCL's right to deduct amounts towards;

- i. carrying out works/jobs listed under Clause 19.2 (a)
- ii. which have not been carried out by the Concessionaire,
purchase of items, which have not been handed back to FSCL or assets belonging to the Concessionaire and used for the Project in terms of Clause 19.2(a) iii, and any outstanding dues, which may have accrued in respect of the FSCL Infrastructure Facilities; duly discharge and release to the Concessionaire the Performance Security within 6 (six) months from the Expiry Date/Termination Date.

20. INDEMNITY AND LIABILITY

20.1. General Indemnity

- a) The Concessionaire will indemnify, defend and hold FSCL/ PM harmless against any and all proceedings, actions and, third party claims (other than a claim by FSCL/ PM or GoH or GoI for loss, damage and expense of whatever kind and nature arising out of the Concession contract of any of its obligations under this Agreement except to the extent that any such claim has arisen due to FSCL Event of Default).
- b) FSCL will, indemnify, defend and hold harmless the Concessionaire against any and all proceedings, actions, third party claims for loss, damage and expense of whatever kind and nature arising out of defect in title and/or the rights of FSCL or PM adversely affecting the performance of the Concessionaire's obligations under this Agreement and/or arising out of acts done in discharge of their lawful functions by FSCL or PM its Officers, servants, agents, subsidiaries and contractors ("FSCL/ PM Indemnified Persons") including FSCL Events of Default except to the extent that any such claim has arisen due to a negligent act or omission, breach of contract or breach of statutory duty on the part of the Concessionaire, its Subsidiaries, affiliates, Contractors, servants or agents including due to Concessionaire Event of Default.

20.2. Without limiting the generality of Clause 20.1 the Concessionaire shall fully indemnify, save harmless and defend FSCL and PM including its officers, servants, agents and subsidiaries from and against any and all loss and damages arising out of or with respect to (a) failure of the Concessionaire to comply with Applicable Laws and Applicable Clearances or Approvals, (b) payments of taxes relating to the Concessionaire contractors, suppliers and representatives, income or other taxes required to be paid by the Concessionaire without reimbursement hereunder, or (c) non-payment of amounts due as a result of materials or services provided to the Concessionaire or any of its Contractors which are payable by the Concessionaire or any of its agents

20.3. Without limiting the generality of the provisions of this Clause, the Concessionaire shall fully indemnify, save harmless and defend the FSCL and PM from and against any and all damages which the FSCL and/or PM may hereafter suffer or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Concessionaire's agents in performing the Concessionaire's obligations or in any way incorporated in or related to the Project. If in any such suit, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the suspension of the injunction or restraint order. If, in any such suit claim or proceedings, the Project, or any part, thereof or comprised therein is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for FSCL and/or PM a license, at no cost to FSCL and/or PM authorizing continued use of the infringing work. If the Concessionaire is unable to secure such license within a reasonable time, the Concessionaire shall, at its own expense and without impairing the specifications and standards either replace the affected work, or part, or process thereof with non-infringing work or parts or process, or modify the same so that it becomes non-infringing.

20.4. In the event that either Party receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under this Clause it shall notify the other Party ("Indemnifying Party") within 7 days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the

Indemnifying Party wishes to contest or dispute the claim it may conduct the proceedings in the name of the Indemnified Party subject the Indemnified Party being secured against any costs involved to its reasonable satisfaction.

20.5. Defence of Claims

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

If the Indemnifying Party has exercised its rights under Clause 20.4 the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

If the Indemnifying Party exercises its rights under Clause 20.4 then the Indemnified Party shall nevertheless have the right to employ its own counsel and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party, when and as incurred, unless:

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

provided that if clauses (ii), (iii) or (iv) shall be applicable, counsel for the Indemnified Party shall have the right to direct the defense of such claim, action, suit or proceeding on behalf of the Indemnified Party and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

21. PERSONNEL UNDER CONCESSIONAIRE

- 21.1. The Concessionaire shall be solely responsible for all the personnel including drivers and other employees working under the Concession which are employed directly or engaged by the Concessionaire through any other agency. Further, the Concessionaire shall also be solely responsible for the statutory payments in respect of the labour laws to the drivers and other personnel working under the Concession. The Concessionaire while appointing the personnel will specifically inform the personnel that on being appointed for the purpose of Concession cannot claim any right or privileges as

employees of FSCL/ PM. Neither FSCL nor PM shall be responsible for any liability of the Concessionaire towards the statutory payments to the personnel working under them. The Concessionaire shall hold PM/FSCL harmless from any liability, damages, claims, costs and expenses of any nature arising from alleged violation of personnel practices.

22. DISPUTE RESOLUTION MECHANISM

22.1. Amicable Settlement

- a) If any dispute or difference or claims of any kind arises between the FSCL and the Concessionaire in connection with construction, interpretation or application of any terms and conditions or any matter or thing in any way connected with or in connection with or arising out of this Agreement, or the rights, duties or liabilities of any Party under this Agreement, whether before or after the termination of this Agreement, then the Parties shall meet together promptly, at the request of any Party, in an effort to resolve such dispute, difference or claim by discussion between them

22.2. Assistance of Expert

- a) The Parties may, in appropriate cases agree to refer the matter to an expert appointed by them with mutual consent (“Expert”). The cost of obtaining the service of the Expert shall be shared equally.

22.3. Arbitration

a) Arbitrator

Failing amicable settlement and/or settlement with the assistance of Expert appointed by the Parties by mutual consent, the dispute or differences or claims as the case may be, shall be finally settled by binding arbitration under the Arbitration and Conciliation Act, 1996. Parties agree that Commissioner, Municipal Corporation Faridabad (MCF) shall be the ‘Sole Arbitrator’.

b) Place of Arbitration

The place of arbitration shall be Faridabad.

c) English 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.

d) Procedure

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

e) 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 proceeding or their assets wherever they may be found and the arbitral award so passed will be submitted in the Civil Court having jurisdiction for making rule of the court.

f) Fees and Expenses

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

g) 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.

23. ASSIGNMENT, CHARGES AND SUB-CONTRACTING

23.1. The Concessionaire shall not assign in favour of any person this Agreement or the rights, benefits and obligations hereunder save and except with prior consent of FSCL.

The aforesaid shall not apply to:

- i. liens/encumbrances arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Concessionaire;
- ii. Pledges/hypothecation of goods/ moveable assets, revenue and receivables as security for indebtedness, in favour of the Lenders and working capital providers for the Project;
- iii. assignment of Concessionaire's rights and benefits under this Agreement to or in favour of the Lenders as security for financial assistance provided by them.

23.2. The Concessionaire shall not create nor permit to subsist any Encumbrance over the FSCL Infrastructure Facilities.

23.3. The Concessionaire shall not sub-contract all or any part of the Project without the prior written consent of FSCL. For any sub-contracting activity, prior approval of FSCL shall be required to be obtained by the Concessionaire, which may be refused or granted subject to such conditions as FSCL deems fit.

23.4. Where the Concessionaire sub-contracts, a part of the Project to any Person, the Concessionaire shall:

- a) ensure that such Person is obliged to comply with all of the obligations and duties of the Concessionaire under this Agreement insofar as they relate to part of the Project which that sub-contractor is required to provide;
- b) be responsible for payments to that Person; and
- c) remain solely responsible and liable to the FSCL for any breach of the Agreement or any performance, non-performance, part-performance or delay in performance of any of the services by any sub-contractor to the same extent as if such breach, performance, non-performance, part-performance or delay in performance had been carried out by the Concessionaire.

23.6. This Concession Agreement is personal to the Concessionaire who shall not assign, novate or otherwise dispose in whole or in part of its rights hereunder nor assign, subcontract or otherwise delegate in whole or in part any of its obligations hereunder without the prior written consent of FSCL. For the avoidance of doubt a disposal shall be deemed to include but not be limited to any reorganisation of the Concessionaire which would affect the Concessionaire's ability to perform any of its obligations under this Concession Agreement including without limitation any reorganisation which affects the resources, technical competence and/or financial standing (or the technical and financial resources available) to enable the Concessionaire to perform its obligations.

24. MISCELLANEOUS

24.1. Information

a) The Concessionaire acknowledges that FSCL:

- i. is subject to The Right to Information Act 2005 ("RTI Act") and agrees to assist and cooperate with FSCL to enable FSCL to comply with its obligations under the RTI; and
- ii. may be obliged under the RTI Act to disclose information without consulting or obtaining consent from the Concessionaire.
- iii. Without prejudice to the generality of this Clause, the Concessionaire shall and procure that its sub-contractors (if any) shall:
 - transfer to the Concessionaire each information request relevant to the Project; and
 - in relation to information held by the Concessionaire on behalf of the FSCL, provide FSCL with details about and/or copies of all such information that FSCL requests and such details and/or copies shall be provided within 5 Business Days of a request from FSCL (or such other period as the FSCL may reasonably specify), and in such form as the FSCL may reasonably specify.

b) Subject to 24.1 (a), Each Party will keep confidential:

- i. the terms of this Agreement; and
 - ii. any and all Confidential Information that it may acquire in relation to the other party.
- c) Neither Party will use the other Party's Confidential Information for any purpose other than to perform its obligations under this Agreement. Each Party will ensure that its officers and employees comply with the provisions of Clause 24.1.
- d) The obligations on a Party set out in Clause 24.1 (b) will not apply to any Confidential Information which:
- i. either of the Parties can demonstrate is in the public domain; or
 - ii. a Party is required to disclose by order of a court of competent jurisdiction but then only to the extent of such required disclosure.
- e) The provisions of this Clause 24.1 will survive any termination of this Agreement for a period of 5 years from termination.

24.2. Interest and Right of Set Off

Any sum which becomes payable under any of the provisions of this Agreement by one Party to the other Party shall, if the same be not paid within the time allowed for payment thereof, shall be deemed to be a debt owed by the Party responsible for payment thereof to the Party entitled to receive the same. Such sum shall until payment thereof, carry interest at State Bank of India – Prime Lending Rate (a rate at which the bank ordinarily lends money to its best corporate customers) from the due date for payment thereof until the same is paid to or otherwise realised by the Party entitled to the same. Without prejudice to any other right or remedy that may be available under this Agreement or otherwise under law, the Party entitled to receive such amount shall also have the right of set off.

Provided the stipulation regarding interest for delayed payments contained in this clause shall neither be deemed nor construed to authorise any delay in payment of any amount due by a Party nor be deemed or construed to be a waiver of the underlying breach of payment obligations.

24.3. Governing Law and Jurisdiction

This Agreement shall be governed by the laws of India subject to Clause 22, the Courts at Faridabad shall have exclusive jurisdiction over all matters arising out of or relating to this Agreement.

24.4. 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.

24.5. Survival

Termination of this Agreement:

- a) shall not relieve the Concessionaire or FSCL 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.

24.6. **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.

24.7. **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, courier, mail or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

If to FSCL

Chief Executive Officer,
FARIDABAD SMART CITY LIMITED
Plot No. 35, Nain Sadan,
Sector 20A, Behind EF3 Mall
Near Old Faridabad Metro Station,
Faridabad, Haryana 121002

If to the Concessionaire

<Name of the Concessionaire>,
Office Address
Email ID

Or such address 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 (i) in the case of any communication made by letter, when delivered by hand, by courier or by mail (registered, return receipt requested) at that address and (ii) in the case of any communication made by facsimile, when transmitted properly addressed to such telex number or facsimile number.

24.8. **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. Failure to agree upon any such provisions shall not be subject to dispute resolution under this Agreement or otherwise.

24.9. **No Partnership**

Nothing contained in this Agreement shall be construed or interpreted as constituting a partnership between the Parties.

24.10. **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. However, where-ever required, based on FSCL guidelines/ instructions, necessary documentation shall be required to be prepared in Hindi, also.

24.11. **Exclusion of Implied Warranties etc.**

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

24.12. **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 the Agreement.

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

SIGNED SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED

For and on behalf of FSCL By

For and on behalf of <Name of the Concessionaire> by:

_____ (Signature)

_____ (Signature)

_____ (Name)

_____ (Name)

_____ (Designation)

_____ (Designation)

In the presence of:

1.

_____ (Signature)

_____ (Name)

_____ (Address)

2.

_____ (Signature)

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_____ (Name)

_____ (Designation)

_____ (Address)

Schedule 1: Project Operation Details

1. The scheduling plan shall pertain to the specific routes in the form of a Time Table to be adhered to by the Concessionaire. The scheduling of bus services varies according to the days of week and the time of the day. Each trip has a starting time & location and a destination time & location. The scheduling plan may be amended / modified and or completely changed by FSCL any time during the concession period depending upon the operational needs and or for any other reason and the Concessionaire shall have no objection to the same. Concessionaire shall provide services as per the said operations plans / schedules. Concessionaire shall be paid as per clause 4.2. FSCL / PM shall keep the concessionaire informed of such changes as soon as possible.
2. The following are the objectives of the scheduling plan:
 - a) Integration of the Bus Time Table with other modes of existing and proposed public transport
 - b) The Time schedule for the Concessionaire
 - c) Reducing service overlaps
 - d) The minimization of layover and dead running
 - e) Time sequence feasibility of trips
 - f) The provision of bus service at regular intervals.
3. The schedule may be reviewed any time during concession period with a view to improve service delivery and fleet utilization.

3.1. The Scheduling Plan

- a) It will require provisioning buses by the Concessionaire to meet the planned schedule. This excludes additional buses held in reserve for maintenance, etc.
- b) Operational Schedules are planned to be prepared on the basis of 190±10 kms and 140±10 kms per bus per day on weekdays and weekends/holidays respectively. This may however be changed depending upon actual operational needs. Assured kms per bus per month are planned to be 5500 kms.
- c) The Concessionaire shall prepare a duty chart for employees classified as a 'Motor Transport Worker' as per the conditions of 'Motor Transport Workers Act, 1961'.

3.1.1. Differential Scheduling Method

Following availability of reasonable vehicle mobility data, the FSCL may prepare the Time Table using Differential Scheduling Method. The Differential Scheduling Method assumes that buses are likely to take lesser time during non-peak hours to complete their journeys compared to peak hours. This method is conducive to increase the fleet efficiency. The schedule for each route expected to be prepared on the same principle.

3.2. Night Services

The service is proposed to be planned in such a way that the buses will be available on each route from early morning to late at night. PM with the approval of FSCL may also operate "Night Bus Services" based on operation requirements.

Route details and the time table will be provided to the Concessionaire by the PM.

3.3. Special Schedules

Special Schedules for specific occasions such as Eid, Holi, Diwali, Rakshabandhan etc. will be prepared from time to time with a view to meet additional traffic demand and the Concessionaire needs to comply with the notified schedules.

3.4. Effective Operational Days

Time Table is prepared for weekdays, weekends and Public Holidays. The total number of weekdays is 309, and the total number of weekends and public holidays is 56 days. Weekends & Public Holidays include Sundays (52 Days) and four public holidays – Independence Day, Republic Day, Gandhi Jayanti and Holi. Considering varying operational needs on weekdays, weekends and public holidays, PM with the approval of FSCL, shall prepare / modify / change operational plans and schedules. Concessionaire shall provide bus services as per said plan / schedules.

Notes:

- 1) PM will provide the details of Routes, Trips and associated Time Table to the concessionaire during the operational stage. The Routes / schedules are subject to change from time to time based on discretion on FSCL.
- 2) Details regarding number of buses to be deployed, types of operations, route details, assured Service Kms per bus per month are set out in Table 1 of this Schedule.

Table 1: Summary

S. No.	Bus type	Type of service (Main plus any other service)	Total route kms*	Nr. of routes*	Headways in Minutes*		Nr. of buses planned for deployment*	Average Assured kms per bus per month \$
					Peak	Off peak		
1	CNG fuelled 650mm floor height AC midi	Metro feeder	69	10	4	6 to 8	40	5500
2	CNG fuelled 650mm floor height Non AC midi	Intra-city / urban areas	97	9	8 to 10	12 to 16	50	5500
<p>Notes :</p> <ul style="list-style-type: none"> i. (*) Above details are indicative and may be changed by FSCL on the basis of varying operational needs iii. (\$) Scheduled kms on week days, weekends and holidays would be planned on the basis of travel demands iv. Concessionaire shall acquire additional buses for repair and maintenance, operational spares/reserve, etc v. Indicative range of Average daily kms operation per bus 190 ± 10 kms on week days and 140 ± 10 kms on weekends and holidays vi. Indicative Operational span – 0600 hrs to 2200 hrs synchronized with metro operations and or urban areas operational needs vii. Kms operation from depot / parking place to starting trip origin in the morning and last trip end to depot / parking place at night / end of operations and or one trip end to another trip start if on different routes would form part of assured kms and paid for at KCR. viii. Actual operations may vary from time to time as decided by FSCL 								

Schedule 2: Operational Parameters, Monitoring and Performance Adjustments

1. Operational Parameters

This schedule defines the operational parameters and standards that direct the Concessionaire to provide required services to bus passengers in the Project Area.

1.1. Aims and Objectives

The principle aim of this performance monitoring regime is to provide greater incentives for a safer, more reliable, attractive, economic and efficient bus service to passengers.

Normally passengers value the quality of bus service on the following performance parameters:

A. Service Quality parameters w.r.t the following main attributes amongst others:

- Adequacy
- Accessibility to bus stops
- Regularity
- Reliability
- Safety
- Wait period or Service headways
- Load Factor (Less crowded buses/ Passenger comfort)
- Punctuality
- User satisfaction

B. Other service quality parameters that are considered important in assessing the performance of the bus services include:

- Staff attitude and behaviour
- Personal safety and security during the journey
- Ease of accessing vehicles
- Cleanliness
- Vehicle repair and upkeep
- Easy availability of travel information

In order to meet these objectives and deliver on each individual performance parameter, the Concessionaire shall be responsible for the following:

1.2. Definitions

For the purpose of this schedule:

- 1.2.1. “**Advertisement Panel**” means the designated space reserved in the interior and exterior of the bus to display advertisements.
- 1.2.2. “**Applicable Limit**” means the permissible limit in timetable for the purpose of operation of Stage Carriage Buses as described in Schedule 2.
- 1.2.3. “**FSCL Equipment**” means any on-board equipment (such as Wi-Fi router, ticket vending machine, ITMS equipment, etc.) in the bus installed by FSCL or its nominated agency.
- 1.2.4. “**Automated Vehicle Location System**” or “**AVL**” means the GPS-based automatic vehicle tracking system, integrated online with central server. The GPS data will have integration with GIS map for fleet management. GPS would also be integrated with on-board Electronic Ticket Vending / verification machine (ETVMs)

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- 1.2.5. “**Central Data Base**” means the data centre for storing and retrieving operational data, established for the Project by the FSCL.
- 1.2.6. “**Data Suspension**” means suspension of unrepresentative data as a result of factors outside the Concessionaire’s control over short term time periods (defined with mutual agreement) on the request of the Concessionaire, which will not be used by PM to assess the Concessionaire performance.
- 1.2.7. “**Delayed Trip**” means any trip operated in which deviation in actual time of operation from the start point is more than the permissible tolerance limit as is described in Schedule 2.
- 1.2.8. “**Driver Quality Monitoring**” means a point based monitoring system to assess the standards of driving maintained in the provision of the services. The system assigns points on various performance parameters as described in Schedule 2.
- 1.2.9. “**Electronic Ticketing Machines**” or “**ETMs**” / ETVMs means the machines provided by or on behalf of FSCL in the buses to issue paper tickets and validate tickets for the purpose of fare collection.
- 1.2.10. “**Fatal Accidents**” means accident involving stage carriage bus operating under this Agreement in which there is a death of passengers/road users/crew.
- 1.2.11. “**Incident Management**” means a system developed by the Concessionaire to report and make relief and support system to deal with in service breakdowns, accidents and other incidents as described in Schedule 2.
- 1.2.12. “**Lost Kilometerage**” means the total number of Scheduled Kilometres in Service Kms left uncompleted due to any missed Trip or Trip not completed.
- 1.2.13. “**Major Accidents**” means accident involving stage carriage bus operating under this Agreement with extent of estimated damage of bus above Rs. 25,000 and/or hospitalization of passenger/ crew/ third party.
- 1.2.14. “**Minor Accidents**” means accident involving stage carriage bus operating under this Agreement with extent of estimated damage of bus up to Rs. 25,000 and/or simple injuries to passenger/ crew/ third party, requiring only outdoor medical care.
- 1.2.15. “**Missed Trips**” means any trip which does not cover the scheduled trip length (kilometres) between origin and destination. The trip which is either not operated or is missed due to breakdowns etc. will also be covered under the category of missed trips.
- 1.2.16. “**Depot Control Centre / Operational Control Centre**” or DCC” / “**OCC**” means a communication, analysis and operational control hub established to control, manage and monitor the bus operation. The DC C/OCC will access data through AVL, AFCS / ETVMs , Concessionaire reports, field data inputs etc., and will provide MIS reports for operational and managerial purposes.
- 1.2.17. “**Retention Period**” means the safe custody of operational and revenue data in the custody of the Concessionaire with proper backup for the period as defined in Schedule 2.
- 1.2.18. “**Ticketing Equipment**” means any equipment and/or software and/or associated infrastructure provided in the bus in accordance with the provisions of this Concession Agreement for use in the provision of the Services primarily for the purposes of issuing tickets and recording of the same, recording on bus revenue receipts, validating Smartcards, recording passenger journeys and for the provision of information to the FSCL, PM and Concessionaire.
- 1.3. Applicable Clearances / Approvals**
- 1.3.1. Obtaining the necessary and Applicable Clearances / Approvals and meeting their requirements, including but not limited to the Certificate of Fitness (CoF), the Pollution under Control Certificate (PUCC), the Certificate of CNG Leakage Testing, the Third Party Inspection Policy, and Proof of Road Tax Payment.
- 1.4. Engineering Quality**
- 1.4.1. Providing buses that meet the technical specifications set out in Volume III and further upkeep and maintaining buses to ensure their roadworthiness that meet the requirements of Stage Carriage Services. The preventive maintenance regime as prescribed by the Vehicle Manufacturer (VM) shall be carried out as per the schedule. The record of all preventive maintenance activities shall be kept in the Bus Maintenance Log Book (Log Book) and duly authenticated by the person in charge of the vehicle

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workshop carrying out bus maintenance. The Log books shall be produced for inspection by officials of FSCL/ PM as and when demanded.

- 1.4.2. If FSCL / PM considers that the operation of a vehicle provided by the Concessionaire could affect the safety of passengers or the general public, PM may instruct the Concessionaire not to operate that vehicle. In such circumstances the Concessionaire shall provide at its own expense an alternative vehicle for the performance of the Services.
- 1.4.3. The other provisions like disinfection of buses once in two months as per Clause (92) of HMVR 1993 (as amended from time to time) shall also be complied with by the Concessionaire.

1.5. Operational Staff

The Concessionaire shall be responsible for:

- 1.5.1. Ensuring that the duty hours of deployed staff are in compliance with The Motor Transport Workers Act, 1961.
- 1.5.2. Ensuring adequate operational staff to meet the requirement of the prescribed schedules. The operational staff deployed shall fulfil statutory requirements as per the Motor Vehicle Act, 1988 or any other applicable law as amended from time to time. Furthermore, only drivers registered with FSCL / PM or a nominated agency of FSCL / PM shall be deployed.
- 1.5.3. Deploying operational staff in proper uniform (as prescribed in the HMVR/Permit conditions from time to time) with nameplate. Operations staff of the Concessionaire on board the bus shall be responsible for the custody of the complaint/ suggestion book and first aid kit.
- 1.5.4. Ensuring compliance with Qualifications, Duties and Responsibilities of Drivers as defined in Annexure A. PM / FSCL reserves the right to develop and maintain a biometric record of operational staff of the Concessionaire for the purpose of monitoring.
- 1.5.5. Ensuring that police verification of all the operating staff is done and they are in possession of valid ID proofs. Drivers must process valid Driving licence for Buses.

1.6. Driver Quality Monitoring (DQM)

- 1.6.1. PM may introduce a point based monitoring system for drivers. The monitoring system may include assigning points on various performance parameters including but not limited to:
- Accidents;
 - Complaints;
 - Rash driving, including not stopping or inadequate stoppage at designated bus stops (less than 30 seconds and start off before passengers are seated/ securely standing);
 - Tampering with FSCL Equipment;
 - Violating rules related to smoking, or talking on a mobile phone or driving under the influence of drugs or alcohol.
- 1.6.2. Details of such a point system shall be worked out during the operation period. In case the negative points for a driver exceed certain pre-defined values in a specified period, FSCL / PM may issue directions to the Concessionaire not to deploy the concerned driver on service for a period ranging from three days to permanent disqualification. This period must be utilized by the Concessionaire for imparting refresher training to such driver. See Annexure B for more details.

1.7. Minimum Service Obligations

The Concessionaire shall be responsible for ensuring that:

- 1.7.1. Stage-carriage operation of buses as per the Time Table as notified by the State Transport Authority (STA) / Regional Transport Authority (RTA) / FSCL / PM and in compliance to the Motor Vehicles Act, 1988 and any other rules/guidelines notified from time to time;
- 1.7.2. Buses report for operation at the route starting point a minimum of five minutes prior to the first start time. Buses must be in a clean, presentable condition and in a state of mechanical roadworthiness as set out in Annexure C;

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- 1.7.3. Prescribed routes / schedules are adhered to and every scheduled journey is completed as planned. Concessionaires should note that changes to routes and incomplete journeys, are liable for penalization except under force majeure circumstances as set out in the Concession Agreement;
- 1.7.4. Buses stop at designated bus stops with clearance at the entry point of the bus to allow for easy boarding and alighting;
- 1.7.5. Appropriate usage of appliances like the disabled access ramp to ensure proper boarding and alighting of passengers at bus stops;
- 1.7.6. Buses stay at the stop until all passengers who need to alight have done so, and all passengers waiting at the stop for the bus have boarded;
- 1.7.7. Passengers are not allowed to board or alight at unauthorized locations.

1.8. Systems development and reporting responsibilities

- 1.8.1. As part of the contract the Concessionaire must develop systems for collecting, recording and sharing information and data as listed below.

1.8.2. Lost Kilometres

The Concessionaire must put in place a system to capture daily operational data at source level and communicate the same to the Depot control Centre (DCC) / OCC as per details in Section 'Lost Kilometres and Annexure D. The system will need to be operational at least 15 days before the start of the service under this Concession Agreement.

1.8.3. Bus Maintenance program

The Concessionaire must set up an internal system to keep a record of all maintenance activities carried out on the buses. The system shall maintain a record of total kilometres performed by the buses on a daily basis, including revenue and non-revenue kilometres. The system shall be capable of monitoring maintenance activities with respect to the preventive maintenance schedules prescribed by the Vehicle Manufacturers. The Concessionaire shall send a report to the DCC / Operational Control Centre (OCC) through electronic means on a daily basis, comprising details of Bus Maintenance Data as per Annexure E.

1.8.4. Incident management

The Concessionaire shall be responsible for putting in place a system of reporting by the driver and other support staff as regards breakdowns, accidents and other incidents. As part of the incident management process, the system shall include:

- Information regarding any damage to vehicle,
- Involvement of any third parties,
- The bus route number,
- The vehicle number,
- Crew details,
- The time of the incident.

The Concessionaire is also responsible for putting in place a system for the quick retrieval and recovery of vehicles and, to remove any road obstructions caused as a result of the incident. Refer to Annexure F for further information.

The Concessionaire shall also ensure that backup buses are available in reserve to ensure service continuity in case a bus is held up due to accidents or to cover any unforeseen eventualities like breakdown repairs.

1.8.5. Lost property

The Concessionaire shall be responsible to comply with the provisions as contained in Clause (82) of HMVR 1993 regarding handling of lost property articles detected during operation of the Stage Carriage Buses. Also, the Concessionaire shall follow any further guidelines on this subject issued by FSCL/PM without prejudice to any statutory guidelines for handling and disposal of lost property article.

1.9. FSCL Equipment and Advertisement Panels

The Concessionaire shall be responsible for:

- 1.9.1. Ensuring that FSCL Equipment are in working order and not tampered with. The safety and security of FSCL Equipment provided on the bus shall be the responsibility of the Concessionaire. Daily operational data in the required format needs to be uploaded on the DCC / OCC system by the Concessionaire. FSCL / PM may, as needed, audit and perform sample checks of operational data and equipment.
- 1.9.2. Making buses available for fitment / inspection / periodic maintenance of FSCL Equipment to an agency nominated by FSCL/ PM at regular bus parking places. The inspection/periodic maintenance will normally be carried out during the night shift when the bus is not in service. In circumstances when inspections are carried out during the day, PM will make every effort to ensure that this does not interfere with the Concessionaire's service obligations. The Concessionaire will develop and implement an effective maintenance system to ensure the timely repair of equipment through the service provider.
- 1.9.3. Using buses for fitment/ removal of advertisements, at the time decided in consultation with and approval of FSCL / PM or any other agency authorized by the FSCL.

1.10. Ticketing and revenue collection

The Concessionaire must ensure that:

- 1.10.1. Revenue collection shall be done by FSCL or any other agency engaged by FSCL for the purpose. Concessionaire shall extend full cooperation to the revenue collector and his staff.
- 1.10.2. All revenues collected by the Revenue collector shall be handed over to FSCL / PM for depositing in a designated account in accordance with this Agreement for Basic Services and Additional Services.

1.11. Right of Access

- 1.11.1. FSCL / PM shall have the rights of access and the rights of audit and/or inspection set out in the Concession Agreement.
- 1.11.2. The Concessionaire shall provide or make available to FSCL / PM:
 - vi. all assistance as may reasonably be required;
 - vii. all records, data and other information as may reasonably be required;
 - viii. the use of a telephone, photocopier and where available facsimile machine; and
 - ix. a suitable work area

1.12. Retention of Data

The Concessionaire shall be responsible to retain all records (which shall mean all records relating to or in connection with the Agreement and any other information reasonably required by FSCL / PM or specified in the Agreement) for a period of not less than five years after expiry or termination of the Concession Agreement (the "Retention Period"). FSCL / PM shall have the rights of access and the rights of audit and/or inspection of any or all such records in accordance with the provisions set out.

2. Performance Monitoring

- 2.1. FSCL would set up a comprehensive DCC / OCC for the monitoring of Operations and key Performance Standards.

2.2. Information Formats

The DCC / OCC will need to be fed with information and data to measure and evaluate service performance. It will be necessary for the Concessionaire to put in place a system to capture basic Operational Data at the source level/ Parameters that need to be captured should include but not be restricted to those in Annexure C – (List of operational parameters).

The Concessionaire shall maintain proper records and provide any information asked by FSCL / PM. This data would be over and above the scheduled reports as defined in Annexure D. Basic data capture shall be through automated means as far as possible.

The Concessionaire shall communicate the operational data to the DCC / OCC through electronic means on daily basis in Microsoft Excel compatible format or as specified from time to time, which shall

include, inter alia, details as per Annexure D. FSCL / PM will require further information on a monthly basis based on formats set out in Annexure E and H.

2.3. Immediate Reports Related to Accidents

The Concessionaire will provide immediate notification of an accident, followed by a written report within 24 hours to the DCC / OCC. The written report will provide all relevant information as specified in Annexure F. Immediate notification and a written report must be provided as and when the Concessionaire becomes aware of any event resulting from the Services or associated activities which involves:

- loss of life of any passenger, member of the Concessionaire’s staff, or other person; or
- an injury to any passenger, or other person where medical attention was required immediately in the wake of the accident.
- robberies or assaults on passengers or staff
- vandalism and public disorder both on and off vehicles or in the garage or depot where the incident involves
- safety critical bus failures
- any incident of a like nature that is likely to attract media attention
- acts of vandalism affecting service delivery
- incidents (including environmental incidents where prosecution is likely, or there is (or there is likely to be significant media attention.

When notifying FSCL / PM of the incident, the Concessionaire will provide the following information as set out in “Incident Report Form” with details including:

- the date, time and place of the incident;
- the circumstances of the incident;
- particulars of injury to any passenger or other person requiring medical attention (if known);
- particulars of damage to the Vehicle;
- the name and identification number of the Concessionaire’s staff present at the time of the incident;
- name, address and contact telephone number of any persons involved (if known), and
- name, address and contact telephone number of any witnesses (Identification number, if the witness is a staff member).
- route number and bus registration number.

The Concessionaire may be required to submit additional incident investigation reports as requested by FSCL / PM.

2.4. Immediate Reports Related to Potential Disruptions to Service

The Concessionaire will provide immediate notification followed by a written report providing all relevant information to the DCC / OCC as soon as the Concessionaire becomes aware of any event (including proposed industrial action) that is likely to substantially disrupt or alter the delivery of Services. The Concessionaire must identify the likely effect of this event and the steps to be taken by the Concessionaire to minimize the disruption to Services.

2.5. Weekly Reporting of Other Incidents

The Concessionaire shall provide DCC / OCC with information for other incidents in relation to each week (‘week’ being Saturday to Friday). This information shall be provided to FSCL / PM on or before the Thursday after the end of each week in which the incident took place or at other such intervals as the FSCL / PM may require from time to time.

3. Performance Measurement

3.1. In order to assess the Concessionaire’s performance in meeting its service obligations as set out in Para 1 of Schedule 2, FSCL / PM will measure specific operational parameters as set out in the following paragraphs. Each measurable parameter will enable FSCL/PM to reward or penalize the Concessionaire depending on its performance against a pre-determined benchmark.

A. Performance Deductions w.r.t various service quality and other performance parameters

B. Performance Incentive

- On-time benchmark
- Sample Check on specified performance parameters and Incentives

3.1.1. Performance Deductions and Incentives shall be measured and made applicable in terms of kilometres on monthly and final reconciliation on annual basis. FSCL / PM’s decision with regard to the above assessments shall be final.

3.1.2. Without prejudice to the Deductions set out in the preceding Clauses, FSCL / PM reserve the right to pursue other remedies as defined in the Agreement. Such Deductions also do not constitute a waiver of any other remedies applicable under Law.

3.2. On-time Performance: Performance Deduction for Delayed Trips and Performance Incentive for Better than Benchmark Performance

The provision of “on-time” services is a very high priority for bus passengers. Therefore, subject to exceptional circumstances, when trip delays are unavoidable, the Concessionaire is required to ensure that the Time Table is adhered to, with no cancellations and all buses operating on time.

3.2.1. Departure times or service intervals, as appropriate, shall be published at bus stops and elsewhere by FSCL.

3.2.2. A delayed Trip is defined as any departure of a bus outside specified time limits set out in the table below.

3.2.3. The performance of the Concessionaire will be worked out by comparing the actual observed departure times with the specified departure times as set out in the Time Table. A bus will be regarded as ‘on time’ if it departs from a scheduled departure point within the Applicable Limits from Time Table.

S. No.	Description (Checkpoint/s)	Applicable Limits from Time Table in minutes		Total number of trips during the month	
		Earliest Start	Latest Start	Operated	Operated “on-time”
1	Start of First Trip for Each Bus for the day	+ 0	+ 10	x ¹	y ¹
2	Start of Each Subsequent Trip (except Sl. No. 4)	- 5	+ 10	x ²	y ²
3	Last Trip of the day	+ 0	+ 10	x ³	y ³
4	Total number of trips during the month			X=x ¹ +x ² +x ³	Y=y ¹ +y ² +y ³

Total no. of trips operated during the month = X

Total number of trips operated “on-time” i.e. within the above ranges =Y

“On time performance of fleet during the month as %age of trips operated = X/Y%

3.2.4. The Concessionaire’s performance of the Services shall be monitored on a monthly basis against these punctuality benchmark standards.

3.2.5. The Concessionaire will be rewarded for services performing above the benchmark (Tables 1 and 3), and penalized for services performing below the benchmark (Tables 1 and 2).

3.2.6. FSCL will measure the performance of all buses on a monthly basis using AVL system. The actual online performance of each bus will be measured against the On Time Performance Benchmark.

Table 1 – “On-Time” Performance

S. No.	Category and Performance	Below Benchmark		Above Benchmark	
1	On Time Performance Benchmark “BM” : 88% - 92%				
	Average monthly “on-time” performance (= Total number of trips operated “on-time” / total trips operated)	Less than BM	Deduction: On-time Deductions in terms of Table 2.	Greater than BM	Incentive : On-time Incentive in terms of Table 3.

Note: In the event of failure of AVL or otherwise, kilometer operation by Buses shall be worked out on the basis of Route length, number of trips operated on that route plus number of Kms between Depot and Trip Origin/ End.

At the end of each month, FSCL will collate performance results in order to calculate the overall performance incentive payment or debit for the Concessionaire. Tables 2 and 3 set out the method of calculation of deduction and incentive for each bus operated under the Project.

Once the total number of deductions and incentives are added together, FSCL will issue a summary performance table to the Concessionaire. This will be issued no later than 25 working days after the month in which performance has been measured. The report will include:

- All routes details, including any agreed changes to the route detail
- Start and end dates of the month
- Confirmation of any agreed data suspension for a previous month and notification of any applications for data suspension being considered by FSCL at that time

The summary table will set out the percentage of buses operating ‘on time’ compared to the departure times specified in the Time Table and the reward or penalty due.

Table 2 - Deductions for Not Achieving On Time Performance Benchmark

S. No.	Overall On-time Performance achieved by the fleet, during the month, in the range of	Deduction in terms of assured kms per bus per month
1	84% - 88%	10 kms for up to every 1% (100 basis points) decrease
2	80%- 84%	15 kms for up to every 1% (100 basis points) decrease
3	76% -80%	20 kms for up to every 1% (100 basis points) decrease
4	< 76%	25 kms for up to every 1% (100 basis points) decrease

Table 3 - Incentive for Actual Performance Better than On Time Performance Benchmark

S. No.	Overall On-time Performance achieved, by the fleet, during the month, as	Incentive(addition) in terms of assured kms per bus per month
1	>92%	10 kms for up to every 1% (100 basis points) increase

- 3.2.7. FSCL / PM reserves the right to prepare other reports for the purposes of monitoring the Services and reporting the performance of the Services to key stakeholders

3.3. Service quality performance evaluation

Service quality performance of the concessionaire operations shall be compiled and compared with the Benched marked(BM) ranges of performance wrt following parameters:

- Regularity (Trips based) : as the ratio of trips operated to trips scheduled during the month
- Regularity (Kms based) : as the ratio of Kms operated to Kms scheduled during the month
- Reliability : as inverse of break down rate per ten thousand kms operated during the month
- Safety : as inverse of number of accidents per lakh kms operated during the month
- User satisfaction : as inverse of number of user complaints received per ten thousand kms operated during the month

Detailed system of assessment and evaluation wrt benched marked performance for each of the parameters along with quantum of deductions / incentives for drop / improvement of services respectively beyond the benchmarked ranges is presented in Table 4. All the parameters shall be compiled on day to day basis using GPS /AVL systems.

Table 4: Service quality performance parameters – their evaluation, bench marked (BMs) values and rate of deductions or incentives for drop / improvement respectively vs BMs values

S. No.	Service quality parameter and definition	Formula to calculate values of service quality parameters	Range of Benchmarked (BM) values (monthly average for contracted fleet)	Deductions/ Incentive in terms of assured kms per bus per month	Remarks
1	Regularity of services (T) = No. of trips operated (Ta) / no. of trips scheduled (Ts) % . Higher Value of 'T' reflects higher regularity of services	$T=Ta/Ts\%$	94% to 98%	5	Deductions / Incentive for upto every 1% (100 basis points) drop / improvement in benched marked(BM) performance
	Regularity of services (K) = No. of kms operated (Ka) / no. of kms scheduled (Ks) % . Higher Value of 'K' reflects higher regularity of services	$K=Ka/Ks\%$	94% to 98%	10	Deductions / Incentive for upto every 1% (100 basis points) drop / improvement in benched marked(BM) performance
2	Reliability of services (R) = Inverse of rate of breakdowns(B) per 10,000 charged kms Higher value of 'R' reflects higher reliability level	$R=Ka/(B*10000)$	0.90 to 1.10	15	Deductions / Incentive for upto every 0.10 points drop / improvement in benched marked(BM) performance
3	Safety of services (S)= Inverse of rate of accidents per lakh charged kms Higher value of 'S' reflects higher safety levels. A = Total no. of accidents during the month	$S=(Ka/(A*100000))$	4 to 6	20	Deductions / Incentive for upto every 0.5 points drop / improvement in benched marked(BM) performance
4	User satisfaction (U) = Inverse of rate of user complaints per ten thousand charged kms. Higher value of 'U' reflects higher user satisfaction levels C= Nr. of user complaints during the month	$U= Ka/(C*10000)$	0.90 to 1.10	10	Deductions / Incentive for upto every 0.10 points drop / improvement in benched marked(BM) performance

ITMS shall be utilised for the purposes of assessing the kilometre and trips performance of each of the services operated under this schedule. Operated kilometres and trips shall also be reported by the Concessionaire on a monthly basis. The information will be set out under the headings listed below:

- Name of Concessionaire and kilometres code
- Routes to which the information relates
- Week ending date to which information relates
- Weekly scheduled service kilometres/ trips derived from the working timetable
- Weekly Kilometres/ trips operated using GPS
- Percentage of Kilometres/ trips operated to trips scheduled during the week / month

3.4. Other Infractions

3.4.1. An Incidence of sub-optimal performance and/or non-compliance of Specifications and standards shall be referred to as an “Infraction”. The deduction for each Infraction shall be made in terms of the table set out below:

Table 5: Vehicle – Fine / deductions per deficiency per bus

Sr. No.	Deficiencies	Deductions from assured kms in Bus Kms per Infraction per day
1	Modification of design or paintwork of the exterior or interior of bus without authorization of Authority	50
2	Missing bus body panels on exterior/interior of the bus	50
3	Defective or malfunctioning of any and or all of rear lights, brake light, turning indicators and parking lights, broken mirrors at the time of Bus Operations	25
3a	Defective or malfunctioning of any and or all of headlights,	100
4	Dirty vehicle (i.e. dusty handrails, chairs/seats and floor, litter of any kind on floor, foul odour; dirty windows and glass panels, Spots, vomit marks) inside or outside, at the time of start of first shift in the morning and or at the time of out-shedding for operations from depot at any other time	50
5	Broken/damaged windows/glasses, fixed glass etc.	50
5a	Broken/damaged/missing any and or all of front windshield or rear windshield glasses	100
6	Fire Extinguisher missing or beyond expiry date	100
7	Malfunctioning passenger door	50
8	Broken/Loose/Missing Passenger Seat	25
9	Loose or missing handrails, roof grab rails and/or with Sharp edges	25
10	Visible dents more than 150mm long beyond 1 week on bus exterior	25
11	Malfunctioning/Broken Light in passenger compartment	25
12	Placing any decorative article/religious figures or symbols or political symbols inside or outside the bus without prior approval of the Authority	25
13	Placing any poster/advertisement/stickers or similar items inside or outside the bus which may or may not generate any revenue for the Operator unless authorized by Authority	25
14	Damage to any vehicle tracking equipment or any Intelligent Transit Management System items, if any, installed on buses.	200
15	Leakage of Oil and Gas, any other fluid	25
16	Defective service brakes, hand brake,	50
17	Damaged Tyre and or tyre worn out below TWI	100
18	ACs not running up to design capacity and/or any stoppages and/or leakages of water and or not providing effective cooling.	25
19	Emitting excessive exhaust smoke/gases	50
20	Damaged front / rear bumper	10
21	First Aid box complete with requisite items not available at start of shift	10
22	Defective suspension system	10

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Sr. No.	Deficiencies	Deductions from assured kms in Bus Kms per Infraction per day
23	Defective any and or all of PIS items, CCTV system, GPS, Alert items,	25
24	Missing / non-functional / defective rear view mirror	10

Table 6:Bus Operations – Fine / deductions applied per incident

Sr. No.	Incidents	Deductions from assured kms in Bus Kms per Infraction
1	Arriving for scheduled operation, at place of origin of 1st trip of a shift, more than 10 min later than given in Operating Plan for a given route for a given bus and similarly for all routes/Buses as per Assured Fleet Availability	25
2	Delay in in-shedding of more than 20 min beyond end of shift.	10
3	Driver not responding to more than 3 consecutive directions sent by Authority Control Centre/ any official.	25
4	Stopping at Bus Stops/stations/terminals for longer than that authorized by Authority	25
5	Improper Docking of Buses at stops/terminals	25
6	Letting passengers access bus at locations other than Bus Stations/stops and Terminals or as designated by Authority	25
7	Not stopping at Stations/stops/terminals designated as per Operating Plan unless authorized by Authority	25
8	Stopping at Stations/stops/terminals not designated as per Operating Plan unless authorized by Authority	25
9	Changing bus route/schedule without authorization of Authority	25
10	Bus breakdown attributed to neglect in preventive maintenance	50
11	Broken down buses not attended within one hour of breakdown	50
12	Abandoning bus during operating hours on road infrastructure (not limited only to Bus Stations/stops, Terminals and Bus bays)	200
13	Operating bus with Defective/Broken Headlights, Rear lights, Brake lights, Turning indicators, Parking lights	100
14	Use of electronic equipment like Radio or Music system unless authorized by Authority	25
15	Use of Cell phone by Driver while driving	100
16	Driver not wearing clean uniform as designed/approved by Authority	25
17	Driver in drunken state	100
18	Misbehaviour by driver with Authority officials	25
19	Cause accident due to irresponsible driving	100
20	Drive above speed limit set by Authority	25
21	Driver smoking in bus – stationary and or while driving	10
22	Driver not triggering PIS in absence of or on failure of GPS based trigger.	10
23	Driver not submitting bus operating summary at the depot on close of shift	10

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The above incidents would be checked and reported by any of the following: the staff of FSCL / PM / Revenue collector agency/ ITMS agency / passengers/ other road users, any other agency or persons authorised, etc by FSCL to carry out above checks continuously and or at random basis. All checks may be under taken as a casual, a campaign and or a scheduled checking programme. Individual deductions against each one of the infractions so reported shall be added during the month and debited to the concessionaire against assured kms.

Checking Modalities for infractions:

The performance of the Concessionaire related to infractions on buses (ref table 5) shall be evaluated on monthly basis, at the discretion of FSCL / PM and reconciled on annual basis. In order to measure the performance of the Concessionaire on the above parameters, sample checks shall be conducted by FSCL / PM' authorized officials on a random basis. At least one random check shall be carried during the month. However FSCL / PM reserves the right to conduct, more than one check during any given month, in which case the average of all checks conducted during the month shall be considered. In case, due to any reason, no check is carried out during a month, no incentive or deduction shall be applicable.

Each infraction observed during the checks on any bus that is checked shall be assigned corresponding assured kms deductions as per Table 5 based on infractions. The average score shall be computed for all the buses checked during the month. The deduction for the fleet shall be computed and applied during the month, as per the applicable slab (table 5).

Example:

A Concessionaire holds a fleet of 90 buses. Every fortnight, 9 buses shall be checked at random (random numbers taken from the random numbers Table) basis for infractions. For identified Infractions on each bus, kms deduction shall be marked against each infraction and number of days till rectification Let the total score obtained for 9 buses checked for various infractions is 90 kms.

The average score per bus is 90 divided by 9 (No. of buses checked) i.e. 10 kms. The deduction applicable for the fortnight shall be 10 multiplied by the total number of buses in the fleet i.e.90, which works out to 900 kms.

- 3.4.2. Infractions shall be identified by FSCL / PM, a nominated person or agency based on visual checking, electro-mechanical reviews, reports from independent agencies and data from the Central Data Base. FSCL / PM shall have access to Concessionaire's facilities in order to check such Infractions on a regular basis either through visits to the workshops and garages commonly used by the Concessionaire, or bus inspections at terminal points along the route during service hours/depos/terminals.
- 3.4.3. The Concessionaire may note that the formats provided in Annexure C, D, E and H are typical, but are subject to revision from time to time based on actual information, logistics and monitoring requirements.
- 3.4.4. In case of non-rectification of infraction within stipulated time to resolve, any subsequent repetition shall attract double the penalty per infraction. Thereafter, it will be binding on the Concessionaire not to operate the vehicle till rectification of the bus related infractions.

3.5. Accidents

3.5.1. Sanctions on Concessionaire Operating Staff

Based on information gathered through Driver Quality Monitoring, Engineering Quality Monitoring and Mystery Traveller audits FSCL / PM reserves the right to impose specific sanctions by way of temporary suspension of operating staff of the Concessionaire. The length of suspension will be based on the type and severity of misconduct. The sanction could be for a maximum duration of up to the end of Concession Period.

3.5.2. Major or Fatal Accident Situations

In case of major or fatal accidents and collisions the Concessionaire shall additionally undertake the following activities:

- a) Direct the concerned driver to undergo a refresher course and pass a skills test in IDTR or any other institute(s) prescribed by PM.
- b) Undergo another medical checkup for eye sight conducted by a medical board authorized by FSCL / PM.
- c) In the case of mechanical failure, re-certification of the bus for road worthiness based on a mechanical inspection by an agency authorized by PM.
- d) In addition to the above measures, FSCL / PM shall impose a assured km penalty of 1000kms (one Thousand kms) per fatality, in case of an accident involving a fatality. This penalty will be without prejudice to any other legal action against the Concessionaire taken by a court of law.

3.6. Other Issues Related to Monitoring

PM will manage operations with suitable software including inputs from global positioning system (GPS) or any other appropriate system. A GPS system can track speed and collect other data. Upon request of authorities/bodies such as GoH/ FSCL / State or Regional Transport Authority/ Traffic Police etc., PM may be obliged to share information with them related to over-speeding, accidents, etc. based on data collected at the Central Data Base. The Concessionaire may note that these agencies may decide to impose fines and penalties on their own based on Applicable Laws.

Annexure A: QUALIFICATIONS, DUTIES AND RESPONSIBILITIES OF DRIVERS AND CONDUCTORS

A. Drivers

The Concessionaire shall ensure that the drivers deployed by him meet the qualifications and perform duties and obligations, as laid down hereunder.

1. Qualifications of Drivers

- i. Academic qualifications for the drivers shall be as per applicable laws.
- ii. Drivers shall possess a valid HTV driving license and Driver badge valid in the Project Area.
- iii. Drivers should have a good level of overall fitness so as to be able to walk, stand and sit while on duty.
- iv. Drivers should be in prescribed uniform during their shift and badges should be worn at all times.
- v. Drivers should be trained to operate on board equipment installed on the bus.
- vi. The other requirement for drivers will be same as that laid down in the Motor Vehicle Act (MVA) 1988, Haryana Motor Vehicles Rules (HMVR) 1993 and by STA/RTA, Haryana.

2. Duties and Responsibilities of Drivers

2.1 The Concessionaire shall ensure that deployed drivers, as a part of their duties and responsibilities:

- i. shall perform a pre-trip inspection of the assigned bus;
- ii. shall behave in a civil and orderly manner with passengers, prospective passengers and all other road users;
- iii. shall be dressed in clean and specified uniform as prescribed in Permit Conditions for Private Stage Carriage Bus operation or as notified by STA/RTA, Haryana;
- iv. shall maintain the vehicle in a clean and hygienic condition;
- v. shall take all reasonable precautions to ensure that passengers are not endangered or unduly inconvenienced by the presence of luggage or freight, where luggage and freight is carried on vehicles in addition to passengers;
- vi. shall, where goods are carried on the vehicle in addition to the passengers, take all reasonable precautions to ensure that passengers are not endangered or unduly inconvenienced by the presence of the goods;
- vii. in the event of bus being unable to proceed to its destination on account of mechanical breakdown or other causes beyond the control of the driver, arrange to convey passengers to their destination in some other similar vehicle.
- viii. shall take all reasonable steps to facilitate inspection of bus, etc. conducted by authorized officials of FSCL / PM.
- ix. shall, on demand by any Police Officer, officer of the FSCL, PM or any member of the State/Regional Transport Authority produce their identity card, display his/her license or badge for inspection.
- x. shall strictly adhere to the notified time table for arrival and departure of the bus from authorized depots and bus stands for the convenience of passengers.

The Concessionaire shall ensure that the drivers in no case shall:

- i. interfere with persons boarding or preparing to board other vehicles.
- ii. wilfully deceive or refuse to inform any passenger the correct fare for their journey.
- iii. except for a good and sufficient reason, refuse to carry any person tendering the legal fare.
- iv. except for good and sufficient reasons require any person who has paid the legal fare to alight from the vehicle before the conclusion of his/her full journey.

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- v. loiter, or unduly delay any journey. The driver shall proceed to the scheduled destination in accordance with the Time Table pertaining to the Trip.
- vi. cause or allow anything to be placed in the vehicle in such a manner as to obstruct the entry or exit of passengers.
- vii. act as a tout or agent of any commercial establishment.
- viii. allow anybody to sit next to him/her, or distract his/her attention whilst driving.

B. Conductors

The qualification, duties, functions, conduct of conductors shall be governed by HMVR 1993, read with permit conditions.

Annexure B: MONITORING OF DRIVING STANDARDS

1. Introduction

The Driver Quality Monitoring (DQM) is an objective assessment of the standards of driving maintained in the provision of the Services. DQM will be undertaken by a third party professional contractor (the DQM Contractor) appointed by PM or its authorized agency, on behalf of FSCL.

2. Monitoring Objectives

2.1. The objectives of DQM are to:

- 2.1.1. enhance the safety and comfort of passengers using the Services;
- 2.1.2. enhance the safety of members of the public and other road users by reducing accident rates;
- 2.1.3. demonstrate clear commitment to continuous improvement in driving standards on the Services with robust data;
- 2.1.4. provide objective professional appraisals that enable the Concessionaire to target its own activities to improve driving standards;
- 2.1.5. address concerns regarding the standard of driving provided in the provision of the Services raised through public correspondence and ongoing monitoring and surveys carried out by FSCL / PM.

3. Methodology

3.1. DQM Assessors will not make themselves known to the driver and are not empowered to suspend or instruct drivers they regard as exhibiting serious faults. DQM Assessors will pay the appropriate fare or show a pass appropriate for their journey.

4. DQM Assessments

4.1. DQM Assessments may be undertaken by FSCL / PM or its authorized agency where:

- 4.1.1. a particular route or the Concessionaire fail to meet FSCL / PM's required standards, as specified from time to time; and
- 4.1.2. public correspondence and/or any other source available to FSCL / PM suggests that the Services are not meeting FSCL / PM's required standards, as specified from time to time.

4.2. DQM Assessments may be conducted at any time.

5. DQM Assessments – Aspects Covered and Standards

5.1. The DQM Assessors are expected to make qualified, impartial and consistent judgment of the standard of driving experienced over a number of journeys.

5.2. The DQM Assessments are carried out under normal driving conditions and not test conditions. Each DQM Assessment will take a minimum of 20 minutes. A copy of the assessment form is attached at Annex 1.

5.3. DQM Assessors will mark the standards of driving in terms of the following aspects:

5.3.1. aspects of driving to be assessed:

- smoothness of acceleration, braking and steering;
- care in the use of speed;
- speed on approach and into bus stops (and other appropriate bus infrastructure);
- speed through hazards and bends;
- negotiation of roundabouts, traffic lights;
- position on road and lane discipline;
- signaling and use of mirrors;
- positioning at bus stops (and other appropriate bus infrastructure); and
- distance between bus and other vehicles (moving and stationary).

5.3.2. external aspects to be noted:

- apparent condition (obvious problems which would make the driver's job harder);
- prevailing light conditions (night / low winter sun, wet road, water-logged road etc.); and
- weather conditions.

5.3.3. An overall DQM Assessment will be given using the following codes and definitions:

5.3.4. Code 1: Fully Acceptable Drive. A journey on the bus that would be perceived by a passenger as being comfortable with no unexpected sudden movements

5.3.5. Code 2: Acceptable Drive with Minor Faults. A journey where mistakes are made and passenger comfort is being eroded. The mistakes made are generally minor ones, which can be rectified through improved application of existing skills and/or driver training.

5.3.6. Code 3A: Unacceptable Drive with a Significant Fault. A journey where a mistake was made that could lead to an accident and/or which would cause a significant level of passenger discomfort. Otherwise the drive is acceptable.

5.3.7. Code 3B: Unacceptable Drive with Serious and/or Repeated Faults. A journey where the mistakes made are serious enough to have a high level of accident potential and passenger comfort is being severely compromised.

5.3.8. Code 4: Unacceptable Drive with Dangerous Faults. A journey where passengers' or other road users/members of the public, lives are being put at risk as a result of the driver's actions.

6. Serious Incident Procedure

Where the bus driver is considered to be under the influence of alcohol or drugs, the DQM agency nominated by FSCL / PM will be required to report the salient details immediately to the DCC / OCC who shall then contact the Concessionaire to request immediate action. The Concessionaire shall take steps to implement such action immediately. A full report of the incident will be emailed to the Concessionaire within 24 hours of the DQM Assessment being carried out.

7. Driver Training and Uniform

7.1. The Concessionaire shall ensure that each of its drivers undergo at least three (3) days of training in each calendar year. The data for the same shall be maintained using biometric system.

7.2. Drivers and Office Staff Uniforms: The Concessionaire shall give at least 2 sets of uniforms to drivers and office staff each year. The proof of the same shall be submitted to FSCL and PM. Failure to provide uniforms would invite penalty as mentioned in this Schedule.

**Annex -1.
Driving Assessment Report Form**

<i>Revisit</i>	
----------------	--

Date	<input type="text"/>	Destination	<input type="text"/>
Time On	<input type="text"/>	Time Off	<input type="text"/>
From	<input type="text"/>	Bus Reg. No.	<input type="text"/>
To	<input type="text"/>	Concessionaire	<input type="text"/>
Route No.	<input type="text"/>	Weather	<input type="text"/>
Stopping – smoothly	<input type="text"/>	Move off – safely	<input type="text"/>
Stopping – position	<input type="text"/>	Move off – control	<input type="text"/>
Door operation	<input type="text"/>	Use of all mirrors (MSM)	<input type="text"/>
Moving off – timing	<input type="text"/>	Give signals	<input type="text"/>
Moving off – smoothly	<input type="text"/>	Reaction to signals	<input type="text"/>
Comfort – braking	<input type="text"/>	Stopping safely	<input type="text"/>
Comfort – acceleration	<input type="text"/>	Lane discipline	<input type="text"/>
Comfort – cornering	<input type="text"/>	Road position	<input type="text"/>
Anticipation	<input type="text"/>	Roundabouts	<input type="text"/>

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Safety	<input type="text"/>	Keep distance	<input type="text"/>
Customer service	<input type="text"/>	Adequate clearance	<input type="text"/>
Dress	<input type="text"/>	Use of speed	<input type="text"/>
		<input type="text"/>	
Overall assessment			

Code 1 = Fully acceptable	Code 3 = Unacceptable with significant faults
Code 2 = Acceptable with minor faults	Code 4 = Unacceptable with serious/repeated faults
	Code 5 = Unacceptable with dangerous faults

Passenger volume

Busy	<input type="text"/>	Average	<input type="text"/>	Quiet	<input type="text"/>
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Traffic conditions

Busy	<input type="text"/>	Average	<input type="text"/>	Quiet	<input type="text"/>
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Passenger comment

Driver comments

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Annexure C: DAILY CHECK LIST OF EACH BUS

S.No	Bus No.	Time	Exterior Clean/ Washed	Interior Swept/ Cleaned	Exterior & Interior lights in working order	No Visible dent(s) / scratch (more than 6 inches)	All safety glasses intact	All ITS equipment in working order	No unauthorized posters pasted on bus inside or outside
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)

List of operational parameters

Driving Quality

- Driving speed
- Stoppage at a bus-stop
- Distance between bus and curb at bus-stop
- Non-scheduled stoppages (coupled with door opening)
- Violations of traffic rules (lane driving, jumping signals, over-speeding)

Journey Experience

- Route taken (deviation from standard)
- Journey duration
- Number travelled in that journey,
- Average , max, min boarders, de-boarders per stop en route
-

Bus Frequency

- Average/max and min duration between the arrival of two buses at the stops of high- frequency routes
- Time of departure of the first trip from starting point of the route.
- Expected Vs. actual arrival/departure times at and from the first and stipulated bus-stops respectively for low frequency bus routes

Kilometres Information

- Number of completed and incomplete journeys

Miscellaneous Details

- Ticketing options used – split between the modes (AFC, ETM, Emergency failover system)

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Annexure D: Daily Bus Operation Data

Concessionaire Code:

Date:

S. No.	Route No.	Duty No.	Bus No.	Driver No.	Trips			Kilometres				No. and type of user complaints	No. of trip operated late (outside tolerance limits)	Details of Breakdown if any (Time, Type Code)	Details of accident if any (Time, Type Code)	Remarks, If Any
					Scheduled	Operated	Missed	Scheduled	Operated	Missed	Reasons for missed kms					
(1)	(2)	(3)	(4)	(5)	(6)			(7)				(8)	(9)	(10)	(11)	(12)

Annexure E: Bus Maintenance Data

S. No.	Bus No.	Maintenance due on (Kms)	Maintenance carried out on (Kms)	Whether carried out at authorized service centre	Entry No. in Bus Maintenance log book
(1)	(2)	(3)	(4)	(5)	(6)

Annexure F: OPERATIONAL GUIDELINES

1. Incident Reporting

1.1. Incident Reporting

FSCL/ PM needs to maintain the records of all incidents, which will be used for monitoring and investigation purposes. The Concessionaire will need to maintain the data of all incidents including those:

- Resulting in damage to the bus, third party vehicles or inanimate objects;
- Causing injury to bus passengers, bus crew or members of the public (including assaults) or animate objects; or
- Which could be considered to have safety implications (such as mechanical failure, fire, wheel loss etc.); and
- Traffic accidents and vandalism.

1.2. Immediate Reporting of Serious Incidents

1.2.1. The Concessionaire shall inform DCC/ OCC immediately on telephone, online bus communication system or any other available mode of communication, any of the following in so far as they relate to the provision of the Services:

- All incidents resulting in a fatality, or major injury or requiring medical attention;
- Robberies and assaults on passengers or staff;
- Low bridge/flyover strikes or other limited headroom obstructions;
- Fire on vehicles;
- Collisions resulting in any injury;
- Vandalism and public disorder (both on and off service vehicles);
- Safety critical bus failures (including wheel loss, brake failure or power surge); and
- Any incident of a like nature or that is likely to attract media attention.

1.2.2. The Concessionaire shall send information immediately to DCC / OCC after an event referred to in Para 1.2.1 has taken place, with the following information:

- Route number;
- Date, time and location of incident;
- Bus Registration No;
- A brief description of the incident;
- Details of any injuries sustained;
- Details of Police Case; and
- Any other information that may be required from time to time.

1.2.3. The Incident Report Form must be completed and submitted DCC / OCC at the earliest opportunity.

1.2.4. The Concessionaire may be required to submit additional incident investigation reports as required by FSCL / PM.

1.3. Weekly Reporting of Other Incidents A full report for “other” incidents; i.e. those that do not fall under the definition of “serious” incidents, shall be reported as soon as is practically possible having regard to the reporting requirement as given above.

2. Standard Guidelines for attending & dealing with on-the-Road Accidents/Incidents Involving Buses, Passengers &/or Staff

2.1. Introduction

This section defines the respective responsibilities of the Concessionaire and FSCL / PM in responding to and dealing with on-the-road accidents and other incidents actually involving buses, passengers and staff, and the effects of such accidents/incidents.

2.2. It is the primary responsibility of the Concessionaire, their staff and officials, to deal with the actual incidents. The Concessionaire must ensure that there are adequate resources and/or training of their own staff, in order that they can deal with these incidents including obtaining and reporting information to meet both the Concessionaire’s and FSCL / PM’s requirements.

2.3. The Concessionaire needs to ensure that appropriate action is taken to minimise the effects on passengers, the Services and any other services operated under contract with or by Concession Agreement of FSCL / PM. This includes arranging the transfer of passengers to any other suitable alternative Buses.

- 2.4.** The Concessionaire should fill the Incident Report Form and submit it to DCC / OCC at the earliest.
- 2.5.** The Concessionaire should not give interviews or comments to the media. If specifically asked for comments on the incident, the Concessionaire will refer the enquiry to the FSCL / PM.

INCIDENT REPORT FORM

SECTION A (USE SEPARATE SHEET FOR ADDITIONAL INFORMATION OR CONTINUE OVERLEAF)

Concessionaire: _____	
Depot: _____	
Route Number: _____	Bus Registration NO: _____
Nature of Incident: _____ (Major/Minor/Fatality)	
Date of Incident: _____	Time of Incident: _____
Location (including Road/Junction/Postcode): _____	

Details of Persons Injured:	
Include Name and Address/Age Sex/Injury	Address: Contact No. if available
_____	_____
_____	_____
Brief Details of Incident:	

Damage Description:	
Include All Vehicles/Infrastructure Involved	

Signature	No: _____	Date: _____
	TIME: _____	

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SECTION B (USE SEPARATE SHEET FOR ADDITIONAL INFORMATION OR CONTINUE OVERLEAF)

Time Arrived at Scene:
Destination of bus: _____ Travelling From: _____ To: _____
Estimated Speed: _____ Fleet Number: _____ Hospital Used: _____
Driver Name: _____ Driver Badge: _____
Conductor Name: _____ Badge no: _____
In the vicinity of: pedestrian crossing/traffic lights/passenger queue/stopping place/mini roundabout/other road junction/bus lane
Police Station Jurisdiction: _____ Did Police Witness Incident? _____ FIR NO if applicable _____
Details of Other Witnesses: _____ contact no. if available _____

Annexure G: LIST OF STATUTORY CERTIFICATIONS

Concessionaire code:

Date:

S. No.	Bus No.	Certificate Of Fitness (COF)			PUCC			CNG Leakage Test Details			Insurance Details				Road Tax Details
		Certificate No.	Date of Issue	Valid up to	Certificate No.	Date of Issue	Valid up to	Certificate No.	Date of Issue	Valid up to	Policy No.	Date of Issue	Type	Valid up to	Receipt No. Date Validity Month
(1)	(2)	(3)			(4)			(5)			(6)				(7)

Annexure H: LOST KILOMETRES CLASSIFICATION & CAUSES (To be compiled and evaluated for necessary corrective actions)

1. Staff

1.1. In service kilometres not operated due to staff causes may include (but is not limited to):

1.1.1. Insufficient staff to cover the service including shortage, sickness or absence, industrial action etc.

1.1.2. Sickness on duty (part loss).

1.1.3. Suspension of driver (without replacement).

2. Mechanical

2.1. In service kilometres not operated due to mechanical causes may include (but is not limited to):

2.1.1. Insufficient buses to cover the service.

2.1.2. Non-serviceable bus.

2.1.3. Breakdowns en-route.

3. Other Lost kilometres

3.1. In service kilometres not operated due to something over which the Concessionaire has an element of control but which is not covered by staff or mechanical causes may include (but is not limited to):

3.1.1. Staff error or unauthorised curtailments by staff.

3.1.2. A bus blocked in the garage and unable to depart on time.

3.1.3. A bus running out of fuel en-route.

3.1.4. Where a bus in service has to be withdrawn due to a defective ITMS.

3.1.5. Where the reason for the lost Kilometres is unknown or is in doubt.

4. Traffic Lost kilometres

4.1. In service kilometres not operated due to traffic causes may include (but is not limited to):

4.1.1. Curtailments or lost journeys arising from the effect of traffic congestion whatever the cause.

4.1.2. Losses arising from staff being late in reaching changeover points must not be included unless it can be shown that the staff left the garage on time and that the allowed running time from garage to changeover point is adequate under normal circumstances.

4.1.3. Losses arising from road traffic accidents involving the Concessionaire's buses.

5. Others

5.1. In service kilometres not operated due to something beyond the Concessionaire's reasonable control but which is not covered by traffic causes may include (but is not limited to):

5.1.1. Incidents

Any kilometres losses resulting from incidents reportable to DCC / OCC (as defined in Incident Reporting).

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For road traffic accidents or vandalism whilst in service it must be demonstrated that action was taken as quickly as possible to render the buses fit for service Evidence must be readily available to show the number of buses affected, incident times, the extent of the damage, engineers action etc.

5.1.2. Disasters

Where a major occurrence requires a fundamental change to the planned operation, for example accidents or explosions.

5.1.3. Road Closed/Blocked

Where buses are 'turned back' or prevented from completing part of the route, for example security alerts, diversions, or roads blocked.

Schedule 3: Payment of Concessionaire Dues

1. Calculation of monthly payments to the Concessionaire

1.1. Release of monthly payments to the concessionaire

- a) PM on behalf of FSCL shall release to the Concessionaire, the amount calculated according to the volume (Kilometres) of services for the Stage Carriage operations provided for the month under consideration (“Service Month” or “SM”) and applicable KCR
- b) For each Service Month, concessionaire payment shall be based on the volume of services provided, subject to Performance Adjustment,

1.2. Monthly payment Release Schedule

Payment shall be made on the following dates (“Payment Date/s”), based on the invoice raised by the Concessionaire, at least 7 days prior to the Payment Date:

Sr. No.	Payment Date	Amount of Payment
1	Last day of SM	90% of estimated Payment for SM
2	Before last day of month succeeding SM	100% of Payment for SM subject to : (i) Minus Performance Adjustment, i Plus incentive payment

Notes:

- a) In cases where it is found that the Concessionaire is unlikely to meet Performance Standards FSCL / PM, has the right to withhold payment set out at Sr. No. 1 above. In such case, entire payment shall be made on the Payment Date set out at Sr. No. 2 above.
- b) In addition, GST and any applicable cess thereon, if any, shall be paid.
- c) In case last day of SM is a bank holiday/ Gazetted holiday in the government, the payment will be released next day.
- d) Along with the invoice, the Concessionaire shall submit the duly filled up Compliance Format in terms of Annexure I of Schedule 2.

1.2.1 Performance Adjustments shall be made at payment set out at Sr. No. 2 of Para1.2 of Schedule 3.

Note: All the following calculations will be undertaken based on Annex 1 of this Schedule.

Request for Qualification and Proposal for Selection of Operator for City Bus Private Operations in Faridabad

1.2. PAYMENTS TO THE OPERATOR FOR KILOMETER CHARGE

1.3.1 Bus Kilometers for any Contracted Bus shall comprise of the following:

- a. Distance travelled by Contracted Bus assigned on given Route(s) as per Operating Plan.
- b. Distance travelled by a Contracted Bus, which is outside prescribed CBS route but as per Operating Plan.
- c. Distance travelled by a Contracted Bus, which is outside the Operating Plan but approved by the Authority for specific and special operational requirements.
- d. Distance travelled by the Contracted Bus from Bus Depot to the first point of loading passengers at the commencement of its service on a day and Distance travelled by the Contracted Bus from its last passenger stop as per the Operating Plan to the Bus Depot at the end of the day's service.
- e. Distance travelled by the contracted buses from end point of one route to start point of any other route for commencement of its services on the new route / section of the new route.

1.3.2. Bus Kilometers for payment shall not constitute the following

- Any kilometers travelled by the Contracted Bus to a maintenance facility other than that set up by Operator at Bus Depot provided for by Authority or for any travel not authorized by Authority and or any travel for Pollution under control certification and or travel to Specified locations for periodical road worthiness certification by the Transport Authority.
- 1.4. Authority shall compute and provide to Operator, for every Payment Period, from when first of the Contracted Buses commences service, total number of kilometers that the Contracted Buses have travelled for aforesaid period. Such calculation shall be made using Global Positioning System (GPS) and in case of absence of GPS data, manually under supervision of the Authority staff. Operator shall be paid based on Bus Kilometers logged and verified in this manner according to the kilometer Charge fixed by FSCL.

1.5. Basis for Payments

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

Base Year Price related to base year price of Fuel per Unit, base year minimum wage rate for highly skilled worker and the Base Year Wholesale Price Index (WPI) which shall be used for determining Applicable Kilometre Charge throughout the agreement period are as follows:

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

Sr. No.	Bus Type	Quantity (Nos)	Quoted & accepted Rate Rs. / Km (Exclusive of GST)
1	BS IV compliant CNG fuelled Non-air conditioned 650 mm floor height midi buses – Intra-city services	50	
2	BS IV compliant CNG fuelled air conditioned 650 mm floor height low midi buses –Metro feeder services	40	

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Base Year Price of Fuel/Unit : Rs. [] per KG of CNG, being the prevailing price of fuel as available from cheapest legal source in vicinity of Bus Depot/ Parking Space being price of Saturday of the week immediately prior to last date of submission of the RFQP on []. Or of IGL website price or price actually paid by the operator whichever is lower.

Base Year minimum wage rate for highly skilled worker:[]latest published price by the Government of Haryana (GoH) before the last date of submission of the RFQP on [-----].

Base Year Wholesale Price Index for all commodities:[] latest published price by the Government of India before the last date of submission of the RFQP on [-----].

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

1.6. Payment Terms

(a) Invoicing Period:

For each Contracted Bus that has been put into regular operations from date of COD up to Last day of the calendar month, Operator shall submit an invoice within seven days of the end of each calendar month (“Payment Period”) specifying:

- (a) registration number of each Contracted Bus and that has operated as part of City Bus Service,
- (b) Bus Kilometers travelled by each Contracted Bus as part of the City Bus Service in the relevant payment period (clearly identifying the Contracted Bus)
- (c) Applicable Kilometer Charge Rate for the period for Contracted Bus.
- (d) GST, and any applicable surcharge or cess on it, if any, payable on invoice amount; and
- (e) 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 strictly for route wise scheduled kms and actually operated kms for payment period decided by FSCL/Authority.

(b) Payment Period

- i) Authority shall, within a period of 8 (eight) days of receipt of invoice, make part payment of 90% of total invoiced amount for each payment cycle of one month.
- ii) Balance 10% of the amount of each invoice shall be released by the Authority by end of the month, after verifying the records that it has on the Bus operations and evidence of salary paid to employees, statutory dues such as EPF, ESIC etc. deposited with concerned agencies/paid and making adjustment against or damages /fines/penalties or other adjustments as may be applicable against the invoice under terms of Agreement.
- iii) In case of expiry of the agreement in normal course of time, complete payment of last month of operation shall be made within one month of the last day of the Agreement.

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

(c) Method for Calculation of Aggregate Payment

Payment for Bus Kilometres up to Assured Bus Kilometres for each Contracted Bus deployed shall be calculated as follows:

Payment = Applicable Kilometer Charge Contracted x [Operated KMs] subject to adjustment as per assured kilometres operation, deductions/ incentives etc.

(Where Operated KMs are Bus Kilometres operated by the contracted buses as part of Operating Plan during relevant Payment Period)

Break up of Km charge wrt various groups of cost elements would be as under:

$Kc = (0.20 * Kc * Cc + 0.30 * Kc * Sc + 0.30 * Kc * Fc + 0.20 * Kc * Oc)$ where

Kc -- base Kilometre Charge, Rs. per km

Cc—Capital cost charge factor (includes depreciation and cost of funds)=1 or capital cost =0.20*Kc*Cc =0.20*Kc is constant

Sc – Staff cost charge factor

Fc—Fuel cost charge factor

Oc-- Other costs charge factor

For the Quoted and Accepted km charge, value of above charge factors is taken as 1

Any Fines / penalties etc. levied shall be adjusted from Aggregate Payment subject to 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 number of operated kilometres in the given period multiplied by Applicable Kilometre Charge. Authority is liable to pay this additional amount on the Invoice Amount.

(d) Payment for Bus operation during Training Period.

During the training period prior to COD, Authority shall pay the Operator for all operated Kilometres as per the formula specified hereunder:

Payment = Applicable Kilometre Charge Contracted x 45% x [Operated KM] subject to adjustment as per assured kilometres operation, deductions/ incentives etc.

Where

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

(e) Guarantee to operate particular number of kilometers

Authority hereby assures the Operator that the Operating Plan will be formulated in a manner as to ensure that average number of Bus Kilometres operated by each of the Contracted Buses, in a continuous period of **12 (Twelve) calendar months**, commencing from CoD of relevant Lot of Contracted Buses, and then onwards on annual basis, shall be no fewer than 66,000 kms / Contracted Bus (Sixty six Thousand Kilo metres per contracted bus) ["Annual Assured Bus Kilometres"]. If the Authority in consultation with

the Operator or otherwise decides to follow a financial year for purpose of payment for assured kms, it may do so. In that case assured kms for part of the year in First year of operation, would be decided on prorata basis from COD to end of the year for each lot of buses.

Annual Assured Payment after reconciliation

i. Payment for Unutilized Kilometers:

If the Authority during the period of a financial year utilizes less than the Annual Assured Bus Kilometres, Authority will pay to the Operator, in addition to 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 = $0.45 \times (T_m - T_a) \times$ Applicable Kilometre Charge subject to adjustment as per assured kilometres operation, deductions/ incentives etc.

where

T_m = Annual Assured Bus Kilometres per bus x Available and deployed fleet

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

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

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

ii. Payment for Excess Kilometers

If the Authority during the period of a financial year operates, with the permission of the authority, more than the Annual Assured Bus Kilometres, Authority will pay to the Operator, in addition to full payments made for Bus km operated under this Agreement based on invoices presented by the Operator, an amount which shall be determined as follows:

Annual Assured Payment Amount for Excess Kms = $0.55 \times (T_a - T_m) \times$ Applicable Kilometre Charge

where

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

T_m = Annual Assured Bus Kilometres x contracted buses comprising the Available and deployed fleet

- iii. Applicable Kilometer Charge for purpose of Payment of Unutilised or Excess Km shall be weighted average of applicable Kilometer Charge used in payment periods during the relevant year.
- iv. Determination of whether Annual Assured Payment Amount is due shall be done at the end of a period of 12 (twelve) consecutive calendar months. Authority shall provide the Operator with a notice detailing

calculations with supporting data (kilometers travelled / operated by each of the Contracted Buses comprising Available and deployed Fleet).

- v. Authority shall have the right to compute on its own and verify Annual Assured Kilometers. Authority shall compute and provide to the Operator, every quarter from COD for respective lot of buses, total number of Kilometers that contracted fleet i.e. Available and deployed Fleet has operated for aforesaid period. Such calculation shall be made using GPS and in absence of GPS, with the help of Authority staff or its authorised agency.

(f) Basis of Revision of Kilometer Charge

Kilometre Charge shall be reviewed and (if applicable) revised only after completion of one year from the COD of last lot of buses. Kilometre charge for any given payment period shall be called Applicable Kilometre Charge. It shall be revised for;

- (a) Fuel cost: Average of daily fuel price at end of the month shall be used as an indicator for revision of km charge. Fuel price must reflect a legal source such as Indraprastha Gas Limited (IGL) website or quotations of supply of fuel for urban bus operations in Faridabad from a Government Supplier or that actually paid by the Operator for purchase of fuel, whichever is lower.
- (b) Staff cost: minimum wage rate of highly skilled worker as notified by the GoH on any day of the month, would be considered for revision of km charge.
- (c) Other costs: Wholesale Price Index (WPI) for all commodities as notified by the GoI if any day of the month would be considered for revision of km charge for "Other costs".

Kilometre charge shall be revised based on following formula/details at the end of each month to be applicable wef the 1st day of the following month;

$$K_c = (0.20 * K_c * C_c + 0.30 * K_c * S_c + 0.30 * K_c * F_c + 0.20 * K_c * O_c) \text{ where}$$

K_c -- base Kilometre Charge, Rs. per km, where value of C_c , S_c , F_c & O_c is 1 in the base km charge.

K_r = Revised Km charge Rate. Revision on the basis of change in element wise Km charge factors as under

C_r = Revised km charge factor for Capital cost charge (includes depreciation and cost of funds) = $C_c = 1$ i.e. No revision

S_r = revised kms charge factor for staff cost considering change of Minimum wage rate of highly skilled worker

F_r = Revised km charge factor for Fuel cost charge – revision based upon change of Rate per unit of fuel

O_r = Revised km charge Factor for Other costs charge- revision based upon change in Wholesale Price Index

$$K_r = K_c * (0.20 * C_c + 0.30 * S_r + 0.30 * F_r + 0.20 * O_r)$$

$$= K_c * (0.20 + 0.30 * W_r / W_i + 0.30 * F_r / F_i + 0.20 * O_r)$$

Where

K_r = Revised Kilometre Charge, Rs per km

C_r = Revised km charge factor for Capital cost charge = 1

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Sr= Revision Factor for Staff cost= W_r/W_i

W_r = Revised minimum wage rate of highly skilled worker

W_i = Initial minimum wage rate of highly skilled worker on last date of bid submission

Fr= Revision Factor for Fuel cost= F_p/F_i

Fr= Revised price per unit of Fuel (Rs per kg of CNG)

F_i =Initial price per unit of Fuel on last date of bid submission

Or= Revision Factor for Other costs= I_r/I_i

I_r = Revised Whole Sale Price Index

I_i = Initial Whole Sale Price Index on last date of bid submission

An example of use of above formula assuming certain adhoc values of various parameters is as under:

Let

$K_c=20$

$C_c=1$ (no revision of capital cost factor)

$W_r=15000$ & $W_i=12000$,

$F_r=60$, $F_i=50$,

$I_r=250$, $I_i=225$,

Then, using the above formula,

$K_r = 20 * (0.20 * 1 + 0.30 * 15000 / 12000 + 0.30 * 60 / 50 + 0.20 * 250 / 225)$

$=23.1$

WPI for the present year shall be obtained from the latest WPI available as published by Ministry of Commerce, Government of India, or such other body that is reliably entrusted with this task.

1.7. Limitations to Liability of Authority for Operations and Maintenance

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

1.8. Liabilities arising from negligent driving and accidents

Any and all damages arising due to negligent driving, or accidents of Contracted Buses on street / in depots and or at parking places shall be the liability of Operator.

1.9. Fines/deductions and Compensation

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

TAXES AND STATUTORY LEVIES

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

Sr. No.	Taxes and Charges	Parties responsible for payment
1	Vehicle Registration Charges	Operator
2	Insurance premium for Buses; and other assets owned by Authority and utilized by Operator	Operator
3	Motor Vehicle tax within Limit of Faridabad	Operator
4	Motor Vehicle tax outside of Faridabad	Operator
5	Passenger Tax	Authority
6	Stage Carriage Permit	Operator
7	All other Bus related taxes including charges such as PUC charge, periodical fitness certification charge, etc.	Operator
8	GST	Payable by Operator and shall be reimbursed by Authority.

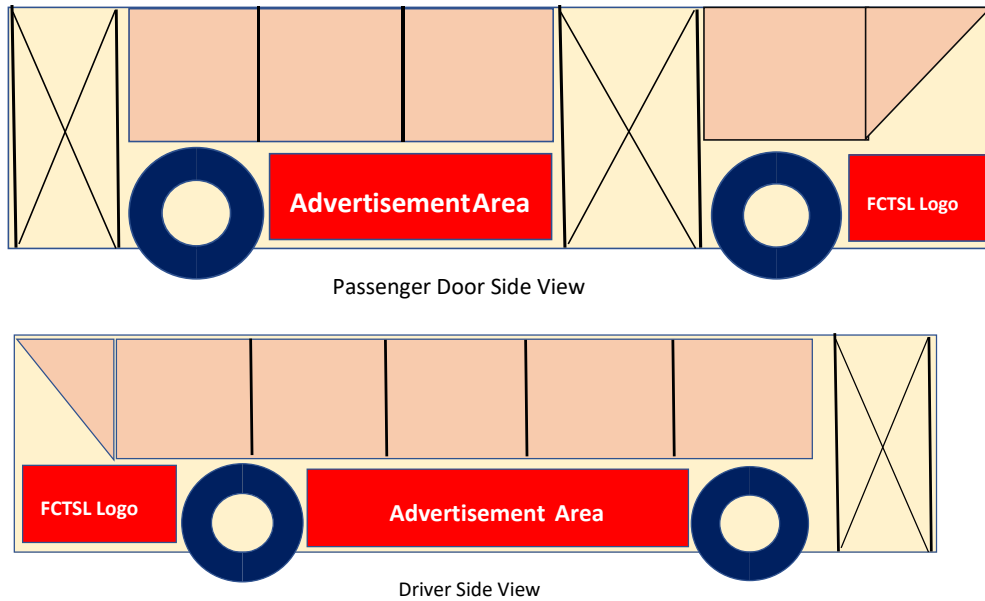
3. Bus Advertisement Marketing Rights

Subject to the provisions outlined in Clauses 3.1, 3.2 and 3.3 hereunder, the Concessionaire shall have the marketing rights for displaying advertisements on the buses (exterior and interior) deployed by the Concessionaire under the Project during the Concession Period. Display of advertisements shall be subject to the provisions of the Haryana Municipal Corporation Advertisement Byelaws as amended from time to time or any other relevant law or orders of any court of law governing the display of advertisements applicable to buses.

The Concessionaire shall be entitled to collect and appropriate revenue realized from display of advertisements on such buses. The Concessionaire shall be responsible and liable for all costs associated with display of advertisements on buses including but not limited to payment of all taxes, duties, levies, revenue share, fee etc. to the competent authorities. Any change in the applicable law, byelaw, or orders of any court of law on advertisements shall not substantively or materially affect the operation of the contract or the bids of the Concessionaire under the Project during the Concession Period. The Concessionaire shall not be entitled to seek compensation for revenues lost due to any change in the applicable law, byelaw, or orders of any court of law on advertisements as a result.

3.1. Details of Advertisement Space

The permissible locations of the advertisements by the Concessionaire on sides of the buses will be as shown in the diagrams (not to scale) below:



The advertisement rights for the on-board electronic media of the buses including PIS boards etc. shall remain with FSCL.

The indicative maximum size of the advertisements on the sides and inside the buses will be as under:

Location on the Bus	Indicative Maximum Size of the Advertisements
Side Panel (passenger door side)	3.00 m x 0.90 m between the front wheel and the centre door and below the bottom of the window sil.
Side Panel (driver side)	3.00 m x 0.90 m between the wheels and below the bottom of the window sil.
Back Panel	Advertisement not permitted on the back panel

Concessionaire is required to verify and assess the actual available area based on the bus design, Applicable Laws and guidelines issued by the competent authorities from time to time. The prototype regarding size and location of advertisements (including LED panel) shall be subject to approval of FSCL. The Concessionaire shall not be entitled to seek any compensation for revenues lost due to any change in the applicable law, byelaw, or orders of any court of law on advertisements resulting in a change in permissible sizes of the advertisement.

For any innovation/ deviation, including where any structural changes are required to be made on the Buses, approval from FSCL/PM shall be required.

3.2. Payment of Taxes

The Concessionaire shall be liable and responsible for payment of all taxes, duties, levies, revenue share, fee etc. due to the Government of India (GoI), GoH, other Governments or local authorities (including the GST, licence fees to the Municipal Corporation and other levies applicable now or levied in the future) for displaying advertisements in the buses.

The Concessionaire shall be liable to make their own arrangement at their own cost to pay the publicity charges or taxes to the GoI, GoH, other Governments or authorities, where such charges are being levied. In case of non-payment of such taxes or charges, the advertisements being displayed on the buses plying in that area will be stopped, for which the Concessionaire shall not be entitled to seek any compensation. The Concessionaire shall be responsible for any consequences arising out of non-payment of any taxes/levies. The Concessionaire shall submit proof of payment of such taxes/levies to FSCL, as and when required.

In case FSCL is made liable for payment of any tax/levies, then the Concessionaire will deposit the corresponding amount of the taxes/levies with FSCL so as to enable FSCL to pay such taxes/levies. In case any interest, penalty or such other charges become due on account of late payment or any other default by the Concessionaire, the Concessionaire shall be solely responsible for the same and such amounts shall immediately be paid by the Concessionaire to the authority concerned or to FSCL where FSCL is required to pay the same.

In case display of advertisement on buses is not permitted under any applicable law or order of any court having the force of law, the advertisements on the buses plying on such routes shall not be displayed and the Concessionaire shall not be entitled to any compensation whatsoever on that account from FSCL.

3.3. Terms and Conditions

- a) The Concessionaire shall comply with the Haryana Municipal Corporation Advertising Byelaws, as amended from time to time; Motor Vehicles Act, 1988; Haryana Motor Vehicles Rules, 1993; and all other Applicable Laws, policies, rules and guidelines framed by competent authorities, as amended from time to time. The space, size, locations, type and other characteristics of advertisement shall be based on and in compliance with the applicable laws, rules and policies notified by competent authorities.
- b) The Concessionaire shall obtain all the required approvals and permissions from competent authorities for display of advertisement on the buses and shall comply with all the rules/regulations applicable from time to time in this regard.
- c) 10% of the buses of each type are required to be reserved for displaying government advertisements free of charge through the Information and Public Relations Department of the GoH. These advertisement spaces, if not utilised by the Public Relations Department of the GoH, shall remain vacant and cannot be utilised by the Concessionaire for any other advertisement.
- d) Quality of Advertisement Boards: The advertisements boards should be put up by pasting of superior vinyl sheets with very high standard of printing & colours. The Vinyl should be pasted on rust proof metallic or fibre sheets. Where the metallic plates are required, these must be rust proof and should be fixed on the buses with rust proof material without damaging the body of the bus.
- e) Rear Panel: The rear panel may be fixed, subject to the condition that there is no interference with respect to the back lights or any other features specified under the Motor Vehicles Act, 1988/Rules..
- f) Replacement of spoiled boards: Any advertisement board which gets spoiled after some time will have to be replaced by the Concessionaire immediately and in any case within a week of the notice given by FSCL, failing which FSCL will have the right to remove the spoiled advertisement boards at the cost and risk of the Concessionaire.
- g) The Concessionaire shall remain responsible for the contents of any advertisement displayed on or within the Bus except for the advertisement displayed by the Public Relations Department of the GoH. It will be the Concessionaire's responsibility to comply with the current law of advertising practice referred to above.
- h) Advertisements not allowed: Advertisements that adversely affect the sovereignty and integrity of India, security environment, friendly relations with foreign states, public order, decency or morality, or are in contempt of court, are defamatory in nature or may lead to incitement to an offence or are political in nature are not allowed. The Concessionaire will be required to immediately remove any advertisement that is directed by FSCL to be so removed for the above reasons.
- i) All advertisements must comply with the code of advertising practice issued by the Advertising Standards Council of India.
- j) Fixing & display of advertisement boards: The responsibility for fixing and display of advertisement panels would be that of the Concessionaire which will be undertaken by the Concessionaire with the written approval of the FSCL indicating the period of display of each advertisement along with registration number of buses. The advertisement panels should be fixed with rust proof material without making any damage to the bus body.
- k) No detention of buses allowed: No detention of buses would be allowed for putting up advertisements on the buses and the Concessionaire will have to put up the advertisement boards during the period the buses are parked in the depot.
- l) Removal of advertisement boards: The advertisements will have to be removed at appropriate time by the Concessionaire. The Concessionaire will be required to immediately remove any advertisement that is directed by FSCL or by the Municipal Corporation, Faridabad in accordance with the provisions of the Haryana Municipal Corporation Advertisement Byelaws as amended from time to time. The advertisements will also be removed by the Concessionaire at their own cost after the expiry of the period for which these have been put up in consultation with the FSCL.

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- m) No compensation for less number of advertisements: If the Concessionaire is unable to put up advertisements on any of the space/ buses, it will not be entitled to claim any compensation or relief from FSCL whatsoever on this account.
- n) Extra Advertisements: FSCL would be free to put up any advertisements on the spaces other than those allotted to the Concessionaire as deemed fit by FSCL and the Concessionaire will have no objection for such extra advertisements and they will also not be entitled to seek any compensation or relief, whatsoever, on this account.
- o) DAVP rates from Government organizations: In case any Government Department/ Corporation/ Board wishes to display advertisements on the buses through the Concessionaire, the Concessionaire will charge them at rates not more than those fixed by the DAVP, Government of India.
- p) Damage or loss of boards or serious break down due to unavoidable circumstances: The Concessionaire shall not be entitled to claim any compensation or relief on account of serious breakdown or interruption in the display of advertisements or damage/loss of the boards etc. due to unavoidable circumstances.
- q) The Concessionaire is permitted to enter into arrangement(s) with media, marketing and other professional agencies to market advertisement rights on buses under due written communication to FSCL. Notwithstanding such arrangements, the Concessionaire shall continue to remain responsible and liable for compliance with the provisions of this Agreement.

Annex 1 to SCHEDULE 3

<To be suitably incorporated based on Price Proposal of the Successful Bidder>

Schedule 4: Implementation Plan

Sr. No.	Project Milestone	Elapsed Time from Appointed Date “End Date”
1	Project Milestone No. 1 : 1.1. Completion of proto-type bus structures 1.2. Completion of proto-type bus paneling/finishing 1.3. Delivery of proto-type bus, acceptance, registration 1.4. Field trials and training of staff 1.5. Delivery of 1 st lot of 30 buses 1.6. Delivery of 2 nd lot of 30 buses 1.7. Delivery of 3 rd lot of 30 buses	1.1. 75 days 1.2. 105 days 1.3. 120 days 1.4. 135 days 1.5. 150 days 1.6. 180 days 1.7. 210 days
2	Project Milestone No. 2 : “COD” or “Commencement Date” and commercial operations of buses 2.1. Operations of 30% of Stage Carriages. 2.2. Operations of 60% of Stage Carriages. 2.3 Operations of 100% of Stage Carriages.	2.1. 150 days 2.2 180days 2.3. 210 days

Note: The plan for induction of buses could be varied by FSCL based on the project requirements.

Route wise monthly phasing of induction

Month from Appointed Date	New Buses to be deployed during the month
1	-
2	-
3	-
4	-
5	30
6	30
7	30
Total	90

Notes:

- All buses inducted by the Concessionaire shall be new and unused.
- Unless otherwise approved by the FSCL / PM, the buses shall be deployed by the Concessionaire in batches of minimum 30 buses.
- Additional buses required as reserve fleet shall be procured and deployed by the Concessionaire commensurate with the overall fleet deployment.

Schedule 5: 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 Head/Registered office 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

Faridabad Smart City Limited, represented by CEO and having its main office at Plot No. 35, Nain Sadan, Sector 20A, Behind EF3 Mall, Near Old Faridabad Metro Station, Faridabad - 121001(Haryana), hereinafter referred to as the “**FSCL**”, which expression shall, unless repugnant to the context or meaning thereof include its administrators, successors or assigns.

WHEREAS

- A. By the Concession Agreement entered into between the FSCL and _____, a company incorporated under the provisions of the Companies Act, 2013, having its registered office/ permanent address at _____ (“the Concessionaire”). The Concessionaire has been granted the Concession to implement the Project of Operation of City Bus Services in Faridabad under Concession Agreement for a period of 8years (hereinafter referred to as “the Project”).
- B. In terms of Clause 9.1 of the Concession Agreement, the Concessionaire is required to furnish to FSCL , 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 Concession Agreement, relating to Project by the Concessionaire.
- C. At the request of the Concessionaire, the Guarantor has agreed to provide bank guarantee, being these presents guaranteeing the due and punctual performance/discharge by the Concessionaire of its obligations relating to the Project.

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS:

- 1. Capitalised terms used herein but not defined shall have the meaning assigned to them respectively in the Concession Agreement.
- 2. The Guarantor hereby irrevocably guarantees the due and punctual performance by M/s. _____ (hereinafter called “the Concessionaire”) of all its obligations relating to the Project and in connection with achieving COD by the Concessionaire in accordance with the Concession Agreement.
- 3. The Guarantor shall, without demur, pay to FSCL sums not exceeding in aggregate Rs. _____ (Rupees _____ only), within _____ calendar days of receipt of a written demand therefore from FSCL stating that the Concessionaire has failed to meet its obligations under the Concession Agreement. The Guarantor shall not go into the veracity of any breach or failure on the part of the Concessionaire or validity of demand so made by FSCL and shall pay the amount specified in the demand, notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Concessionaire 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.

¹ To be issued by a nationalized bank or scheduled bank authorized by RBI to undertake government transaction in India.

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4. In order to give effect to this Guarantee, FSCL 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 Concession Agreement or other documents or by the extension of time for performance granted to the Concessionaire or postponement/non exercise/ delayed exercise of any of its rights by FSCL or any indulgence shown by FSCL to the

Concessionaire 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 FSCL or any indulgence shown by FSCL , provided nothing contained herein shall enlarge the Guarantor's obligation hereunder.

5. This Guarantee shall be irrevocable and shall remain in full force and effect until _____¹ unless discharged/ released earlier by FSCL in accordance with the provisions of the Concession Agreement. The Guarantor's liability in aggregate be limited to a sum of Rs. _____.
6. This Guarantee shall not be affected by any change in the constitution or winding up of the Concessionaire/the Guarantor or any absorption, merger or amalgamation of the Concessionaire/the Guarantor with any other Person.
7. 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.

Note: A similar Performance Security with suitable changes *mutatis mutandis* shall be furnished during operation periods in terms of Clause 9.6.

¹ 18 months from the date of signing the Concession Agreement
RFQP Part II – Draft Concession Agreement

Schedule 6: Depot

1. Depot

1.1. Handover of Depot

For the purposes of maintenance, daily cleaning and parking of Buses, subject to the execution of a Depot License Agreement as provided in **Schedule 8: Depot License Agreement** to this Concession Agreement, the FSCL shall provide a bus Depot (hereafter “Depot”) to the Concessionaire. It is hereby clarified that the Concessionaire shall only have a limited right of way and right to use the Depot subject to the terms of the Depot License Agreement and the terms contained herein. The Concessionaire shall not have any right to display advertisement in the Depot or any part thereof.

Currently land for Depot has been identified/ allotted. However, handover of depot with requisite infrastructure may take longer time than planned rollout date of bus operation. Therefore, Concessionaire should account for this exigency and make suitable alternative arrangements for operations in the Depot/alternate space provided by the FSCL. The Concessionaire in such case shall create minimum temporary facilities required for undertaking operation and maintenance such as porta cabins, temporary electricity connection, etc. It is clarified that in above situation there will be no extra payments to the Concessionaire by the FSCL on account of this nor will there be any relaxation in timelines provided in Clause 10 of the Concession Agreement dealing with Project Milestones and COD.

In case any infrastructure or facility is developed by FSCL subsequent to the handover of the Depot to the Concessionaire, the same shall be included in list of facilities as contained in the Depot License Agreement from the date of handover.

1.2. Ownership of Depot

It is hereby clarified that the ownership of the Depot shall remain vested solely with the FSCL at all times. The Concessionaire shall only be provided the limited right of way and right to use as a licensee under the Depot License Agreement in respect of the Depot and upon the end of the Concession Period, the Depot License Agreement shall also terminate or expire, whereupon the Concessionaire shall vacate and hand back to the FSCL such Depot along with any permanent structure(s) created by it to fulfil its obligations as per the terms of this Concession Agreement. Provided however, upon such Termination or Expiry, the Concessionaire shall be entitled to remove any equipment, machinery, tools, apparatus, consumables, etc. procured and brought by it, at its own cost, to the Depot during the Concession Period for implementing the Project, subject to Clause 19 of the Concession Agreement.

1.3. Infrastructure to be made available by the FSCL at the Depot

1.3.1. Subject to clause 1.1 of this Schedule, the FSCL shall provide basic civil infrastructure to the Concessionaire at the Depot which has been detailed in Annexure A of this Schedule.

1.3.2. Any routine or long-term up-gradation/repair/maintenance of civil infrastructure shall be taken up by the Concessionaire during the Concession Period at his cost.

1.4. Equipment to be arranged by the Concessionaire

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- 1.4.1. The Concessionaire shall at its own cost and expense bring any such consumables, equipment, machinery, tools, fixture etc. and appoint skilled personnel and supervisor for regular upkeep, maintenance, cleaning and safekeeping of the Buses and Depot as detailed in Annex 1 of this Schedule, during the term of the Concession Agreement.

The Concessionaire shall ensure compliance with the provisions of the Factories Act, 1948 and the Rules made thereunder, as amended from time to time, while carrying out its maintenance related obligations at the Depot including deployment of a qualified person as Depot in charge/ supervisor for exercising control, monitoring and supervising the activities of the personnel of the Concessionaire deployed at the Depot.

- 1.4.2. Any other equipment / facility / tools etc. if any required by the Concessionaire for operation, repair and maintenance of buses and for other facilities under his control would be acquired by the Concessionaire at its own cost.

1.5. Provisioning and Payment of utilities

- 1.5.1. The Concessionaire shall be liable to undertake necessary formalities for obtaining approvals and commissioning of utility services such as electricity, water, sewerage, etc from the concerned agencies in the Depot. However, necessary support from FSCL will be provided towards this.

- 1.5.2. The Concessionaire shall be liable to pay bills for utilities such as electricity, water, sewerage, etc. for consumption at the Depot. Provided, however, the Concessionaire shall be liable to pay bills for the consumption of utilities only for the area of the Depot allotted to the Concessionaire.

- 1.5.3. The Concessionaire shall be responsible to coordinate and follow up with utility agencies concerned to ensure uninterrupted utility services during the Concession Period.

1.6. Security, Safety and Fire Hazards

- 1.6.1. The Concessionaire shall:

- a) at its own cost and expense maintain the area of the Depot which has been specifically allocated and handed over to it under the terms of the Depot License Agreement and the terms contained herein in good working condition to ensure security and safety of the equipment, consumables, machines, Buses, etc. at the Depot;
- b) at its cost ensure adequate security, watch & ward services at the Depot and take adequate preventive measures to safeguard against fires and install the requisite firefighting equipment at the Depot;
- c) not cause any damage in the area of the Depot provided to it under the terms of the Depot License Agreement and the terms contained herein nor do any act which will in any way be prejudicial to the rights of the FSCL or other users/ occupants of the same.

1.7. Hand back of Depot

- 1.7.1. Upon Termination/Expiry, the Concessionaire shall not remove any permanent structure/ immovable assets created by the Concessionaire to fulfil the obligations as per the terms of the Concession Agreement. The Concessionaire shall at the end of the Concession Period, handover without payment of any monies and free from Encumbrances the peaceful possession of the Depot and any permanent structure /immovable assets that may have been created by the Concessionaire in the Depot to the FSCL, in sound condition, subject to normal wear and tear;

- 1.7.2. Subject to Clause 19 of the Concession Agreement, the Concessionaire shall be allowed to take away any temporary structures, equipment, tools and fixture installed by it at the Control Centre including any consumables procured by Concessionaire for the execution of the Project.

Annex 1– Depot Plant and Equipment

1. Depot Plant and Equipment by Concessionaire

The Concessionaire shall procure, install and commission following maintenance equipment, tools, plant & machinery in the Depot at his cost, including but not limited to the following:

Sr. No.	Name of Equipment
1.	Automatic washing machine with 3 side brushes (including foundation) integrated with under chassis cleaning system
2.	Car Washers with twin cylinders
3.	4/6 wheeler Break-down relief van along with tools
4.	Electrical Generator - 63 to 125 KVA
5.	Air Compressors
6.	Nitrogen Tyre Inflators
7.	Auto cut-off Tyre inflator with wall mounted digital meters
8.	Engine/Gear Box Trolley/Cranes
9.	Fork Lifts for material handling
10.	Brake and clutch liner riveting machines
11.	Pedestal Drilling machines
12.	Hydraulic presses
13.	Brake units testing machines
14.	Electric Welding machines
15.	Spray painting machines
16.	Tyre pressure gauges
17.	Hub pullers
18.	Decanting Pumps
19.	Torque wrenches
20.	Hydraulic Jacks
21.	Pit trolleys
22.	Bench vices
23.	Working tables
24.	Greasing machine
25.	Gas Welding machine sets
26.	Arc Welding machines
27.	Battery Chargers
28.	Distilled Water Plant for battery
29.	Cell testers
30.	Battery gravity / Hydro meters
31.	Ammeter cum Voltmeters
32.	Matra Jacks
33.	Electric clamp meters
34.	Bench Grinders
35.	Injector / spark plug testers
36.	Portable drilling machines
37.	Wheel alignment gauges
38.	Hot plates for tube repairing if required
39.	Chassis stands
40.	Tool Box sets

2. Depot Basic Infrastructure by FSCL

The FSCL shall provide basic civil infrastructure for use by the Concessionaire on best effort basis for the Project at the Depot as detailed below:

- (i) Location: to be indicated separately

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- (ii) Area: approx. to be indicated separately
- (iii) Covered area of 3,000 square meters with civil infrastructure facilities like space for office, security booths and space for security personnel, medical facility and rest room, canteen, spare parts store, work shop sheds (for washing facilities, maintenance / service pits etc.) (iv) Boundary wall: 2 m height with 0.6 meter railing.
- (v) Provision for sanitary installations, external services connections, internal electrical connections, power wiring, telephone conduits, computer conduits, street light, signages and septic tank.
- (vi) Roads to be improved / widened for the movement of buses.
- (vii) Office space for DCC, ITMS, FSCL / PM and FCS Provider including maintenance/ storage room
- (viii) (viii) CNG Station on best effort basis, if found feasible by the CNG supplier.

Notes:

- Civil works at the Depot shall be typically constructed by FSCL whereas equipment, tools and fixtures have to be provided by the Concessionaire.
- The Depot with aforesaid civil structures shall be handed over post construction to the Concessionaire. Any routine or long-term up-gradation/repair/maintenance of civil structures shall be taken up by the Concessionaire during the Concession Period.
- In case no Municipal water supply is available in the near vicinity, deep bore well will have to be developed by the Concessionaire.
- The Concessionaire will make necessary temporary arrangements such as porta cabins, sheds etc. to meet any exigency as illustrated in sub clause 1.1 of this Schedule.

Schedule 7: Change in Ownership

The conditions related to shareholding/ cross holding are set out in the following paragraphs:

1. Shareholding Restrictions

1.1. Type 1 Bidder (Sole Bidder)

- a) Type 1 Bidder shall be required to incorporate a limited liability company under Indian Companies Act, 2013 as a fully owned subsidiary of the bidder for implementing the Project.

1.2. Type 2 Bidder (Consortium)

- a) Type 2 Bidder shall be required to incorporate a limited liability company under Indian Companies Act, 2013 for implementing the Project.
- b) Lead Member of the Type 2 Bidder and all other members of the Consortium shall hold equity stake in the Concessionaire in accordance with the Consortium MoU submitted by them during the bidding stage in securing the Concession till a period of 3 (three) years from the COD, unless otherwise agreed in writing by FSCL.
- c) Lead Member of the Type 2 Bidder shall hold a minimum equity stake equal to 51% in the Concessionaire and other members of the Consortium shall individually shall hold a minimum equity stake equal to 5% in the Concessionaire up to 3 (three) years from the COD.
- d) Subsequent to 3 (three) years from the COD, the Lead member may change, subject to approval of FSCL, with an equal or a better qualified entity subject to the changed Lead Member committing to hold a minimum equity stake equal to 51% in the Concessionaire and the other members of the Consortium remaining unchanged and continue to hold a minimum equity stake equal to 5% each of Concessionaire till the end of the Concession Period.
- e) Subsequent to 3 (three) years from the COD, other members, either one or both may be replaced by equal or better qualified member(s), with prior approval of FSCL and subject to each one of them holding a minimum equity stake of 5% in the concessionaire and the original Lead member remaining unchanged and continuing to hold a minimum equity stake of 51% in the concessionaire till end of the contract period of 8 years.

2. Shareholding Commitment Related to Parent and Subsidiary

In case the Bidder has used the credentials of its parent or subsidiary in meeting the Operational Experience Criteria and/or Financial Capability Criteria during the bidding stage in securing the Concession, the Concessionaire commits to ensure, as applicable, that the Bidder continues to hold at least 51% of the common equity of the subsidiary company or the Parent Company continues to hold at least 51% of the common equity of the Bidder, till a period of 8(eight) years from the COD, unless otherwise agreed in writing by FSCL.

3. Obligations to Inform FSCL

The Concessionaire shall be under an obligation to inform FSCL in writing whenever (1) there is any change in the shareholding of the Concessionaire, and/or (2) there is any change in the shareholding of the Parent Company in the Bidder and/or there is any change in the shareholding of the Bidder in the subsidiary company (In case the Bidder has used the credentials of its parent or subsidiary in meeting the Operational Experience Criteria and/or Financial Capability Criteria during the bidding stage in securing the Concession).

Schedule 8: Depot License Agreement

Faridabad Smart City Limited, a company duly incorporated under the provisions of the Companies Act, 2013 with CIN ---having its office at Plot No. 35, Nain Sadan, Sector 20A, Behind EF3 Mall, Near Old Faridabad Metro Station, Faridabad , Haryana 121002, (hereinafter referred to as the “**FSCL**” which expression shall include its successors and permitted assigns);

AND

<**Name of the Concessionaire**>, a company duly incorporated under the provisions of the Companies Act, 2013 with CIN _____ having its registered office at _____(hereinafter referred to as the “**Concessionaire**”, which expression shall include its successors and permitted assigns).

WHEREAS

- A. The Parties have entered into a Concession Agreement dated [___/___/20__] whereby the FSCL has appointed the Concessionaire for implementation of the Project.
- B. Pursuant to the Concession Agreement, the FSCL is providing to the Concessionaire the right to use and the right of way to the bus depot (the details of which are provided in the **Annex 1** of this Depot License Agreement) (“**Depot**”) for the limited purpose of implementation of the Project.
- C. The Parties are hereby entering into this Depot License Agreement to specify the terms and conditions of the use of the Depot by the Concessionaire.
- D. The actual memorandum of handover of Depot to the Concessionaire along with relevant Depot details is placed as Annexure to this Agreement.

NOW THEREFORE IT IS AGREED AS FOLLOWS:

- 1. All capitalized words used but not defined herein shall have the meaning specified in the Concession Agreement.
- 2. The FSCL hereby provides on a license basis the Depot (the details of which are provided in **Annex 1** of this Agreement) and the Concessionaire hires the Depot on the terms and conditions of this License, it being recorded that the FSCL warrants that the Depot will, save for reasons beyond its reasonable control, be fit for the purpose for which it is to be used by the Concessionaire, namely to provide a reasonable shelter for the Stage Carriage buses while not in use and to facilitate the cleaning, repair and maintenance of the Stage Carriage buses. The Concessionaire shall not have any right to display advertisement in the Depot or any part thereof.
Provided, however, the Concessionaire shall have no right, title, interest or any ownership rights over the Depot or any part thereof.
- 3. This Depot License Agreement shall come into operation on the date of execution hereof and shall terminate on the termination or cancellation of this Depot License or the Concession Agreement for whatever reason, whichever is the earlier (“**License Period**”).
- 4. There shall be rental of Rs. 1 (one) per year payable by the Concessionaire to the FSCL in respect of the License for use of the Depot, provided that the Concessionaire discharges all of its obligations pursuant to this Depot License Agreement and the Concession Agreement.
- 5. In case any infrastructure or facility is developed by FSCL subsequent to the handover of the Depot to the Concessionaire, the same shall be included in list of facilities as contained in the Annex 1 of this Agreement from the date of handover.

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6. The Concessionaire shall be liable to undertake necessary formalities for obtaining approvals and commissioning of utility services such as electricity, water, sewerage, etc. from the concerned agencies in the Depot. However necessary support from the FSCL will be provided towards its obligations.
7. The Concessionaire shall be liable to pay bills for utilities such as electricity, water, sewerage, etc. for consumption at the Depot. Provided, however, the Concessionaire shall be liable to pay bills for the consumption of utilities only for the area of the Depot allotted to the Concessionaire.
8. The Concessionaire shall be responsible to coordinate and follow up with concerned utility agencies to ensure uninterrupted utility services during the Concession Period.
9. The Concessionaire shall be responsible for timely payment of the cost of all electricity and water consumed at or on the Depot. It is hereby clarified that the Concessionaire shall be liable to pay the cost of all the utilities only in relation to such area of the Depot as has been provided to the Concessionaire under this Depot License Agreement.

10. Insurance

- a. The Concessionaire shall not keep or do in or about the Depot anything which is liable to increase any of the risks against which the Depot (or any part thereof) is insured for the time being to the extent that such insurance is rendered void or voidable or the premiums of such insurance are, or become liable to be, increased.
- b. Without prejudice to any other right of action or remedy that the FSCL may have arising out of a breach of the foregoing provision, the FSCL may recover from the Concessionaire on demand the full amount of any increase in insurance premiums in respect of the Depot attributable to such breach.
- c. For the purposes of the above provisions, the Concessionaire shall be entitled to assume that the Depot is at all material times insured against such risks, on such terms, for such amounts, and at such premiums as are for the time being usual in respect of similar buildings in similar locations.
- d. The Concessionaire shall, in accordance with its obligations pursuant to the Concession Agreement, obtain and maintain contract works insurance and public liability insurance in relation to the Depot at his cost.

11. Cession and Subletting

The Concessionaire shall not be entitled to:

- a. cede all or any of its rights or delegate any of its obligations under this Depot License Agreement;
- b. sublet the Depot in whole or part; or
- c. give up possession and/or control of the Depot to any third party, without the FSCL's prior written consent.

12. Concessionaire's Obligations

The Concessionaire shall:

- a. keep the Depot clean, tidy and commercially usable at all times;
- b. be responsible for the handling of all waste and effluent in accordance with the Applicable Laws;
- c. not use the Depot or allow it to be used, in whole or part, for any purpose other than that of implementing the Project;
- d. not park any vehicles in the Depot or allow anyone to park any vehicles other than those used for implementing the Project;
- e. not bring into the Depot any article which, by reason of its weight or other characteristics, is liable to cause damage to the Depot;
- f. not leave refuse or allow it to accumulate in or about the Depot except in the refuse bins provided;

- g. refrain from interfering with the electrical or plumbing serving the Depot, except as may be strictly necessary to enable the Concessionaire to carry out its obligations of maintenance and repair in terms of this Agreement;
- h. not permit any person to temporarily or permanently dwell in the Depot;
- i. provide at the Concessionaire's own expense all electric, LED/fluorescent and incandescent light bulbs required in the Depot from time to time;
- j. co-operate with FSCL / PM any other concessionaires or third party using the Depot or a part thereof as notified by the FSCL from time to time; and
- k. allow for use of the Depot by FSCL / PM, one or more other concessionaires at the written request of the FSCL, provided that such use shall not materially adversely affect the Concessionaire's ability to implement the Project under the Concession Agreement.

13. Maintenance and Repairs

The Concessionaire shall at its own expense and without recourse to the FSCL:

- a. throughout the License Period maintain in good order and condition the interior and exterior of the Depot and all parts thereof, including (without limitation of the generality of this obligation) all windows, doors, appurtenances, fixtures and fittings contained in the Depot.
- b. promptly and properly repair or make good all damage occurring in the interior and exterior of the Depot from time to time during the License Period, whatever the cause of such damage, and including damage to any part of the interior of the Depot or to any window, door, appurtenance, fixture or fitting, and replace all such items (as well as any keys) which have been broken, lost or destroyed (again regardless of cause).
- c. on the termination or cancellation of this Depot License Agreement, forthwith return the Depot and all such parts thereof (including all keys) to the FSCL in good order, condition and repair, normal wear and tear excepted.
- d. The Depot shall be deemed, at the commencement of this Depot License Agreement, to be in good order and condition except to the extent that the Concessionaire notifies the FSCL in writing within 7 (seven) days after having taken possession of the Depot of the need for any repairs to or in the Depot or of the fact that any part of the Depot, including any lock, key, door, window, appurtenance, fixture or fitting, is damaged, missing, or out of order.
- e. Upon receiving a notification contemplated in sub-clause (d) above, the FSCL shall promptly cause the necessary repair or replacement to be effected to the Depot at the FSCL's own expense.
- f. The Concessionaire shall be responsible for the maintenance of, and for all repairs and replacements becoming necessary from time to time in or to, the Depot and all parts thereof.
- g. In the event the Concessionaire fail to carry out any of its obligations under this Depot License Agreement with regard to any maintenance, repair or replacement, the FSCL shall be entitled, without prejudice to any of the FSCL's other rights or remedies, to effect the required item of maintenance, repair or replacement and to recover from the Concessionaire on demand, all reasonable amounts incurred by the FSCL in respect thereof.

14. Alterations, additions and improvements

- a. The Concessionaire shall not make any alterations or additions to the Depot without the FSCL's prior written consent.
- b. If the Concessionaire does alter or add to the Depot in any way, whether in breach of sub clause (a) or not, the Concessionaire shall, if so required in writing by the FSCL, restore the Depot on the termination or cancellation of this Agreement to the same condition as it was prior to such alteration or addition having been made, normal wear and tear excepted. For the sake of clarity, the Parties agree that this sub-clause (b) shall not be construed as excluding any other or further remedy which the FSCL may have in consequence of a breach by the Concessionaire of sub-clause (a).
- b. Save for any alteration or addition which is removed from the Depot as required by the FSCL in terms of sub-section (b), all alterations or additions made to the Depot shall, on termination or cancellation of this

Depot License Agreement, become the property of the FSCL and may not be removed from the Depot at any time. Subject to any prior written agreement to the contrary between the Parties, the Concessionaire shall not, whatever the circumstances, have any claim against the FSCL for compensation for any alterations or additions to the Depot.

15. Exclusion of Liability

- a. The Concessionaire shall have no claim against the FSCL/PM for any loss or damage suffered by the Concessionaire by reason directly or indirectly of:
 - i. any negligent act or omission of the FSCL or any agent or servant of, or contractor to, the FSCL, including (without limiting the generality of the foregoing) any negligent act or omission of any cleaner, maintenance person, handyman, artisan, labourer, workman, watchman, guard or commissionaire, excluding gross negligence and/or wilful default;
 - ii. any failure or suspension of, or any interruption in, the supply of water, electricity, air conditioning, heating, or any other amenity or service to the Depot (including, without limiting the generality of the foregoing, any cleaning service), whatever the cause;
 - iii. any breakdown of, or interruption or delay in the operation of, any machinery, plant, equipment, installation, or system situated in or on, or serving, the Depot, and including (but without limiting the generality of the foregoing) any geyser, boiler, burglar alarm or security installation or system, again regardless of cause;
 - iv. any interruption of, or interference with, the enjoyment or beneficial occupation of the Depot or any parts of the common Depot caused by any building operations or other works to or in the Depot, whether by the FSCL or by anybody else; or
 - v. any other event or circumstance beyond the FSCL's reasonable control occurring, or failing to occur, upon, in, or about the Depot, whether or not the FSCL could otherwise have been held liable for such occurrence or failure, and the Concessionaire indemnifies the FSCL/PM and holds it harmless against any and all liability to any employee or agent of the Concessionaire, its guests and other invitees, and all other persons who may occupy or be entitled to occupy the Depot or any parts thereof through or under the Concessionaire.
- b. The FSCL shall not, however, be excused from specific performance of any of the FSCL's obligations under this Agreement, whether express or implied, and particularly (but not only) the FSCL's obligations to afford the Concessionaire occupation and enjoyment of the Depot as contemplated by this Depot License Agreement.

16. FSCL's Right of Entry and Carrying out of Works

The FSCL/PM may at all reasonable times, without thereby giving rise to any claim or right of action on the part of the Concessionaire or any other occupier of the Depot:

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

17. Damage to or destruction of Depot

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

18. Special Remedy for Breach

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

19. Right to Negotiate Renewal

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

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

SIGNED ON BEHALF OF THE

SIGNED ON BEHALF OF FSCL CONCESSIONAIRE

by the hand of its authorized representative

_____ (Signature)

_____ (Signature)

_____ (Name)

_____ (Name)

_____ (Designation)

_____ (Designation)

SIGNED ON BEHALF OF SELECTED BIDDER

by the hand of its authorized representative

_____ (Signature)

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_____ (Name)

_____ (Designation)

Annex 1 to Depot License Agreement:

Details of Depot Infrastructure handed over to Concessionaire during execution of Agreement

Depot Facility:

Date of Handover	
Address of Depot	
Area of Depot	
Facilities	
Utilities	
Security	

We have inspected the above depot premises and are satisfied as to its condition. We undertake to maintain the above premises in good working condition as per standard practices and terms and conditions of this Depot License Agreement. We understand that the premises above are only being licensed to us for the purpose of implementing the Project during the Concession Period and we undertake to ensure that it shall not be used for any other purpose. We confirm to return the above premises to the FSCL at the end of the Concession Period in the same condition as found when we took over, subject to normal wear and tear for such premises for prescribed uses and the provisions of the Depot License Agreement. The FSCL shall not bear liabilities arising from the use of these premises.

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

For Concessionaire

Name, Sign, Time and Place

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

(End of the Document)