

APPENDIX 8

DRAFT BUS PROVIDER AGREEMENT
between
Jaipur City Transport Services Limited (JCTSL)
And

(Bus Provider)

For

Providing and operating low floor diesel fuelled buses
For
Bus Rapid Transit System (BRTS) Project
of
Jaipur City Transport Services Limited (JCTSL)
on
Buy–Own – Operate and Maintain (BOOM) Basis

Reference: RFP Document No.-----1
---- March 2008

Jaipur City Transport Services Limited
C/O Jaipur Development Authority, Jaipur
R.K Vyas Bhawan, JLN Marg, Jaipur-302005

TABLE OF CONTENTS

S.N.	Contents	Page No.
1.0	DEFINITIONS AND INTERPRETATION	6
1.1	DEFINITIONS	6
1.2	PRINCIPLES OF INTERPRETATION	9
1.3	MEANING OF "AGREEMENT"	10
2.0	BUS PROVIDER CONTRACT	10
2.1	GRANT OF BUS PROVIDER CONTRACT	10
2.2	BUS PROVIDER CONTRACT PERIOD	11
2.3	ACCEPTANCE OF BUS PROVIDER CONTRACT	11
3.0	ACCESS TO PREMISES / VEHICLES	11
3.1	ACCESS TO PREMISES & VEHICLES	11
3.2	RIGHTS, TITLE AND USE OF THE PREMISES IF ANY, ARRANGED BY JCTSL FOR PARKING OF BUSES OF THE BUS PROVIDER PROVIDED BY HIM FOR THE BRTS PROJECT	12
3.3	APPLICABLE PERMITS	13
4.0	SCOPE OF SERVICES	13
4.1	OVERVIEW OF THE SCOPE OF SERVICES OF THE BRTS PROJECT WITH RESPECT TO BUS PROVIDER ACTIVITIES	13
4.2	DUTIES AND RESPONSIBILITIES OF THE BUS PROVIDER DERIVED FROM THE BUS PROVIDER AGREEMENT OF THE BRT SYSTEM	16
4.3	DUTIES AND RESPONSIBILITIES OF JCTSL	21
5.0	SERVICE QUALITY PERFORMANCE (SQP), COMPLIANCE & DEFAULT	22
5.1	SERVICE QUALITY PERFORMANCE (SQP)	22
5.2	COMPLIANCE WITH SQP & REMEDY FOR BREACH OF SQP COMPLIANCE	22
6.0	STEERING COMMITTEE & ENGINEER IN-CHARGE	23
7.0	BUS PROVIDER'S OBLIGATIONS	24
7.1	PERFORMANCE GUARANTEE	24
7.2	FRESH PERFORMANCE GUARANTEE	24
7.3	FINANCING ARRANGEMENT	24
7.4	PROJECT IMPLEMENTATION	24
7.5	PROJECT IMPLEMENTATION: OPERATION AND MAINTENANCE	26
7.6	GENERAL OBLIGATIONS	27
7.7	NO BREACH OF OBLIGATIONS	28
7.8	CONFIDENTIALITY OBLIGATIONS OF BUS PROVIDER	29
8.0	JCTSL'S OBLIGATIONS	30
8.1	SPECIFIC OBLIGATIONS	30
8.2	GENERAL OBLIGATIONS	30
9.0	BUS HIRING CHARGES FOR THE BUS PROVIDER	30
9.1	BUS HIRING CHARGES FOR THE BUS PROVIDER	30
9.2.	PAYMENT TERMS	30
10.0	CHANGE OF SCOPE & CAPACITY AUGMENTATION/ REDUCTION	31

10.1 CHANGE OF SCOPE & CAPACITY AUGMENTATION/REDUCTION	31
11.0 FORCE MAJEURE AND CHANGE IN LAW	31
11.1 FORCE MAJEURE EVENT	31
11.2 NOTICE OF FORCE MAJEURE EVENT	32
11.3 PERFORMANCE OF OBLIGATIONS	33
11.4 TERMINATION DUE TO FORCE MAJEURE EVENT	34
11.5 LIABILITY FOR OTHER LOSSES, DAMAGES ETC.	35
11.6 CHANGE IN LAW	35
12.0 EVENTS OF DEFAULT AND TERMINATION	35
12.1 TERMINATION FOR DEFAULT	35
12.2 TERMINATION FOR INSOLVENCY, DISSOLUTION ETC.	36
12.3 ACCRUED RIGHTS OF PARTIES	36
13.0 HANDOVER & DEFECT LIABILITY PERIOD	36
13.1 HANDING OVER OF PROJECT ASSETS	36
13.2 JOINT INSPECTION AND REMOVAL OF DEFICIENCY	37
13.3 RECOVERY OF BALANCE DUES OF JCTSL FROM THE BUS PROVIDER	37
14.0 DISPUTE RESOLUTION	37
14.1 AMICABLE RESOLUTION	37
14.2 ARBITRATION	38
15.0 REPRESENTATIONS AND WARRANTIES	39
15.1 REPRESENTATIONS AND WARRANTIES OF THE BUS PROVIDER	39
15.2 OBLIGATION TO NOTIFY CHANGE	41
15.3 INDEMNIFICATION	41
16.0 MISCELLANEOUS	41
16.1 ASSIGNMENT AND CHARGES	41
16.2 LIQUIDATED DAMAGES	41
16.3 GOVERNING LAW AND JURISDICTION	42
16.4 WAIVER	42
16.5 SURVIVAL	42
16.6 AMENDMENTS	43
16.7 NOTICES	43
16.8 SEVERABILITY	43
16.9 NO PARTNERSHIP	44
16.10 LANGUAGE	44
16.11 OWNERSHIP & PROTECTION OF PROPERTY AND INTELLECTUAL PROPERTY RIGHTS	44
16.12 INTELLECTUAL PROPERTY RIGHTS	45
16.13 COUNTERPARTS	46
SCHEDULE 1 : RFP DOCUMENT	47
SCHEDULE 2 : LETTER OF ACCEPTANCE	48
SCHEDULE 3 : COPY OF PERFORMANCE GUARANTEE	49
SCHEDULE 4 : SERVICE QUALITY PERFORMANCE (SQP)	50
SCHEDULE 5 : BUS SPECIFICATIONS	51

AGREEMENT

This Bus Provider Agreement is mutually agreed and entered into on this _____ day of _____ (Month), Two Thousand and eight at Jaipur,

BETWEEN

Jaipur City Transport Services Limited acting through the Managing Director, Jaipur City Transport Services Limited(JCTSL), -----, Jaipur-302005, Rajasthan, India hereinafter referred to as "**the Contracting Authority**" or "**JCTSL**" which expression shall unless repugnant to the context include its successors and assigns, OF THE ONE PART,

AND

_____, a individual operator/corporate entity, company/JV/cooperative society, having its registered office at _____, hereinafter referred to as "**Bus Provider**" which expression shall unless repugnant to the context include its successors and permitted assigns, OF THE OTHER PART.

WHEREAS,

- A. JCTSL is engaged in the business of securing and promoting an efficient, economical, reliable and properly coordinated system of mass passenger road transport to public by a fleet of hired buses in the Municipal area/influence zone/contiguous area of Jaipur and the extended areas.
- B. With a view to provide efficient, safe, comfortable, user friendly and environmently compatible mass passenger public transport services on a sustainable basis, JCTSL is desirous of hiring low floor(floor height 400/650m,whichever JCTSL decides) diesel fuelled modern buses and operating them on a public private participation (ppp) system in the above areas,
- C. Accordingly, JCTSL had invited Bids under a **Two stage process** from Bidders for:

Engagement of bus providers and prescribed the terms and conditions for the selection of a Successful Bidder under its Request for Proposal (RFP), inter-alia, to provide and operate the said buses at his cost for the above purpose on "Buy, Own, Operate and Maintain" (BOOM) basis for the Bus Rapid Transit System (BRTS) Project of Jaipur City Transport Services Limited (JCTSL) subject to and on the terms and conditions contained in the said RFP.

- D. After evaluating several Bids, JCTSL has accepted the Bid submitted by M/s _____, (the "Bus Provider") with _____ as its lead member ("Lead Member" for undertaking, inter alia, the work for and in relation to the BRTS Project. The said Lead Member has also got the requisite authority to act as such from other members of the Consortium by way of Affidavit(s) executed by the said other members in favor of the Lead Member.
- E. Accordingly, a Letter of Acceptance No. _____ dated _____ was issued to the Bus Provider for requiring, inter alia, the execution of this Bus Provider Agreement and submission of Performance Guarantee for the performance of its obligations under this Bus Provider Agreement.
- F. Pursuant thereto, the Bus Provider has submitted Performance Guarantee of Rs. -----lacs (Rupees-----lacs) by way of _____ to enter into this Bus Provider Agreement for the BRTS Project on BOOM basis and has requested JCTSL to accept the Bus Provider as the entity which shall undertake, fulfill and perform the obligations and exercise the rights of the Bus Provider under the Letter of Acceptance, including the obligation to enter into this Bus Provider Agreement for the BRTS Project. A copy of the said Performance Guarantee is annexed as [Schedule 3](#) hereto.
- G. The Bus Provider has also furnished a legal opinion from a legal counsel on its behalf representing that it is duly authorized to enter into this [Bus Provider Agreement](#) and fulfill its obligations under this Bus Provider Agreement.
- H. Now therefore JCTSL has agreed to enter into this Agreement with the Bus Provider pursuant to the Letter of Acceptance for the BRTS Project.
- I. It is deemed necessary and expedient to enter into this Bus Provider Agreement to record the terms of the said Bus Provider Agreement between the Parties.
- J. Terms and conditions of this Agreement shall supersede any contrary terms and conditions of the RFP and any Appendices and / or Schedule(s) thereto.

NOW THEREFORE, IN CONSIDERATION OF THE PREMISES AND THE MUTUAL COVENANTS HEREINAFTER CONTAINED, THE PARTIES HERETO HEREBY AGREE AND THIS AGREEMENT WITNESSETH AS FOLLOWS:

ARTICLE 1

1.0 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

“**Agreement**” shall have the meaning ascribed to it in [Article 1.3](#) hereof.

“**Applicable Laws**” means all statutes and laws promulgated or brought into force and effect by the Central Government of India or any State Government(s) or Local Government(s), including regulations and rules made by them, and judgments, decrees, injunctions, writs and orders of any court of record, as may be in force and effect during the subsistence of this Agreement.

“**Applicable Permits**” means all clearances, permits, authorizations, consents and approvals required to be obtained or maintained under Applicable Laws in connection with the BRTS Project during the subsistence of this Agreement.

“**Appointed Date**” shall mean the date of this Agreement.

“**Arbitration Act**” means the Arbitration and Conciliation Act, 1996 as in force today and shall include any and all modifications / amendments thereto or any re-enactment thereof as in force from time to time

“**BRTS Project**” has the meaning ascribed to it in the Clause A of the RFP titled.

“Disclaimer”

“**BRT System** ” is the system **of a public passenger transport service consisting of the mass mobilization of passengers, using buses along the set of routes of the BRT System, generally within the municipal limits/contiguous areas of Jaipur, and its area of influence, in conditions of freedom of access, quality and security of users, and subject to an economic considerations.** It inter-alia includes without limitation the Buses, equipments, infrastructure, hardware, software, designed, developed, implemented and maintained for the BRTS Project. In the JCTSL’s system the buses are planned to be provided by the Bus Provider on BOOM basis at his cost as per the project requirements.

“**BQS**” means bus queue shelters constructed at JCTSL bus stops.

“**Central Control Station**” means a central facility of JCTSL used mainly for service monitoring and operations control etc through hosting the central server and components thereof for centrally collecting, storing, consolidating, processing the information obtained from various elements of BRTS, its sub system elements, agents, employees, service providers, communications systems and related sources etc. in relation to the BRTS Project for use by JCTSL.

“**MD**” means the Managing Director of JCTSL.

“**Bus Hiring charges**” is the amount payable by the JCTSL to the bus provider for provision, operation and control of the buses provided by him for BRTS of JCTSL as per the BOOM system and in accordance with the terms of the RFP document and subsequent agreement [as set forth in Article 9](#).

“**Consortium**” shall mean an association of 2 (two) or more corporate entities / firms or a collaborator entity formed specially for the purpose of this Bus Provider Agreement,

“**Bus Provider Agreement**” means the Agreement including, without limitation, any and all Annexure thereto which will be/has been entered into between JCTSL and the Successful Bidder through which JCTSL will grant the rights to the Successful Bidder to, buy, own, operate and maintain the buses in the BRTS Project on BOOM basis during the Period of the contract/agreement on the Appointed Date.

“**Bus Provider**” means _____ with whom JCTSL has entered into this Bus Provider Agreement

“**Bus Provider Period**” shall be a period of 7 (seven) years and extendable for 1 (one) year or 750000 km whichever is completed earlier commencing from the Appointed Date. Provided however that in the event of earlier termination of the Concession Agreement, “Bus Provider Period” shall mean and be limited to the period commencing from the Appointed Date and ending with the date of termination of the Concession Agreement.

“**JCTSL**” means the Jaipur City Transport Services Limited and its authorized successors and assigns at all times. JCTSL, Jaipur as a Special Purpose Vehicle (SPV) a unit of government of Rajasthan, is responsible for planning, management and control of the JCTSL’s BRT System and is its owner, **assigns at all times**.

“**JCTSL Representative**” means any person duly authorized by JCTSL for the purposes of this Bus Provider 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 BRTS Project, physical encumbrances, claims for any amounts due on account of taxes, cesses, electricity, water and other utility charges and encroachments on the Premises.

“Expiry Date” shall mean the date on which the Agreement expires in the normal course with the efflux of time.

“Good Industry Practice” shall mean the exercise of that degree of skill, diligence, prudence and foresight in compliance with the undertakings and obligations under this Agreement which would reasonably and ordinarily be expected of a skilled and an experienced person engaged in the implementation, operation and maintenance or supervision or monitoring thereof of any of them of a project similar to that of the BRTS Project.

“Letter of Acceptance” means the letter issued by JCTSL to the Successful Bidder to undertake and execute the BRTS Project in conformity with the terms and conditions set forth in the RFP.

“Parties” shall mean the parties to this Agreement and **“Party”** shall mean either of them, as the context may admit or require.

“PIS” means Passenger Information System whereby and where-under passengers shall be informed of details at bus stops/BQS, inside the Bus, at bus terminals etc as per directions of the JCTSL and the requirements given in the RFP

“Bus Specification” shall mean the specifications of the bus stipulated by the JCTSL in [Section I & J](#) of the RFP, and any amendments thereto. These Specifications are annexed hereto in [Schedule 5](#)

“Project Implementation Requirements” shall mean and include the provisions of the Scope of services and bus specifications collectively.

“Inspection and Quality Assurance Plan” shall mean the inspection and quality assurance plan stipulated in the bus specifications for checking the bus for its conformity with the stipulated specifications for approval by JCTSL and which shall after JCTSL’s approval be appended to this Agreement as a Schedule hereto.

“RFP” and / or **“RFP Document Package”** means the Request for Proposal documents for the BRTS Project annexed hereto as [Schedule 1](#).

“**Scope of Services**” shall have the meaning ascribed to it in Article 4 of this Agreement.

“**Quality of Service**” shall have the meaning ascribed to it in Article 5 of this Agreement.

“**Termination**” shall mean early termination of this Agreement pursuant to Termination Notice or Notice of Termination or otherwise in accordance with the provisions of this Agreement but shall not, unless the context otherwise requires, include expiry of this Agreement due to efflux of time in the normal course.

“**Termination Date**” shall mean the date specified in the Termination Notice or Notice of Termination as the date on which Termination occurs.

“**Year**” - For all legal effects, and in particular for the construction of the contractual provisions where there is a reference to a given number of Bus Provider years, a “year” is understood as the twelve month consecutive period counted from the Appointed Date.

Any other term(s), not defined herein above but defined elsewhere in this bus provider agreement shall have the meaning(s) ascribed to such term(s) therein and shall be deemed to have been included in this Section.

1.2 Principles of Interpretation

- a. The Article numbers, headings and marginal headings in this Agreement are solely for the purpose of facilitating reference and shall not impact the construction or interpretation of this Agreement.
- b. Words importing Persons or Parties shall include firms, companies, corporations, trusts, associations and any organizations, having legal capacity to sue and be sued in their names.
- c. Words importing the singular also include the plural and vice versa where the context requires.
- d. Words importing one gender also include other gender.
- e. In case of ambiguities or discrepancies in this Agreement, the following shall apply:
 - (i) Between two Articles of this Agreement, the provisions of specific Articles relevant to the issue under consideration shall prevail over those in other Articles.
 - (ii) Between the Articles and the Schedules, the Articles shall prevail;

- (iii) Between the written description on the drawings and the System Requirements / bus Specifications, the latter shall prevail
- (iv) Between any value written in numerals and that in words, the latter shall prevail

1.3 Meaning of "Agreement"

This Agreement comprises of the following and accordingly it shall mean and include the following:

1. This Bus Provider Agreement along with any and all Schedules hereto.
2. **Schedule 1** - Request for Proposal (RFP) -----of March 2008 in its entirety including all its Sections, Appendices and Schedules thereto
3. **Schedule 2** - Letter of Acceptance
4. **Schedule 3**– Proforma of Performance Guarantee
5. **Schedule 4** – Service Quality Performance(SQP)
6. **Schedule 5** – Bus Specifications

In the event of any discrepancy / conflict in the terms of the above referred documents or interpretation thereof, the decision of JCTSL shall prevail.

ARTICLE 2

2.0 BUS PROVIDER CONTRACT

2.1 Grant of Bus Provider Contract

- (a) Subject to and in accordance with the terms and conditions set forth in this Agreement, JCTSL hereby **grants and** authorizes the Bus Provider to "Buy, Own, Operate and Maintain" buses as per stipulated specifications at his cost on BOOM basis in the BRT System for the BRTS Project of JCTSL, Jaipur, and to exercise and/or **enjoy the following rights as set forth in this Agreement:**

RIGHTS OF BUS PROVIDER

- i. Bus provider shall have the right to buy, own, operate, and maintain the buses of stipulated specifications for the BRT System at his cost and receive payments towards hiring charges finalized for the revenue kilometers operated by him and as per terms and conditions given in the RFP. The detailed rights of the bus provider are given in the RFP Document

- (ii) It shall be Bus Provider's responsibility to comply with the applicable laws, rules, Guidelines as applicable for this purpose or orders issued by the JCTSL with respect to the above.

2.2 Bus Provider contract Period

The Bus Provider contract hereby awarded is for a period of 7 (seven) years extendable by one year or for 750000 kms operation per bus which ever is earlier commencing from the Appointed Date and ending on the Expiry Date ("the Bus Provider Contract Period") during which the Bus Provider is authorized to "Buy, Own, Operate and Maintain" buses as per stipulated specifications at his cost on BOOM basis in the BRT System for the BRTS Project of JCTSL, Jaipur, in accordance with the provisions hereof. Provided that in the event of Termination, the Bus Provider contract Period shall mean and be limited to the period commencing from the Appointed Date and ending with the Termination Date.

2.3 Acceptance of Bus Provider contract

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

ARTICLE 3

3.0 ACCESS TO PREMISES / VEHICLES

3.1 Access to Premises & Vehicles

- a) JCTSL reserves the right to inspect/arrange inspection through an authorized agent of any bus and support facility used by Bus Provider in relation to the implementation of the BRTS Project. JCTSL shall do so after giving prior notice to Bus Provider and make a visit during the office hours of Bus Provider. Bus Provider shall at all times assist JCTSL in such inspections/visits.
- b) JCTSL reserves the right to inspect/ arrange inspection through an authorized agent of any all relevant documents/ records of bus operations / records including the books of accounts of statutory payments like PF, ESIC, Service Tax, etc. of Bus Provider at any time to monitor compliance with Bus Provider's obligations in relation to implementation of the BRTS Project. JCTSL shall do so after giving prior notice to Bus Provider and make a visit during the office hours of Bus Provider. Bus Provider shall at all times assist JCTSL in such inspections/visits.

- (c) In order for Bus Provider to set up the parking yard and other facilities related to vehicle operation and maintenance of the buses for the BRTS Project JCTSL shall allow Bus Provider the use of such premises (on as is where is basis) as required ("Premises") for the purpose **as and when and if possible** .and as per terms and conditions finalized by JCTSL for BRTS Project.
- (d) Bus Provider shall also allow access of JCTSL, its employees, agents, contractors, etc as and when required, for the above purposes and or for any other purpose for the BRTS Project. The said premises if allotted to the bus provider for the above purpose upon such terms and conditions and in such phased manner as set forth by JCTSL

3.2 Rights, Title and Use of the Premises if any, arranged by JCTSL for parking of buses of the bus provider provided by him for the BRTS Project

- (a) The Bus Provider shall be allowed the use of the Premises, if any, arranged by JCTSL in accordance with the provisions of this Agreement.
- (b) The Premises shall be and continue to be the property of JCTSL.
- (c) The Bus Provider shall not part with or create any Encumbrance on the whole or any part of the Premises save and except as set forth and permitted under an Agreement signed with JCTSL Jaipur as and when such a premises is arranged.
- (d) Bus Provider shall take the prior written consent of JCTSL for making any changes/alterations / constructions to, at or on the Premises for purposes of this and the aforesaid Agreement.
- (e) The Bus Provider shall at all times during the subsistence of this Agreement maintain the Premises and shall not, without the prior written approval of JCTSL, use the Premises for any purpose other than for the purpose of the BRTS Project as defined by the JCTSL in the agreement signed then and purposes incidental or ancillary thereto.
- (f) Bus Provider shall ensure that its use of the Premises hereunder shall not result in an adverse effect thereto. In the event of an adverse effect being caused to the Premises it shall be the Bus Provider's responsibility to restore the said Premises at Bus Provider's cost and expenses.

3.3 Applicable Permits

The Bus Provider shall obtain a copy of the required route permit from JCTSL and maintain the same in such sequence as is consistent with the requirements of the BRTS Project.

ARTICLE 4

4.0 SCOPE OF SERVICES

4.1 Overview of the Scope of services of the BRTS Project with respect to bus provider activities

In order to achieve the Aims and Objectives of the BRTS Project, JCTSL plans to implement the BRT System ("BRT System") of mass passenger public transport system in the municipal areas/ Zones of influence /contiguous areas of Jaipur, Rajasthan under the JCTSL Jaipur as specified in the Scope of services

4.1.1 Bus Provider shall ensure that the buses and the services provided by them broadly cover the following:

- a) Buy, Own, Operate and Maintain low floor buses as per bus specifications prescribed by JCTSL in the RFP document and operate them for the JCTSL's BRT system as per the schedules, on routes, trips, areas etc decided by JCTSL from time to time at his cost.
- b) The parking place will be provided by the JCTSL only for the buses to be operated as a part of this agreement as near to the starting points of bus operations to eliminate/ minimize dead kilometers operations for reaching the starting point of operation. He shall hold, maintain and operate the bus parking place at his risk and cost. No temporary/permanent structure will be erected without prior approval of JCTSL.

Subsequently as and when JCTSL develops a yard, workshop and any other area, JCTSL may provide the same for use of the bus providers as per terms and conditions decided by the JCTSL.

- c) make available the assigned number of buses or as amended by JCTSL to BRT System for the operation at a place, time, for the duration etc and operate them on routes, schedules, trips, etc at his cost and as per directions of the JCTSL from time to time.
- d) make the buses available for display of advertisements inside/outside the buses as decided by JCTSL and as per terms and conditions finalized by JCTSL, Jaipur.

- e) Provide trained and skilled staff for operation, maintenance, and supervision of the buses and other facilities related there to at his cost for services as per the agreement.
- f) ensure quality of buses, purchased by him, to be as per the prescribed specifications. Obtain all certificates, test reports, and other documents as indicated in the specifications and submit them to JCTSL, Jaipur. Get the buses inspected and approved by JCTSL, Jaipur and obtain a certificate of acceptance to enable him to commence operations in the BRT System.
- g) to arrange for regular preventive maintenance and break down repairs etc through an annual maintenance contract with the bus manufacturer or his authorized dealers or through other well equipped workshops.. Submit a certificate of inspection from the authorised dealer or representative of the bus manufacturer, inter-alia indicating that the bus is in full roadworthiness state of operation, free from any defect, deficiencies etc meeting all the specifications as contracted.
- h) co-operate with all other service providers and facilitate their operations in the BRT System eg for revenue collection by the revenue collectors, from on board advertisements by the advertising agencies etc
- i) operate the buses maintaining highest standards of service quality including behavior of the crew and the other staff. Implement all the instructions, directions, guidelines etc issued through various means of communications by the JCTSL, Jaipur.
- j) ensure cleanliness of buses at all times both inside the bus and outside.
- k) ensure crew interventions for the route destination display system as required by the system for efficient and proper operation of the system. Maintain the system in perfect operational state at all times.
- l) provide all information, data, records, documents etc as required by JCTSL, Jaipur from time to time. Respond to all notices letters communications received from JCTSL, Jaipur within the given time frame with complete and full replies. Submit bills timely and pay all dues of JCTSL, Jaipur without any delays.
- m) train staff and re-train them periodically for updating their skills in all the related fields at his cost.
- n) participate in all the meetings, committees etc as directed by the JCTSL from time to time.

- o) develop a Project Management Plan for the BRTS Project. The Project Management Plan at a minimum, shall detail all tasks related to the implementation of BRT System, and for each task, the task / person / effort resource allocation. This information shall be provided in the form of a detailed Gantt Chart detailing all milestones to ensure that all the buses will be available to JCTSL as per schedule. . Submit to JCTSL a weekly report on items which are on critical path and that require management action. Bring to the notice of the steering Committee in its meetings held at periodic intervals at venue decided by JCTSL and provide, interalia report on the following:
- Progress Reports (Progress against the Project Management Plan).
 - Status of all risks and issues.
 - Status of readiness of the buses and the skilled staff to operate buses and supervise bus operation.
- p) identify, analyze and evaluate the project risks, and develop cost effective strategies and action plans to mitigate those risks. Shall monitor reports and update the project risk profile to JCTSL. Monitor the progress of the project, on regular basis and then analyze the deviations, exceptions for corrective actions
- q) shall implement the BRTS Project as per the schedule specified carry out all other obligations listed elsewhere in the RFP/agreement

4.1.2 JCTSL shall

- a) Specify the requirements and provisioning standards for the system and its elements clearly, engage all other services providers in time, develop the requisite BRT System infrastructure and facilities, plan, schedule monitor and control all the related activities of the system for timely implementation and commissioning of the system
- b) Establish systems, procedures. Develop service provider manuals on various aspects of the BRT System services
- c) Ensure service quality performance to be as per the laid requirements by various service providers
- d) Establish effective system of communication and coordination amongst all the stake holders of the system
- e) Ensure timely payment of dues to the services providers
- f) Ensure timely and amicably resolution of disputes between various service providers and the JCTSL
- g) Carry out all other obligations as detailed else where for efficient performance of the system on sustainable basis.

4.1.3 Detailed duties and responsibilities of both the bus provider and the JCTSL are given in the following sections

4.2 Duties and Responsibilities of the Bus Provider Derived from the Bus Provider Agreement of the BRT System

4.2.1 By means of this contract agreement, and as a result of the non-exclusive provisions of the contract and together with other service providers/contractors and for the provisioning of the transport activity of the JCTSL, BRT System, the Bus Provider has the following duties and responsibilities amongst others:

4.2.2 Regarding the provision of the mass transport public services:

4.2.2.1 To buy, own, operate and maintain requisite number of specified buses of type, design, shape, size, style and detailed specifications/quality requirements as given in the tender inviting notice no. 187 of March 2008 of the JCTSL, BRT System as per rates, terms and conditions of the tender document/subsequent contract.

4.2.2.2 To ensure that mass public passenger transport services are of the quality as detailed in the aforesaid RFP Document are maintained so on sustainable basis.

4.2.2.3 To ensure that all contractual requirements of the tender and subsequently those contained in the contract document are fulfilled through out the currency of the contract,

4.2.2.4 To ensure that no deficiencies, defaults or failures in the quality of service provided and or of any of the related elements of or acts of providing the specified bus transport service levels allowed to occur failing which accept and pay penalties/fines as detailed in the RFP document/the contract.

4.2.2.5 To accept revision of the bus hiring charges as per the terms and conditions of the tender/subsequent contract particularly those dependent on the quality of service, load factor, variations in the operational cost elements of the hiring charges etc given in RFP document.

4.2.2.6 To guarantee the provision of mass public passenger transport services, under conditions of freedom of access, quality, service standards and security of users, with the period and continuity established by JCTSL, Jaipur.

- 4.2.2.7 To execute, at his own risk and costs, all ancillary or complementary contracts to the bus provider contract required for the proper operation of the JCTSL, BRT System.
- 4.2.2.8 To join, as account holder and beneficiary, to the escrow account agreement of the JCTSL, with a financial service provider as and when required to do so by JCTSL.
- 4.2.2.9 To allow fitment of vehicle tracking system, the logical units, communication and control equipment and all other equipment which must be installed in the buses and which for that purpose establishes JCTSL, BRT System. The installation of logical units and communication and control equipment in buses will take place at any time i.e prior to the entry in service or operation of each vehicle or during the currency of the contract.
- 4.2.2.10 JCTSL, Jaipur will establish the conditions and specifications of the equipment which the operators shall attempt to install, if required, in such a way that they are compatible with existing one.
- 4.2.2.11 The installation of equipment is subject to the prior approval of JCTSL, Jaipur which will certify compliance of this obligation, as well as the compliance of all equipment with the established characteristics.
- 4.2.2.12 To perform maintenance of equipment/buses strictly following manufacturer's instructions and to submit a **certificate of road worthiness of the buses periodically i.e. every quarter**, as per the contractual specs of JCTSL from the bus manufacturer or his authorised dealer.
- 4.2.2.13 To arrange himself, the capital/funds/finances, required for the total value of the investment including working capital necessary for the procurement and operation of buses and other related facilities/equipments/services etc, out his own resources and or through credits or any other source of financing (if any),
- 4.2.2.14 To be liable for damages which may be caused to JCTSL, Jaipur or **to third parties, for non-compliance regarding pledge of revenues or liens on vehicles**. The party to enforce such damages is JCTSL, Jaipur.
- 4.2.2.15 To make available to the JCTSL, BRT System, the vehicles required for the provision of services which JCTSL, Jaipur, obtains from him, as per the technical specification, and of the type provided for in this contract, on the dates and under the terms and conditions laid out by JCTSL, Jaipur

- 4.2.2.16 To obtain the certificate of fitness for operation into the service, for vehicles assigned to the BRT System's operation, the object of this contract from JCTSL, Jaipur.
- 4.2.2.17 To engage the personnel to drive the vehicles for which he is responsible, and supervise guide and control the bus provider's operations subject to the modes and conditions of the prevalent labour acts/regulations/laws/rules as applicable at Jaipur.
- 4.2.2.18 To ensure that all the legal, statutory, and all other requirements as per the applicable labour acts/motor transport worker act/rules/regulation/ practices are fully complied with by the Bus Provider and that JCTSL is fully and completely absolved of any responsibility, liability of any kind what so ever on this behalf and or of any act of omission or commission by them. The JCTSL is expressly understood to be indemnified by the bus provider for any of the acts of omission/commission and of any consequential damages/losses caused by the bus provider's employees, agents, contractor, sub contractors, etc.
- 4.2.2.19 Payment for **Comprehensive Insurance Policy** will be made by the Bus Provider based on the terms & conditions decided by the JCTSL, where all risk of vehicles, passengers, drivers & conductors will be covered. All damages, liabilities caused by any incident/accident of buses whether to the bus provider's assets or to any third party are fully and completely taken care of by the bus provider and JCTSL Jaipur is not held responsible for any of such damages/losses etc and is fully indemnified for them.
- 4.2.2.20 To train drivers and organize refresher training programs as decided/accepted by JCTSL, Jaipur., ensuring that the drivers know and strictly observe the applicable rules/regulations/practices/instructions for the operation of the BRTS buses within the JCTSL, BRT System, and of the environmental norms and guaranteeing the due attention and protection of the passenger. All drivers should possess a minimum three years old commercial heavy duty vehicle license with passenger badge. The original license shall be in safe custody of JCTSL/Bus Provider.
- 4.2.2.21 The obligation provided at the above para, applies to the fact that drivers are duly qualified and are in possession of valid driving license to drive heavy duty passenger transport buses in the urban areas. Before deployment of any driver on the buses provided for operation in the BRT system, the bus provider shall arrange to get verified through conduct of tests-theoretical and practical, examinations or procedures for evaluation of knowledge, skills and expertise of the proposed drivers by the

JCTSL or an agency/individual appointed by JCTSL and obtain a acceptance certificate for deployment of each and every driver. When on duty, the driver shall always carry this certificate. No driver without the said certificate shall ever be deployed on the buses provided for BRTS operation of the JCTSL, Jaipur.

- 4.2.2.22 To comply with, and enforce among its employees, agents, contractors or sub-contractors, all orders, instructions, manuals and regulations in force or which JCTSL, Jaipur. may issue, and to expressly comply and cause compliance of the corresponding regime of sanctions.
- 4.2.2.23 To maintain in adequate conditions of safety and transit, the route buses which it assigns to meet the services required by the JCTSL, Jaipur and the additional equipment to be installed in the buses, stations or in any other installation or premises.
- 4.2.2.24 To obtain, in due time, the licenses and permits required for the compliance of all its obligations, under the terms of the contract.
- 4.2.2.25 To submit, information, data, returns, reports, certificates etc as per the requirements of JCTSL, Jaipur, from time to time at the defined place and within the stipulated time in relation to provisioning and operation of buses for the BRTS besides for any other related activity.
- 4.2.2.26 To allow adequate supervision of the execution of the contract by JCTSL, Jaipur. or by the auditors, inspectors and supervisors appointed by JCTSL, Jaipur. allowing full and unrestricted access to any installation, equipments, buses and information by personnel authorized by JCTSL, Jaipur.
- 4.2.2.27 To comply with the operating instructions issued by JCTSL, Jaipur and to guarantee the operational-ability, security, quality and functionality of the System and to enforce them among its employees, contractors, subcontractors, agents or dependents, along with the instructions issued by the JCTSL, Jaipur, its authorized representatives and or its control Centers/offices.
- 4.2.2.28 To maintain adequate conditions of cleanliness and security on the buses, stops, stations and the terminals assigned to the JCTSL, BRT System, in compliance with the assigned obligations.
- 4.2.2.29 To answer to any requirement which JCTSL, may make regarding the due cleanliness and security of the buses etc assigned to it in the JCTSL, BRT System.

4.2.2.30 To provide services of appropriate quality as required by JCTSL, Jaipur.

The parameters of service quality are given in the **RFP document**

4.2.2.31 To pay for the fines and penalties for deficiency in service quality:

Fines and penalties for deficiency in service quality levels and in other service related parameters shall be levied as per details given in the **RFP document**. These fines and penalties shall be recovered from the dues payable to the service provider. Should recovery as above not be possible for any reason the JCTSL shall invoke the performance guarantee and recover the dues. JCTSL shall be free to recover these fines/penalties from any other payments due to the service provider. These fines/penalties/actions shall be over and above any other the enforcement agencies/police etc takes and hence are no substitutes for those actions. JCTSL shall also be free to take any other action as deemed fit in different cases.

4.2.3 Regarding advertising in the buses:

4.2.3.1 To display advertisements at other places inside & outside the bus, the bus provider shall have no objection to such displays and fitment of any gadgets, devices, display systems/boards or any other equipments by JCTSL itself and or jointly with any third party or by a third party as decided/approved by JCTSL at locations/spaces identified and approved by the JCTSL and within the ambit of other provisions listed above. Sharing of revenue with the JCTSL shall be as per the system given in the following paragraphs.

4.2.3.2 Any advertisement (print media only) shall be displayed on the external sides as well as internal side of the bus should however be decided by the JCTSL. The JCTSL shall also ensure that 20 % of the total sales revenue generated by such advertisements is paid to the bus provider. Indicative locations and dimensions of the panels for displaying advertisement are given in the RFP. Bus provider shall themselves assess the market potential for print media advertisement revenue and incorporate in their price proposal accordingly.

4.2.3.3 No advertisement revenue will be shared with the bus provider for electronic gadgets like LCD screen, LED screen, audio system etc which will be retrofitted by the JCTSL as and when decided by the JCTSL.

4.2.3.4 To maintain the advertising material placed inside the buses in a perfect state. Security of these equipments/fittings shall be the

responsibility of the Bus provider. The driver should immediately report any malfunctioning of these equipments/fittings to the concerned JCTSL staff.

4.3 Duties and Responsibilities of JCTSL

The contract awarded to the bus provider establishes the following obligations amongst others on JCTSL, Jaipur.

- 4.3.1 To effect, either itself or by proxy, the management, planning and control activities of the JCTSL, BRT System, which enable the bus provider to perform the transport activity object of this contract.
- 4.3.2 To make payment of the hiring charges to the bus provider at the rates fixed and as per the payment schedule etc failing which pay the dues along-with the penal interest calculated on the overdue payment at the PLR of the State Bank of India.
- 4.3.3 To deliver in administration, the operations yard/parking yard/workshop area etc as and when possible/feasible in future and as per terms and conditions finalised by JCTSL, Jaipur, to the bus providers, mainly in accordance with the conditions mentioned in this contract if any.
- 4.3.4 To refrain from disposing of the assets delivered under administration, if this affects the rights of the bus providers.
- 4.3.5 To make diligent use of the resources required/available at JCTSL, Jaipur, judiciously aiming at continued financial sustainability and growth of the mass passenger public transport system in Jaipur.
- 4.3.6 To adopt the necessary measures in order to guarantee the peaceful possession of rights or assets affected or delivered for the exploitation of the contract. This obligation is understood only for dispossession purposes.
- 4.3.7 To revise bus hiring charges, payable to the bus providers, inter-alia on the basis of rates of the cost elements besides other parameters as laid out in this contract
- 4.3.8 To form a Steering Committee under this Agreement. All issues arising out of the BRTS Project, which can not be resolved by discussions etc at the level of the concerned officials shall be referred to the Steering Committee, which decision shall be binding upon Parties.

- 4.3.9 To provide Bus Provider the duty plan with respective route structure so that Bus Provider can monitor the movement of buses for deviations
- 4.3.10 To verify the service quality performance compliance and work out legitimate penalties as set forth in the RFP document on monthly/quarterly basis. The monthly/quarterly bills for these shall be raised by JCTSL on Bus Provider and the same shall be payable by Bus Provider promptly.

ARTICLE 5

5.0 SERVICE QUALITY PERFORMANCE (SQP), COMPLIANCE & DEFAULT

5.1 Service quality performance (SQP)

The minimum service levels to be maintained by Bus Provider for the BRT System and operations in relation thereto shall be as set forth in Schedule 4 hereto titled "Service quality performance, fines and penalties

5.2 Compliance with SQP & Remedy for Breach of SQP Compliance

- a) JCTSL shall, periodically, monitor the Bus Provider's compliance with the SQP. JCTSL shall inflict fines and penalties for default/deficiencies and recover the same from the bills payable to the bus provider after following the due process detailed in the RFP.
- b) Any disputes arising out of above shall be escalated to a nominee of the senior management of JCTSL and the decision of such nominee shall be final and binding on the Parties.
- c) In the event of default / breach by Bus Provider to comply with the SQP, JCTSL shall have the right to impose fines/ penalties on the Bus Provider as set forth in the RFP. The penalty amounts shall be recovered by JCTSL from the bills payable to Bus Provider after following the due process.
- e) JCTSL shall notify to the Bus Provider of any failure / breach / default by Bus Provider to meet the SQP. In the event that the Bus Provider, having been notified by JCTSL in this behalf, fails to remedy the defect(s) within a time frame specified by JCTSL, JCTSL may proceed to take such remedial action as may be necessary, at Bus Provider's risk and cost and without prejudice to any other rights which JCTSL may have against the Bus Provider under this Agreement.

- f) In the event of repetitive occurrence of serious offences will be done by the bus provider more than three time within a year then JCTSL, in its sole discretion, may terminate this Agreement in accordance with the provisions hereof. Such termination of the Agreement shall be without prejudice to any other rights available to JCTSL.

ARTICLE 6

6.0 STEERING COMMITTEE & ENGINEER In-charge

6.1 Constitution of the BRTS Project Steering Committee.

- (a) Pursuant to the execution of the Bus Provider Agreement, JCTSL shall nominate members to formulate a steering committee to oversee and monitor the work performed by Bus Provider under the Bus Provider Agreement ("Steering Committee"). The composition and functions of the Steering Committee will be decided by JCTSL at the later stage.

6.2 Functions Role and Frequency of Steering Committee Meetings

Decided by JCTSL at the later stage.

6.3 Appointment of Engineer in-charge of JCTSL

- (a) JCTSL may, in its sole discretion, appoint an engineer in-charge (including without limitation a firm / corporation of engineers) having necessary expertise to undertake, perform and carry out various duties, responsibilities, services and activities as set forth by JCTSL at the later stage to oversee the quality of buses, their repair and maintenance, roadworthiness, presentation, cleanliness, etc besides implementation and operation of the BRTS Project by Bus Provider for such time as may be necessary .JCTSL may appoint such Engineer in-charge at / after the execution of the Bus Provider Agreement. The tenure and the scope of work and the reports to be submitted by the Engineer in-charge shall be as set forth at the later stage.

6.4 Roles & Responsibility of Engineer in-charge of JCTSL

To be decided by JCTSL at the later stage.

ARTICLE 7

7.0 BUS PROVIDER'S OBLIGATIONS

In addition to and not in derogation or substitution of any of its other obligations mentioned in the RFP, the Bus Provider shall have the following obligations:

7.1 Performance Guarantee

- (a) The Bus Provider has, for due and punctual performance of its obligations hereunder relating to the BRTS Project, delivered to JCTSL, simultaneously with the execution of this Agreement, a performance guarantee from _____, for a sum of Rs. 50,00,000/- (Rupees Fifty Lacs only) in the form of a Bank Guarantee To include name of the Bank _____ in favor of "Managing Director, JCTSL" payable at Jaipur ("Performance Guarantee"). A copy of the said Performance Guarantee is Schedule 3 hereto.
- (b) The Performance Guarantee is irrevocable and the Performance Guarantee is valid for the entire Bus Provider Period and an additional period of 180 (one hundred and eighty) days thereafter.

7.2 Fresh Performance Guarantee

In the event of the encashment of the Performance Guarantee by JCTSL during the Bus Provider contact/agreement Period pursuant to an encashment notice, the Bus Provider shall within 30 (thirty) days of the encashment notice furnish to JCTSL a fresh Performance Guarantee in such sum as required by JCTSL failing which JCTSL shall be entitled to terminate this Agreement. The provisions set forth in Clause Article 7.1 above shall apply mutatis mutandis to such fresh Performance Guarantee.

7.3 Financing Arrangement

- (a) The Bus Provider shall at its cost, expenses and risk make such financing arrangements as would be necessary to implement the contract for the BRTS Project and to meet all of its obligations under this Agreement, in a timely manner.

7.4 Project Implementation

- (i) The Bus Provider shall adhere to the Project Implementation Requirements/Bus provisioning and other related activities' schedule including without limitation adherence to the timelines stipulated for the same and complete the procurement and commissioning of

requisite number of buses as per the stipulated specifications for the BRT System and make it operational upon the terms and in the manner stipulated in this Agreement.

- (ii) The Bus Provider shall undertake any and all actions in relation to the bus provider contract for the BRTS Project by itself and shall remain solely responsible to meet the bus procurement and operation and maintenance schedules hereunder.
- (iii) The Bus Provider shall, before commencement of various actions related to the bus provider contract under the BRTS Project have requisite organization and designate and appoint suitable officers / representatives as it may deem appropriate to supervise all his activities as a bus provider for the BRTS Project, to deal with JCTSL and to be responsible for all necessary exchange of information required pursuant to this Agreement. Bus Provider shall promptly notify the names of these officers / representatives to JCTSL.
- (iv) For the purposes of determining that any and all activities in relation to the bus provider contract for the BRTS Project are being undertaken in accordance with the **Project Implementation Requirements/schedules**, the Bus Provider shall with due diligence carry out all necessary and periodical reviews/checks/inspection and quality assurance of buses and other items/facilities from time to time as required under the **Project Implementation Requirements/** as per the Quality Check and Acceptance Test Plan ("Tests") for the buses. The Bus Provider shall maintain proper record of such checks/inspections/Tests and the remedial measures taken to cure the defects or deficiencies, if any, indicated by the results of the above actions.
- (v) All actions/activities in relation to the bus provider contract for the BRTS Project including without limitation all inspection/checks/Tests shall be carried out in accordance with **Project Implementation Requirements/schedules** and all other provisions of this Agreement.
- (vi) JCTSL, may, by written notice, require the Bus Provider to suspend forthwith the whole or any part of any action/activity/works in relation to the bus provider contract for the BRTS Project, if in JCTSL's reasonable opinion the same is being carried on in a manner that is not in conformity with the provisions of this Agreement.
- (vii) Bus Provider shall submit periodic reports including standard reports and exceptional reports in relation to the progress of implementation of the bus provider contract for the BRTS Project in terms of this Agreement. The format for reporting requirements shall be set out by JCTSL and handed over to successful bus provider after issue of

the letter of acceptance of the bid and it is the Bus Provider's responsibility to furnish such periodic reports to JCTSL.

7.5 Project Implementation: Operation and Maintenance

- (a) The Bus Provider shall operate and maintain the buses provided for the BRT System in accordance with the Project Requirements and other operation schedules on trips/routes/in areas as prescribed/directed by JCSL from time to time. The bus provider shall maintain the buses in highest state of operational roadworthiness and fitness through out the period of the contract,
- (b) The Bus Provider shall, during the entire period of the BRT System Project
 - (i) have requisite organization and designate and appoint suitable officers / representatives as it may deem appropriate to supervise the bus provider 's activities in the BRT System Project, to deal with JCTSL and to be responsible for all necessary exchange of information required pursuant to this Agreement;
 - (ii) conduct all inspections, maintain follow ups of the progress of fabrication of buses, organize their acceptance/necessary tests to ascertain their compliance with the stipulated with Project Requirements.
 - (iii) suspend forthwith the whole or any part of the activity(s) under the BRT System
- (C) Project upon receiving a written notice from JCTSL, who may require the Bus Provider to suspend the activities in whole or part if in the reasonable opinion of JCTSL, the operations are being carried on in a manner that is not in conformity with the Project Requirements.
- (d) In the event the Bus Provider has failed to procure/own/operate/maintain the buses and or carry out all other activities for the BRT System in accordance with the Project Requirements, and such failure has not been remedied despite a notice to that effect issued by JCTSL or ("Notice to Remedy"), JCTSL may, without prejudice to any of its other rights/remedies under this Agreement, be entitled to take such actions including suspension of the bus(es) and or the contract and or replacement of the bus provider by a replacement bus provider for the BRT System at the risk and cost of the Bus Provider. The Bus Provider shall reimburse 150% of the costs incurred by JCTSL on account of such actions within 7 (seven) days of receipt of JCTSL's claim therefore.

- (e) In addition to any other provisions of this Agreement, the Bus Provider shall be deemed to be in material breach of Project Implementation Requirements if JCTSL in accordance with the provisions of this Agreement, has determined that due to breach of its obligations by the Bus Provider:
- (i) there has been failure / undue delay in carrying out scheduled / planned implementation/operation/maintenance of the buses and other related infrastructure/facilities under his control or the scheduled / planned maintenance has not been carried out in accordance with the bus maintenance requirements prescribed by the bus manufacturer and or there have been defaults/deficiencies in the quality of services provided.
 - (ii) the maintenance of the buses /facilities provided for the BRT System or any part thereof and or provisioning of services has deteriorated to a level which is below the acceptance level prescribed by the Project Requirements;
 - (iii) the buses or any part thereof is not safe for operations;
 - (iv) there has been a serious or persistent let up in adhering to the Project.

Requirements and thereby there has been persistent breach of Project Implementation Requirements. For avoidance of doubt, persistent breach shall mean: (a) any breach of Project Implementation Requirements by the Bus Provider which has not been remedied by the Bus Provider despite a Notice to Remedy in respect thereof issued by JCTSL; (b) recurrence of a breach by the Bus Provider, during the pendency of Notice to Remedy by JCTSL requiring the Bus Provider to remedy a breach, and; (c) repeated occurrence of a breach notwithstanding that earlier breaches have been remedied pursuant to Notice to Remedy or otherwise.

- (f) Upon occurrence of a material breach of Project Implementation Requirements, JCTSL shall, without prejudice to and notwithstanding any other consequences provided there for under this Agreement, be entitled to terminate this Agreement.

7.6 General Obligations

7.6.1 The Bus Provider shall at its own cost and expense:

- (a) Buy, own, operate and maintain the buses provided to the BRT System at his cost and in accordance with the provisions hereof;

- (b) comply with Applicable Laws in relation to the above task in the mass passenger public transport system of the BRTS Project at all times during the Bus Provider Period;
- (c) make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of its obligations under this Agreement and shall be solely responsible for compliance with all labour laws and solely liable for all possible claims and employment related liabilities of its staff employed in relation with the BRTS Project and Bus Provider hereby indemnifies JCTSL against any claims, damages, expenses or losses in this regard and agrees that in no case and for no purpose shall JCTSL be treated as an employer in this regard;
- (e) be responsible for all the health, security, environment and safety aspects of the bus provider services for the BRTS Project at all times during the Bus Provider Period.
- (f) be responsible for payment of all statutory levies including ESIC Contribution, PF etc. in respect of the staff engaged by Bus Provider for operation & maintenance of the the buses and other items/assets for the BRT System . Notwithstanding the generality of the foregoing, any and all payments to be made to any contractors, sub-contractors or any other personnel engaged by Bus Provider and any and all payments to be further made by such contractors, sub-contractors to any party / personnel in relation to the bus provider contract of the BRTS Project shall be the sole responsibility of Bus Provider and JCTSL shall neither incur any liability in this respect nor entertain any claims in this respect.

7.6.2 The Bus Provider shall ensure optimum utilization of the Premises, if any provided to JCTSL at any time during the contract period, and shall not use the same for any purpose unconnected or which is not incidental to the BRTS Project or related activities.

7.7 No Breach of Obligations

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

- (i) Force Majeure Event, subject to Article 11.0;
- (ii) Compliance with the instructions of the JCTSL

7.8 Confidentiality obligations of Bus Provider

(a) Confidential Information

- (i) Bus Provider shall treat as confidential any information which is clearly described as confidential otherwise clearly marked as confidential or proprietary to JCTSL ("Confidential Information"). Notwithstanding the generality of the foregoing, Confidential Information shall include any proprietary or confidential information of JCTSL relating to the BRTS Project or services provided under the Bus Provider Agreement in relation thereto and information relating to JCTSL's business or operations.
- (ii) Bus Provider shall not without JCTSL's prior written consent use, copy or remove any Confidential Information from JCTSL's premises, except to the extent necessary to carry out Bus Provider's obligations hereunder. Upon completion or termination of each assignment hereunder, Bus Provider shall return to JCTSL all documents or other materials containing JCTSL's Confidential Information and shall destroy all copies thereof.

(b) Confidentiality Exceptions

Confidential Information shall not include information which:

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

(c) Period of Confidentiality

Bus Provider's obligations of confidentiality regarding JCTSL's Confidential Information shall terminate 3 (three) years after the expiry or earlier termination of the Bus Provider Agreement.

ARTICLE 8

8.0 JCTSL's OBLIGATIONS

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

8.1 Specific Obligations

- (a) JCTSL will grant in a timely manner all such approvals, permissions and authorizations which the Bus Provider may require or is obliged to seek from JCTSL under this Agreement, in connection with implementation of the BRTS Project and the performance of its obligations. .

8.2 General Obligations

JCTSL shall where appropriate provide necessary assistance to the Bus Provider in securing Applicable Permits and observe and comply with all its obligations set forth in this Agreement.

ARTICLE 9

9.0 BUS HIRING CHARGES FOE THE BUS PROVIDER

9.1 Bus Hiring charges for the bus provider

Bus hiring charges payable to the bus provider by JCTSL shall be as ----- as per the scheme given in the RFP and rates as finalized for the successful bidder.

9.2. Payment Terms

- a) Payment of bus hiring charges to the Bus Provider (as per the Bus Provider Agreement) by JCTSL shall be made on a monthly basis after deducting TDS as per income tax rulings.
- b) The aforesaid monthly payments to Bus Provider by JCTSL shall be made within 7(seven days), for each preceding month, of submission of bills by the Bus Provider. JCTSL shall however recover all fines, penalties, liquidated damages etc if any from the dues payable to the bus provider before releasing the payments to the bus provider.
- c) Any and all payment(s) of hiring charges to the Bus Provider shall be by way of a Pay Order/cheque of a Scheduled Bank drawn in favour of the bus provider and payable at par at Jaipur.

When-ever feasible the payments would be effected through the ECS and or any other mechanism followed by the banks for which the bus provider shall have to complete necessary formalities as required by the bankers.

- d) Any and all applicable taxes including without limitation any and all Service Tax in the performance of the services under the Bus Provider Agreement shall be borne by Bus Provider.
- e) Bus Provider will deduct appropriate TDS as required under the Income Tax Act 1961 from all the payments to be made to JCTSL unless exemption certificate is provided by JCTSL. TDS certificates shall be issued for such deductions.

ARTICLE 10

10.0 CHANGE OF SCOPE & CAPACITY AUGMENTATION/REDUCTION

10.1 Change of Scope & Capacity Augmentation/Reduction

During the implementation period, the number of buses hired from the bus provider for the BRTS Project can be increased by 50% within the first two years of operation from the date of induction of the first bus of the Bus provider as per the terms set forth in the Agreement. Any such change in scope shall be set forth in writing and appended to this Agreement.

ARTICLE 11

11.0 FORCE MAJEURE AND CHANGE IN LAW

11.1 Force Majeure Event

Any of the following events which is beyond the control of the Party claiming to be affected thereby ("Affected Party") and which the Affected Party has been unable to overcome or prevent despite exercise of due care and diligence, and which results in a material adverse effect shall constitute a Force Majeure Event:

- (a) earthquake, flood, inundation and landslide, cyclone.
- (b) fire caused by reasons not attributable to the Bus Provider;
- (c) acts of terrorism;
- (d) strikes, labour disruptions or any other industrial disturbances not arising on account of the acts or omissions of the Bus Provider.

- (e) action of a Government Agency having a material adverse effect including but not limited to
 - (i) acts of compulsory acquisition or takeover by any Government Agency of the Premises or any part thereof or of the Bus Provider's rights in relation to the BRTS Project,
 - (ii) any judgment or order of a court of competent jurisdiction or statutory authority in India made against the Bus Provider in any proceedings which is non-collusive and duly prosecuted by the Bus Provider, and
 - (iii) any unlawful, unauthorized or without jurisdiction refusal to issue or to renew or the revocation of any Applicable Permits, in each case, for reasons other than Bus Provider's breach or failure in complying with the BRTS Project requirements, Applicable Laws, Applicable Permits, any judgment or order of a Governmental Agency or of any contract by which the Bus Provider is bound.
- (f) early determination of this Agreement by JCTSL for reasons of national emergency or national security.
- (g) War, hostilities (whether declared or not), invasion, act of foreign enemy, rebellion, riots, weapon conflict or military actions, civil war, ionising radiation, contamination by radioactivity from nuclear fuel, any nuclear waste, radioactive toxic explosion, use of chemical weapon, use of biological weapon, volcanic eruptions.

11.2 Notice of Force Majeure Event

- (a) As soon as practicable and in any case within 7 (seven) days of the date of occurrence of a Force Majeure Event or the date of knowledge thereof, the Affected Party shall notify the other Party of the same setting out, inter alia, the following in reasonable detail:
 - (i) the nature and extent of the Force Majeure Event;
 - (ii) the estimated Force Majeure Period;
 - (iii) the nature of and the extent to which, performance of any of its obligations under this Agreement is affected by the Force Majeure Event;

- (iv) the measures which the Affected Party has taken or proposes to take to alleviate / mitigate the impact of the Force Majeure Event and to resume performance of such of its obligations affected thereby; and
 - (v) any other relevant information concerning the Force Majeure Event, and /or the rights and obligations of the Parties under this Agreement.
- (b) As soon as practicable and in any case within 5 (five) days of notification by the Affected Party in accordance with the preceding clause (a), the Parties shall meet, hold discussions in good faith in order to:
 - (i) assess the impact of the underlying Force Majeure Event,
 - (ii) to determine the likely duration of Force Majeure Period and,
 - (iii) to formulate damage mitigation measures and steps to be undertaken by the Parties for resumption of obligations the performance of which shall have been affected by the underlying Force Majeure Event.
- (c) The Affected Party shall during the Force Majeure Period provide to the other Party regular (not less than weekly) reports concerning the matters set out in the preceding clause (b) as also any information, details or document, which the other Party may reasonably require.

11.3 Performance of Obligations

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

- (a) due notice of the Force Majeure Event has been given as required by the preceding Clause 11.2;
- (b) the excuse from performance shall be of no greater scope and of no longer duration than is necessitated by the Force Majeure Event;
- (c) the Affected Party has taken all reasonable efforts to avoid, prevent, mitigate and limit damage, if any, caused or likely to be caused to the BRT System and /or the Premises as a result of the Force Majeure Event and to restore the BRT System and Premises, in

accordance with the Good Industry Practice and its relative obligations under this Agreement;

- (d) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party 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;

11.4 Termination due to Force Majeure Event

(a) Termination

- (i) If a Force Majeure Event, excluding events described under Clauses 11.1(f) and 11.1(g), continues or is in the reasonable judgment of the Parties likely to continue beyond a period of 120 (One hundred and Twenty) days, the Parties may mutually decide to terminate this Agreement or continue this Agreement on mutually agreed revised terms. If the Parties are unable to reach an agreement in this regard, the Affected Party shall after the expiry of the said period of 120 (One Hundred and Twenty) days, be entitled to terminate this Agreement. Notwithstanding anything inconsistent contained in this Agreement, if a Force Majeure Event is an event described under Clauses 11.1(f), or 11.1(g), and the same subsists for a period exceeding 365 (Three Hundred and Sixty Five) days, then either Party shall be entitled to terminate this Agreement. Provided that JCTSL may at its sole discretion have the option to terminate this Agreement any time after the occurrence of any Force Majeure Event described under Section 11.1.

(b) Termination Notice

If either Party, having become entitled to do so, decides to terminate this Agreement pursuant to the preceding clause (a), it shall issue Termination Notice setting out: (i) in sufficient detail, the underlying Force Majeure Event; (ii) the Termination Date which shall be a date occurring not earlier than 60 (Sixty) days from the date of Termination 51 Notice; (iii) if and to the extent applicable the estimated money payable by / to the Affected Party including the details of computation thereof and; (iv) any other relevant information.

(c) Obligation of Parties

Following issue of Termination Notice by either Party, the Parties shall promptly take all such steps as may be necessary or required to ensure that the Premises etc (as then existing) are handed over by Bus Provider to JCTSL peacefully and free from all Encumbrance on the Termination Date.

11.5 Liability for other losses, damages etc.

Save and except as expressly provided in this Article 8, neither Party hereto shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event.

11.6 Change in Law

The Agreement shall be in force and binding on both the parties hereto till the expiry of the Bus Provider Period and no change in law or other circumstances shall affect the respective rights and obligations of the Parties. No claim of whatsoever nature shall be made by one party on to the other on account of any such change in law or other circumstances.

ARTICLE 12

12.0 EVENTS OF DEFAULT AND TERMINATION

12.1 Termination for Default

- (a) Without prejudice to any other rights available to JCTSL for breach of contract or otherwise JCTSL may in its sole discretion terminate the Agreement in whole or in part by issuing a Notice of Termination to Bus Provider in writing if:
 - (i) Bus Provider fails to perform any of Bus Provider's obligations set forth in the Agreement; and / or
 - (ii) Bus Provider fails to adhere to the timelines set forth in the Agreement for performance of Bus Provider's obligations thereunder; and / or
 - (iii) Bus Provider fails to comply with the applicable laws, rules, regulations,
- (b) In any of the above mentioned conditions, JCTSL shall have the right to invoke the Performance Guarantee and / or take over the buses and the infrastructure of the Bus Provider or ask the Bus

Provider to transfer upon JCTSL's direction the entire lot of buses and the infrastructure or some of the buses or part of the infrastructure to any replacement Bus Provider selected by JCTSL in its sole discretion.

- (c) If Bus Provider, having been notified, fails to remedy the defect(s) within a Time frame specified in the SQP section of the RFP, JCTSL may proceed to take such remedial action as may be necessary, at Bus Provider's risk and cost and without prejudice to any other rights which JCTSL may have against the Bus Provider under the Agreement.

12.2 Termination for Insolvency, Dissolution etc.

JCTSL may at any time terminate the Agreement by giving written notice to Bus Provider without any compensation to Bus Provider, if Bus Provider becomes bankrupt or otherwise insolvent or in case of dissolution of firm or winding up of the company, provided that such termination will not prejudice any other rights of JCTSL. Notwithstanding the generality of the foregoing, JCTSL reserves the right to invoke the Performance Guarantee and / or take over the buses/infrastructure of the Bus Provider for the BRTS Project or any part thereof and / or ask the Bus Provider to transfer the said buses/infrastructure or part thereof to a replacement Bus Provider selected by JCTSL, in JCTSL's sole discretion.

12.3 Accrued Rights of Parties

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

ARTICLE 13

13.0 HANDOVER & DEFECT LIABILITY PERIOD

13.1 Handing Over of Project Assets

Upon the expiry of the Bus Provider Period by efflux of time and in the normal course, the Bus Provider shall at the end of the Bus Provider Period or prior termination of this Agreement, as the case may be, hand over free from Encumbrances the peaceful possession of the Premises, if any provided to the bus provider under administration or otherwise besides any other assets installed or developed by Bus Provider by way of this

Agreement for the BRTS Project including without limitation any and all hardware, software, firmware, deliverables etc. in sound condition.

13.2 Joint Inspection and Removal of Deficiency

The handing over process shall be initiated at least 6 (six) months before the actual date of expiry of the Bus Provider Period by joint inspection by JCTSL and the Bus Provider. JCTSL shall within 15 (fifteen) days of such inspection prepare and furnish to the Bus Provider a list of works / jobs / additions / alterations, if any, to be carried out to bring the BRTS Project related assets to the prescribed level of service condition at least 2 (two) months prior to the date of the expiry of the Bus Provider Period. In case the Bus Provider fails to carry out the above works, within the stipulated time period the JCTSL shall be at liberty to have these works executed by another agency or on its own at the risk and cost of the Bus Provider. Any cost incurred by JCTSL in this regard shall be reimbursed by the Bus Provider to JCTSL within 7 (seven) days of receipt of demand. For this purpose, JCTSL shall without prejudice to any other right /remedy available to it, under this Agreement, have the right to appropriate the Performance Guarantee and / or to set off any amounts due, if any and payable by JCTSL to the Bus Provider to the extent required / available and to recover deficit amount, if any, from the Bus Provider.

13.3 Recovery of Balance dues of JCTSL from the Bus Provider

The dues payable to JCTSL by the Bus Provider on any account, if any, at the end of the Bus Provider Period shall be recovered by JCTSL from the Performance Guarantee.

ARTICLE 14

14.0 DISPUTE RESOLUTION

14.1 Amicable Resolution

- (a) Save where expressly stated otherwise in this Agreement, any dispute, difference or controversy of whatever nature howsoever arising under, out of or in relation to this Agreement including non-completion of the BRTS Project between the Parties and so notified in writing by either Party to the other (the "Dispute") in the first instance shall be attempted to be resolved amicably by the Parties and failing such resolution of the same, in accordance with the procedure set forth in sub-article (b) below.
- (b) Either Party may require the Dispute to be referred to the Managing Director (MD), JCTSL for amicable settlement. Upon such reference, both the Parties and the MD or his nominee (who can be an employee of JCTSL dealing the BRTS Project or otherwise) shall

meet at the earliest mutual convenience and in any event within 15 (fifteen) days of such reference to discuss and attempt to amicably resolve the Dispute. If the Dispute is not amicably resolved within 15 (fifteen) days of such meeting, either Party may refer the Dispute to arbitration in accordance with the provisions of Article 14.2 below.

14.2 Arbitration

(a) Arbitrators

Any Dispute which is not resolved amicably as provided in Article 14.1(a) shall be finally settled by binding arbitration under the Arbitration and Conciliation Act, 1996. The arbitration shall be by a committee of 3 (three) arbitrators chosen from a panel of arbitrators on the list of arbitrators available or furnished by JCTSL. 1 (One) arbitrator is to be chosen by each Party and the third to be appointed by the 2 (two) arbitrators chosen by the Parties. If either Party fails to choose its arbitrator, the other Party shall take steps in accordance with Arbitration and Conciliation Act, 1996.

(b) Place of Arbitration

The place of arbitration shall be Jaipur.

(c) 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, / arbitral tribunal and 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 hereby waive, to the extent permitted by law, any rights to appeal or to review of such award by any Court or Tribunal. The Parties hereto agree that the arbitral award may be enforced against the Parties to the arbitration proceedings or their assets wherever they may be found and that a judgment upon the arbitral award may be entered in any Court having jurisdiction thereof.

(f) Fees and Expenses

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

(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.

ARTICLE 15

15.0 REPRESENTATIONS AND WARRANTIES

15.1 Representations and Warranties of the Bus Provider

The Bus Provider represents and warrants to JCTSL that:

- (a) it is duly organized, validly existing and in good standing under the laws of India;
- (b) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (c) 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;
- (d) it has the financial standing and capacity to undertake the Bus Provider contract for the BRTS Project;
- (e) this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (f) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Bus Provider's Memorandum and Articles of Association or any Applicable

Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected;

- (g) there are no actions, suits, proceedings or investigations pending or to the Bus Provider'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 an event of default on the part of the Bus Provider or which individually or in the aggregate may result in material adverse effect;
- (h) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Agency which may result in Material adverse effect;
- (i) 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;
- (j) no representation or warranty by the Bus Provider contained herein or in any other document furnished by it to JCTSL or to any Government Agency in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (k) no bribe or illegal gratification has been paid or will be paid in cash or kind by or on behalf of the Bus Provider to any person to procure the contract.
- (l) Without prejudice to any express provision contained in this Agreement, the Bus Provider acknowledges that prior to the execution of this Agreement, the Bus Provider has after a complete and careful examination made an independent evaluation of all aspects of the BRTS Project, and the information provided by JCTSL, 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 Bus Provider in the course of performance of its obligations hereunder.
- (m) The Bus Provider 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 JCTSL shall not be liable for the same in any manner whatsoever to the Bus Provider.

15.2 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.

15.3 Indemnification

Bus Provider shall at all times, i.e. during the subsistence of the Bus Provider Agreement and any time thereafter, defend, indemnify and hold JCTSL harmless from and against all claims (including without limitation claims for infringement of intellectual property, breach of contract, death or injury to a person or injury to property, or other tort claims) and expenses (including court costs) arising out of or relating to the breach by Bus Provider of any covenant, representation or warranty or from any act or omission of the Bus Provider or his agents, employees or sub contractors. JCTSL will notify Bus Provider of any such claim, suit or proceeding and will assist Bus Provider (at Bus Provider's expense) in the defense of the same.

ARTICLE 16

16.0 MISCELLANEOUS

16.1 Assignment and Charges

Bus Provider shall not assign, in whole or in part, any right or delegate any duty under the Bus Provider Agreement to any third party, except with JCTSL's prior written consent in this:

- (a) The Bus Provider shall not assign in favor of any person this Agreement or the rights, benefits and obligations hereunder save and except with prior consent of JCTSL.
- (b) The Bus Provider shall not create nor permit to subsist any Encumbrance over the Premises except with prior consent in writing of JCTSL, which consent JCTSL shall be entitled to decline without assigning any reason whatsoever.
- (c) Restraint set forth in clauses (a) and (b) above shall not apply to liens/encumbrances arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Bus Provider;

16.2 Liquidated Damages

In the event of delay in supply of buses by the Bus Provider in relation to the schedule of supplies stipulated in the bus provider agreement of the JCTSL's the BRTS Project, or any subsequent amendment thereto, JCTSL

shall recover from Bus Provider liquidated damages (and not by way of penalty) @ Rs. 1000/- (Rupees one thousand) per bus per day of delay.

16.3 Governing Law and Jurisdiction

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

16.4 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 authorized 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.

16.5 Survival

Termination of this Agreement

- (a) shall not relieve the Bus Provider or JCTSL 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.

16.6 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.

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

If to JCTSL:

[Designation] ,
Jaipur City Transport Services Limited (JCTSL)
ADDRESS OF JCTSL
Jaipur
Fax No.

If to the Bus Provider :

The-----,
----- Limited,
-----.
Fax No. -----

Or such address, 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 recognized 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 facsimile number.

16.8 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. Provided failure to agree upon any such provisions shall not be subject to dispute resolution under this Agreement or otherwise.

16.9 No Partnership

Nothing contained in this Agreement shall be construed or interpreted as constituting a partnership between the Parties. Neither Party shall have any authority to bind the other in any manner whatsoever.

16.10 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 in Hindi/English language.

16.11 Ownership & Protection of Property And Intellectual Property Rights

16.11.1 Ownership & Protection of Property

- a) JCTSL shall retain the title and ownership of any site allotted by JCTSL to Bus Provider for purposes of carrying out Bus Provider's obligations in relation to the BRTS Project. Such title and ownership of JCTSL in any such site shall not pass to Bus Provider.
- b) The ownership of **any** other infrastructure created by Bus Provider at the allotted sites for the BRTS Project shall be with JCTSL with effect from the date of the implementation. The possession of the infrastructure shall pass to JCTSL on the expiry of the Bus Provider Agreement.
- c) JCTSL shall own any and all data created out of the BRTS Project at all the times, during and after the expiry / termination of the Bus Provider Agreement. Bus Provider shall not have any claim on and for such data and shall not for any reason withhold such data from JCTSL.
- d) Bus Provider shall exercise all due caution to protect and maintain the data created out of this BRTS Project.
- e) Bus Provider shall not share, sell or in any manner use the data created by Bus Provider out of this BRTS Project otherwise than in accordance with the terms of the bus provider Agreement.
- f) Upon expiry or earlier termination of the Bus Provider Agreement, Bus Provider shall transfer the possession of any and all assets including without limitation any hardware, software etc. designed,

created, implemented by Bus Provider at a the allotted sites for the BRTS Project to JCTSL.

16.12 Intellectual Property Rights

- a) Bus Provider shall acknowledge and agree that any and all **hardware, software, and / or firmware developed** by Bus Provider at the allotted sites for JCTSL in relation to the BRTS Project and any modifications thereto or works derived there-from shall be the exclusive property of JCTSL at all times and JCTSL shall retain all right, title and interest in and to the same. Provided however that the Bus Provider shall have the right to possess and use the same during the Bus Provider Agreement Period for purposes of effective implementation, operation and maintenance of the BRTS Project on specific approval of the same by JCTSL.
- b) After the expiry or termination of the Bus Provider Agreement Bus Provider shall have no right, title or interest in or to any work including without limitation the designs, software, modifications or facilities developed at the allotted sites by Bus Provider for JCTSL under the BRTS Project for any purpose whatsoever.
- c) For purposes of the Bus Provider Agreement the terms "**software**", "**software programs**" shall include without limitation the specifications, documentation, technical information, and all corrections, modifications, additions, improvements and enhancements to any of the foregoing provided at the sites by the Bus Provider in relation to the BRTS Project pursuant to the Bus Provider Agreement.
- d) JCTSL may in its sole discretion allow the use of any and all buses used specifically for JCTSL in relation to the BRTS Project by Bus Provider to a third party for the purpose of advertisements etc inside/outside the buses.
- e) JCTSL may in its sole discretion allow the marketing of any and all product(s) developed specifically for JCTSL in relation to the BRTS Project by Bus Provider to a third party. Provided however that such marketing shall be done only after prior consultation with JCTSL in which event the parties shall arrive at an understanding which shall be set forth in writing in a Memorandum of Understanding ("MOU") between JCTSL and the Bus Provider before taking up such activity. The MOU shall clearly state the terms of / for such marketing activity, the responsibilities of Bus Provider and JCTSL respectively as well as financial implications thereof.

16.13 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:

For and on behalf of JCTSL by:

(Signature)
(Name)
(Designation)

For and on behalf of BUS PROVIDER by:

(Signature)

In the presence of :

- 1)
- 2)

Schedule 1 : RFP DOCUMENT

Schedule 2 : LETTER OF ACCEPTANCE

Schedule 3 : COPY OF PERFORMANCE GUARANTEE

Schedule 4 : SERVICE QUALITY PERFORMANCE (SQP)

Schedule 5 : BUS SPECIFICATIONS