

Invitation for Bids/Tender

Date: 20.12.2018

IFB No: OPS/VOC/Pink Buses/2018/041

1. TransPeshawar (The Urban Mobility Company) is a Company set up under Section 42 of the Companies Act, 2017, and is responsible for project implementation, management and maintenance of urban rapid transit projects assigned by the Khyber Pakhtunkhwa Urban Mobility Authority.
2. TransPeshawar (The Urban Mobility Company) invites sealed bids from eligible bidders for the Procurement of Service Provider for Operation and Maintenance of Pink Buses in cities listed below. Details of scope of services required are available in respective Request for Proposal.

Sr. No	Title	Bid Submission Date and Time	Bid Opening Date and Time
i	Procurement of Service Provider for Operation and Maintenance of Pink Buses in Abbottabad	January 07, 2019 4:00 PM (PST)	January 07, 2019 4:15 PM (PST)
ii	Procurement of Service Provider for Operation and Maintenance of Pink Buses in Mardan	January 07, 2019 4:00 PM (PST)	January 07, 2019 4:15 PM (PST)

3. Each city will be treated as a separate procurement for the purpose of award. Potential Bidders /Service Providers needs to submit proposal for each city separately.
4. A complete set of Request for Proposal for each city may be downloaded by interested bidders from website of TransPeshawar (<http://transpeshawar.pk/>) and KPPRA website (<http://www.kppra.gov.pk/>)
5. Procurements will be carried out as per Rules and Regulation of Khyber Pakhtunkhwa Public Procurement Regulatory Authority. Competitive bidding will be conducted in accordance with the single stage: two envelope bidding process.
6. A pre-bid meeting will take place on **27th December, 2018 at 10:30 AM (PST) hours** at TransPeshawar office (address given below) for the bidders who wish to attend.
7. Proposal shall be received during office hours at the TransPeshawar office (address given below) no later then date and time mentioned in para 2 above.
8. Bids will be opened at the office of TransPeshawar on the dates and time mentioned in para 2 above and in the presence of bidders' representatives who choose to attend.

**Chief Executive Officer,
TransPeshawar (The Urban Mobility Company)
Second Floor, Ali Tower, University Road, Peshawar
Phone Number: +92-91-5700128**

REQUEST FOR PROPOSALS (RFP)
for
Service Provider for Operation and
Maintenance of Pink Buses in
Mardan

Date: 20.12.2018

TABLE OF CONTENTS

SECTION 1 - DEFINITIONS	3
SECTION 2 – NOTICE	4
2.1 Introduction	4
2.2 Disclaimer	4
SECTION 3 - BIDDING PROCESS	5
3.1 Planning.....	5
3.2 Information Sources	5
3.3 Pre-Bid Meeting	6
3.4 Questions and Answers on the Request for Proposals.....	6
3.5 Rejection of Proposals.....	6
3.6 Cancellation of the Bidding Process and Proclamation of the Bidding Process as Unsuccessful	7
3.7 Opening and Evaluation of Proposals	8
3.8 Signing of the Service Agreement	8
SECTION 4 – INSTRUCTIONS TO SERVICE PROVIDERS	9
4.1 General Terms	9
4.2 Proposal Package	9
4.3 Submission of Proposal	10
4.4 Content of Proposal	10
4.5 Technical Proposal.....	10
4.6 Financial Proposal	12
SECTION 5 - EVALUATION	12
5.1 Responsiveness Criteria	12
5.2 Evaluation Criteria.....	12
5.3 Information	14
5.4 Clarification	14
SECTION 6 - GENERAL MATTERS.....	14
6.1 Responsibility of Service providers	14
6.2 Confidentiality	15
6.3 Proprietary Data	15
6.4 Fraud and Corruption.....	15
6.5 Governing Law and Rules	16
Schedule 1 Comment Form.....	17
Schedule 2 Business Structure (Individual/partnership/corporation etc.,)	21
Schedule 3 Business Structure (consortium)	23
Schedule 4 Proposal Submission Letter	26
Schedule 5 Authority to Bid and Designation of Authorized Representative (partnership/corporation)	27
Schedule 6 Authority to Bid and Designation of Authorized Representative (Consortium)	28
Schedule 7 Bid Bond	30
Schedule 8 Key Personnel.....	31
Schedule 9 Financial Offer	32
Schedule 10 Affidavit of Integrity Pact	33

SECTION 1 - DEFINITIONS

- 1.1.1 The following words or terms shall have the following meanings in this Request for Proposals:

Affiliate means a corporation or entity effectively under the Control of, or in Control of, a Service provider or associated with a Service provider under common ownership and Control.

Service provider means any individual, company, partnership, corporation, Consortium or joint venture or other legal entity which participates in the Bidding Process.

Bid Bond has the meaning given to it in paragraph 4.5.4.

Bidding Process or **Bidding** means the process beginning from the publication of the Invitation to Bid until the signing of the Service Agreement.

Coercion, Collusion, Corrupt Practices, Fraud, Restrictive Practices and Undesirable Practices have the meanings given to them in paragraph 6.4.2.

Consortium means an unincorporated association of juridical persons bound by contract or law, undertaking by mutual written agreement a common enterprise which is to participate in the Bidding Process.

Consortium Member means any of the juridical persons comprising a Consortium, each having a definite interest in the common undertaking, liable in the Bid and whose interest may be converted into an equivalent equity participation in the corporation that will become a service provider if the Consortium is awarded and accepts the obligation to provide the Required Services.

Control means, for purposes of defining an Affiliate, the power to direct or cause the direction of the management policies of a body corporate whether through: (i) ownership of at least fifty per cent (50%) plus one share of the outstanding voting shares or (ii) ownership of at least twenty per cent (20%) of the outstanding voting shares and (a) possession of at least fifty per cent (50%) plus one share of the voting rights through voting trust or other voting agreements entered into at least one year before the Proposal Submission Date or (b) the ability to elect a majority of the members of the Affiliate's board of directors. In determining ownership by a corporation of the shares of another corporation, shares held both directly and indirectly will be counted. If the Service provider or Consortium Member was incorporated only within the last six (6) months, then the requirement herein that the voting trust or other voting agreement should have been entered into at least one (1) year before the Proposal Submission Date, will not be applicable.

Financial Proposal has the meaning given to it in paragraph 4.4.1.

Winning service provider means the Best Evaluated Service provider as determined by TransPeshawar Company in accordance with evaluation criteria.

KPPRA means the Khyber Pakhtunkhwa Public Procurement Regulatory Authority.

Net Worth means the sum of equity and reserves from which shall be deducted the sum of revaluation reserves, miscellaneous expenditure not written off and accrued liabilities.

Procurement Rules means the Khyber Pakhtunkhwa Public Procurement of Goods, Works and Services Rules of 2014.

Proposal means the bid submitted by a Service provider for the provision of the Required Services.

Proposal Submission Date means the date specified as such in paragraph 3.1.1.

Required Services has the meaning given to it in the Service Agreement.

Service Agreement means the service contract to be entered into between TransPeshawar Company and a Winning Service provider and attached with this RFP.

Subcontractor means an entity which may be engaged by a Winning Service provider to undertake some of the Required Services.

Technical Proposal has the meaning given to it in paragraph 4.4.1.

TransPeshawar (The Urban Mobility Company) or "TransPeshawar Company" or Employer means a Public Limited Company registered under Section 42 on February 09, 2017 with Security Exchange Commission of Pakistan having a registered office at TransPeshawar (The Urban Mobility Company), Ali Tower, Second Floor, University Road, Peshawar, Khyber Pakhtunkhwa, Pakistan.

SECTION 2 – NOTICE

2.1 Introduction

2.1.1 This RFP is uploaded on KPPRA and TransPeshawar websites solely for use in preparing and submitting a Proposal in a competitive tender to procure the Required Services.

2.1.2 This RFP is being uploaded on above mentioned websites by TransPeshawar Company, a public agency under the Government of Khyber Pakhtunkhwa.

2.2 Disclaimer

2.2.1 No employees or consultants of TransPeshawar Company:

- (a) make any representation (express or implied) or warranties as to the accuracy or completeness of the information contained in this RFP or other document made available to a person in connection with the tender process for the Required Services and shall have no liability for this RFP or for any other written or oral communication transmitted to the recipient in the course of the recipient's evaluation of the Operations of Pink buses in Mardan; or
- (b) will be liable to reimburse or compensate a recipient for any costs or expenses incurred by the recipient in evaluating or acting upon this RFP

or otherwise in connection with the project of operations of Pink buses in Mardan.

- 2.2.2 The RFP does not constitute a solicitation to invest or otherwise participate in the assignment.
- 2.2.3 The Bidding Process is conducted through the procedures specified in this RFP, in line with the principles of the Khyber Pakhtunkhwa Public Procurement Regulatory Authority Act and the Procurement Rules of 2014.
- 2.2.4 The issuance of this RFP does not imply that TransPeshawar Company is bound to appoint a Winning Service provider or enter into a Service Agreement. TransPeshawar Company reserves the right to reject all or any of the Proposals received or otherwise discontinue the Bidding Process at any time.

SECTION 3 - BIDDING PROCESS

3.1 Planning

- 3.1.1 The indicative overall planning for the Bidding Process is presented below:

Milestone	Party Responsible	Target Date
Issuance of RFP and Service Agreement	TransPeshawar Company	21.12.2018
Pre-Bid Meeting	TransPeshawar Company	27.12.2018 10:30 AM
Upload of Pre-Bid Minutes on websites of TransPeshawar and KPPRA	TransPeshawar Company	28.12.2018
Proposal Submission Deadline	Service providers	07.01.2019 04:00 PM
Notification of the Results of the Evaluation and Appointment of Winning Service provider	TransPeshawar Company	Tentatively in January, 2019
Signing Date of Service Agreement and Compliance with other Requirements	Winning Service provider and TransPeshawar Company	Tentatively in January, 2019

3.2 Information Sources

- 3.2.1 The primary sources of information provided to Service providers in relation to this Request for Proposals are:
- (a) Request for Proposals (the present document);
 - (b) Service Agreement (attached to the present document).

- (c) Pre-Bid Meeting as organised by TransPeshawar Company (cf. Section 3.3);
 - (d) Answers to questions raised on the Request for Proposals (cf. Section 3.4);
- 3.2.2 Service providers relying on information from other sources or the public domain do so at their own risk.

3.3 **Pre-Bid Meeting**

- 3.3.1 A Pre-Bid Meeting shall be organised by TransPeshawar Company to:
- (a) Explain the project, the Bidding Process and the Request for Proposals;
 - (b) Receive questions on the Request for Proposals; and
 - (c) Provide an opportunity for Service providers to visit and inspect the existing infrastructure
- 3.3.2 The pre-bid meeting shall be organised at a date specified in Article 3.1.1.
- 3.3.3 Minutes of Pre-bid meeting will be uploaded on TransPeshawar website i.e. www.transpeshawar.pk.

3.4 **Questions and Answers on the Request for Proposals**

- 3.4.1 The service provider shall have the opportunity to ask questions concerning the Request for Proposals by the date specified in Article 3.1.1. These questions can only be addressed by email to the following address:

Attention: Mr. Fayyaz Khan

Chief Executive Officer, TransPeshawar Company.

Email: fayyazak@yahoo.co.uk with cc to ashfaq.rauf@gmail.com

- 3.4.2 The Service providers' questions shall be treated anonymously.
- 3.4.3 TransPeshawar Company shall endeavour to respond to all clarification or information requests, however requests received later than Pre-Bid meeting date and time would be left unanswered. Every such clarification delivered to Service providers shall be made in the form of an appendix to the Request for Proposals and shall, upon being issued, be sent in the shortest possible time to all Service providers. All such appendices shall automatically become an integral part of the Request for Proposals.
- 3.4.4 All Service providers shall therefore be provided with the same information simultaneously. TransPeshawar Company does not assume any responsibility for emails not received or delivered late.

3.5 **Rejection of Proposals**

- 3.5.1 TransPeshawar Company has a discretionary right to reject a Proposal. Reasons for rejecting a Proposal include, but are not limited to, the following:

- (a) The Proposal does not contain all elements defined in the instructions;
- (b) The Proposal is not submitted before the Submission Deadline;
- (c) The Service provider or the bank which has issued the Bid Bond are insolvent or in the process of liquidation or bankruptcy;
- (d) The amount, format or issuer of the Bid Bond does not meet the requirements; or
- (e) TransPeshawar Company becomes aware of facts which can influence the free will of contractual parties.

3.5.2 The Proposal may also be rejected up until signing of the Service Agreement, in case TransPeshawar Company concludes, in its discretionary right, that one of the following applies:

- (a) The Proposal does not comply with the objectives of the tender or is not in line with the applicable laws (especially in case the Proposal proposed is not acceptable to TransPeshawar Company in terms of conditions offered or their alignment with applicable laws and existing practice in the Islamic Republic of Pakistan;
- (b) There is evidence of collusion/joint agreement between Service providers;
- (c) There is reason to believe that tender rules have been violated (for example, failure to keep confidential information);
- (d) There is evidence that the Service provider is trying to gain advantage over other Service providers in an incorrect manner; or
- (e) The Financial Offer varies significantly from the estimate of TransPeshawar Company.

3.5.3 In the event of the rejection of a Proposal, TransPeshawar Company shall inform the relevant Service provider in a written form, in accordance with the applicable laws.

3.6 **Cancellation of the Bidding Process and Proclamation of the Bidding Process as Unsuccessful**

3.6.1 TransPeshawar Company reserves the right to unilaterally cancel or suspend the Bidding Process at all times. In case of cancellation, TransPeshawar Company will inform the Service providers.

3.6.2 The tender may be cancelled at any time prior to the Submission Deadline at no cost to, if TransPeshawar Company determines that this action is in its best interest or that of the Government of Pakistan/Khyber Pakhtunkhwa. Reasons for cancellation include, but are not limited to:

- (a) Changes in the legislative framework in the Islamic Republic of Pakistan, causing the Bidding Process or the Required Services to become impossible, illegal or economically unviable; or

- (b) Proposed amendments to the instructions or procedure would be of such magnitude and substance that a new Bidding Process would be desirable.
- 3.6.3 The Bidding Process may be proclaimed unsuccessful at any time after the Submission Deadline, at no cost to TransPeshawar Company, if:
- (a) No Proposals have been submitted;
 - (b) The Proposals which have been submitted, in the opinion of TransPeshawar Company, do not meet the criteria, goals and requirements of the Bidding Process; or
 - (c) The Winning Service provider refuses to sign the Service Agreement in the form offered by TransPeshawar Company.
- 3.6.4 In the event of such rejection of a Proposal, or cancellation or proclamation of the Bidding Process as unsuccessful, no Service provider shall be entitled to any claim whatsoever against TransPeshawar Company or the Government of Pakistan/Khyber Pakhtunkhwa for any costs, expenses or damages resulting directly or indirectly from such cancellation of the Bidding Process or rejection of Proposal.

3.7 Opening and Evaluation of Proposals

- 3.7.1 The opening of the Technical Proposals shall occur fifteen minutes after the Proposal Submission Deadline at the address indicated in paragraph 4.3.1. The Service providers may be represented, by not more than two (2) persons, at the opening of the Technical Proposals. Proposals for which a notice of withdrawal request has been submitted shall not be opened.
- 3.7.2 TransPeshawar Company shall evaluate the Technical Proposals in accordance with the provisions of SECTION 5. TransPeshawar Company shall then inform all Service providers of the results in writing.
- 3.7.3 The opening of the Financial Proposals shall be during a public session at a time notified later on. The Service providers who have been qualified for the evaluation of their Financial Proposal may be represented, by not more than two (2) persons, at the opening of the Financial Proposals. After the conclusion of the public opening, TransPeshawar Company shall evaluate the Financial Proposals.
- 3.7.4 TransPeshawar Company shall evaluate the Financial Proposals in accordance with the provisions of SECTION 5. TransPeshawar Company shall then inform all Service providers who have been qualified for the evaluation of their Financial Proposal of the results in writing.

3.8 Signing of the Service Agreement

- 3.8.1 The Winning Service provider shall receive an invitation in form of Letter of Award from TransPeshawar Company with the aim to sign a Service Agreement for Required Services as defined in the Service Agreement. The Winner Service provider shall, within 07 working days of receipt of Letter of Award, furnish Performance Security in favour of TransPeshawar on prescribed format. The successful service provider shall immediately sign the agreement with

TransPeshawar in the form and manner as prescribed in the RFP but not later than 07 (Seven) days after submission of performance security.

- 3.8.2 In the event of a withdrawal by a Winning Service provider, TransPeshawar Company may invite the next Service provider to conclude a Service Agreement for the Required Services.
- 3.8.3 If a Service provider which was invited by TransPeshawar Company to sign a Service Agreement withdraws from the Bidding Process, the Bid Bond of the said Service provider shall be called by TransPeshawar Company.

SECTION 4 - INSTRUCTIONS TO SERVICE PROVIDERS

4.1 General Terms

- 4.1.1 All elements of the Proposal containing monetary values, whether they apply to business activities in the Islamic Republic of Pakistan or abroad, must be expressed in Pakistani Rupees (PKR).
- 4.1.2 All documents forming part of the Proposal must be written in the English language; copies of legal or similar supporting documents in other languages must be accompanied with a notarised translation.

4.2 Proposal Package

- 4.2.1 The Proposal must be submitted in a master envelope containing two inner envelopes, i.e. the Technical Proposal envelope and the Financial Proposal envelope.
- 4.2.2 The master envelope must be properly sealed and must be marked with:
 - (a) The name and the address of the Service provider;
 - (b) The address of TransPeshawar Company as indicated in paragraph 4.3.1;
 - (c) The warning: "Do not open before <insert Proposal Submission Deadline>";
 - (d) The wording: "Master envelope – "Proposal for service provider for Operation and Maintenance of Pink Buses in Mardan".
- 4.2.3 The Technical Proposal envelope must be marked as "Technical Proposal" and must contain:
 - (a) One (1) complete original set of the Technical Proposal, clearly marked as "**ORIGINAL**";
- 4.2.4 The Financial Proposal envelope must be marked as "Financial Proposal" and must contain:
 - (a) One (1) complete original set of the Financial Proposal, clearly marked as "**ORIGINAL**"; and

- 4.2.5 In the event of any discrepancy between integer and words, the later shall prevail.

4.3 Submission of Proposal

- 4.3.1 The Proposal must be delivered to TransPeshawar Company on or before the Submission Date and time (**Proposal Submission Deadline**) at the following address:

Attention: Mr. Fayyaz Khan

Chief Executive Officer, TransPeshawar Company.

Address: TransPeshawar (The Urban Mobility Company), Second Floor, Ali Tower, University Road, Peshawar, KPK, Pakistan.

- 4.3.2 The Proposal must be submitted in person or via registered post mail or via courier, in closed envelopes. The Proposal shall be considered submitted upon physical receipt by TransPeshawar Company of the master envelope. TransPeshawar Company shall issue a Proposal receipt confirmation, which shall clearly indicate the date and time at which the Proposal was received. Late submission, for whatsoever reason, will not be acceptable.

4.4 Content of Proposal

- 4.4.1 The Proposal shall contain all components listed in the table below. The Proposal shall be considered only on the basis of information provided in accordance with this predefined format.

Item	Schedule
Technical Proposal	
Business Structure	Schedule 2 or Schedule 3
Proposal Submission Letter	Schedule 4
Authority to Bid and Designation of Authorized Representative	Schedule 5 or Schedule 6
Bid Bond	Schedule 7
Technical Offer	Schedule 8
Financial Proposal	
Financial Offer	Schedule 9

4.5 Technical Proposal

- 4.5.1 The Service provider must submit a **Business Structure** in conformity with Schedule 2 (or, in case the Service provider is a Consortium, Schedule 3).

- (a) The Business Structure must be signed and dated by the Authorised Representative.
- 4.5.2 The Service provider must submit a **Proposal Submission Letter** in conformity with Schedule 4.
 - (a) The Proposal Submission Letter must be signed and dated by the Authorised Representative.
- 4.5.3 The Service provider (or, in case the Service provider is a Consortium, each Consortium Member) must submit an **Authority to Bid and Designation of Authorized Representative** in conformity with Schedule 5 (or, in case the Service provider is a Consortium, Schedule 6).
 - (a) The Authority to Bid and Designation of Authorized Representative must be signed and dated by the Corporate Secretary or equivalent officer of the Service provider (or, in case the Service provider is a Consortium, of the Consortium Member).
- 4.5.4 The Service provider must submit a **Bid Bond** of Rupees 1,000,000 (One Million) bid amount in conformity with Schedule 7 or in Shape of Pay Order or Call Deposit Receipt (CDR). In case of Bid in conformity with Schedule 7, Bid Bond shall be in the name of JV, if any.
 - (a) The Bid Bond must be provided by a Schedule Bank in Pakistan.
 - (b) The Bid Bond can be claimed by TransPeshawar Company in case of:
 - (i) Withdrawal from the Bidding Process between the Proposal Submission Date and the signing date of the Service Agreement;
 - (ii) Effective Date of the Service Agreement not reached within the timeframe and conditions specified in the Service Agreement;
 - (iii) Failed to submit Performance Security within prescribed time;
 - (iv) Exclusion from the Bidding Process by TransPeshawar Company in case of any wilful misconduct such as Corrupt Practice, Collusion, Coercion, Fraud, Fraudulent Practice, Undesirable Practice or Restrictive Practice.
 - (c) Within seven (7) days after the submission of Performance Security by Winner Service provider, TransPeshawar Company shall release the Bid Bond to all Service providers. The Bid Bond of the Winning Service provider shall be released on the submission of Performance Security.
 - (d) The Bid Bond must be signed and dated by the Corporate Secretary or equivalent officer of the bank providing the Bid Bond.
- 4.5.5 The Service provider must submit a **Key Personnel** in conformity with **Schedule 8**~~Error! Reference source not found.~~
 - (a) The Key Personnel must be signed and dated by the Authorized Representative.

4.6 Financial Proposal

- 4.6.1 The Service provider must submit a **Financial Offer** in conformity with Schedule 9.
- (a) The Financial Offer must be signed and dated by the Authorised Representative.

SECTION 5 - EVALUATION

5.1 Responsiveness Criteria

- 5.1.1 Prior to evaluation of Proposals, TransPeshawar Company shall determine whether each Proposal is responsive to the requirements of the RFP. A Proposal shall be considered responsive only if:
- (a) the Proposal is received by the Proposal Submission Deadline;
- (b) the Proposal contains all the information (complete in all respects) as requested pursuant to this RFP;
- (c) the entity is registered in Pakistan and have valid registration in any Provincial or Federal Government department (Tax number/ NIC for individual or registration with registrar of firms or registration with SECP etc);
- (d) is on Active Tax Payer list;
- (e) Affidavit that the entity is not Blacklisted; and
- (f) the Proposal does not contain any condition or qualification(s).
- 5.1.2 TransPeshawar Company reserves the right to reject any Proposal which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by TransPeshawar Company in respect of such Proposal.

5.2 Evaluation Criteria

- 5.2.1 TransPeshawar Company shall evaluate the Technical Offers in accordance with the following criteria:

Technical Offer	Maximum Points	How each item is scored	Data to be provided by the Service provider
Operation Supervisor	10	Fourteen-year Education Experience and more than 2.5 years in transport operations.	Resume showing qualifications and experience for potential person to fill Key Personnel positions listed in accordance to Schedule 8
Total number of human		Less than 10 = 5 Points	List of Human Resources Employed

Technical Offer	Maximum Points	How each item is scored	Data to be provided by the Service provider
resource managed by the company	30	11 to 20 = 20 Points 21 or more = 30 Points	stating Designation and Contact numbers (Duly attested)
Net Worth of Business in Last Year in Million (in Rupees) individually or collectively (in case of JV)	15	Less than PKR 10 Million = 0 Points 11 Million and above: 15 Points	Latest Financial Statements of Fiscal or Calendar year as applicable for the year
Average Annual Turnover of business in last three years' in Millions individually or collectively (in case of JV)	10	Less than PKR 15 Million = 0 Points 16 Million and above: 10 Points	Latest Financial Statements of Fiscal or Calendar year as applicable for the year
Number of years of operations in public transport vehicles	15	Two points will be awarded for each year of experience in public transport vehicle operations.	Copy of Route Permit (s) OR Contract Document OR Letter of Award OR Any other valid document for evidence. (In case of JV, applies to any one single member with maximum years of experience or while was as member of JV in previous assignment/project)
Maintenance of Vehicles including contract carriage, Public service vehicles & Public carrier, Individually or collectively in case of JV	20	Less Than 3 vehicles = 0 Points 4 to 7 vehicles = 10 Points 8 or more vehicles = 20 Points	Registration Certificates in case of vehicles owned OR Lease/ Rental Agreement (in case of vehicles on Lease OR Any other valid document for evidence by Service providers Independently or in JV or as member of JV in previous assignment/project)

Technical Offer	Maximum Points	How each item is scored	Data to be provided by the Service provider
Total Technical Offer Score	100		

5.2.2 All Service providers having submitted:

- (a) a non-responsive Technical Proposal and/or having obtained a total Technical Offer score of less than seventy (70) points shall be disqualified and their Financial Proposals shall be returned unopened; and
- (b) a responsive Technical Proposal and having obtained a total Technical Offer score of seventy (70) points or more shall be qualified for the evaluation of their Financial Proposal.

5.2.3 Among the bidders having qualified for the evaluation of their Financial Proposal and having submitted a compliant Financial Proposal, the bidder offering the highest monthly price to the employer shall be appointed as the First Winning Service provider/best evaluated bid.

5.3 **Information**

5.3.1 Any information contained in the Application shall not in any way be construed as binding on TransPeshawar Company, its agents, successors or assigns, but shall be binding against the Service provider if any contract is subsequently awarded to it under the Bidding Process on the basis of such information.

5.4 **Clarification**

5.4.1 TransPeshawar Company may, at its sole discretion, seek clarifications and ask for supporting documents from any Service provider regarding its Proposal. Such clarification(s) must be provided within the time specified by TransPeshawar Company for this purpose. Any request for clarification(s) and all clarification(s) must be sent by email, at the address specified in paragraph 3.4.1.

5.4.2 If a Service provider does not provide clarifications sought under paragraph 5.4.1 within the prescribed time, its Proposal may be rejected. In case the Proposal is not rejected, TransPeshawar Company may proceed to evaluate the Proposal by construing the particulars requiring clarification to the best of its understanding, and the Service provider shall be barred from subsequently questioning such interpretation of TransPeshawar Company.

SECTION 6 - GENERAL MATTERS

6.1 **Responsibility of Service providers**

6.1.1 Notwithstanding any information given in the RFP and any additional communication from TransPeshawar Company, including supplemental notices and bid bulletins, it is the sole responsibility of any Service provider to:

- (a) be fully acquainted with the laws, requirements, terms, and conditions of the Bidding Process;
- (b) examine all the bidding documentation, including all instructions, annexes, forms, schedules, terms, specifications, and drawings; and
- (c) familiarize itself with all existing laws, decrees, acts, rules, and ordinances of Islamic Republic of Pakistan, whether national or local, which may affect the provision of the Required Services.

6.2 **Confidentiality**

- 6.2.1 Information relating to the examination, clarification, evaluation and recommendation for the Service providers shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising TransPeshawar Company in relation to or matters arising out of, or concerning the Bidding Process.
- 6.2.2 TransPeshawar Company shall treat all information submitted as part of the Proposal in confidence and shall require all those who have access to such material to treat the same in confidence.
- 6.2.3 TransPeshawar Company shall not divulge any such information, unless it is directed to do so by any statutory body that has the power under law to require its disclosure or to enforce or assert any right or privilege of the statutory body and/or TransPeshawar Company.

6.3 **Proprietary Data**

- 6.3.1 All documents and other information supplied by TransPeshawar Company or submitted by a Service provider to TransPeshawar Company shall remain or become the property of TransPeshawar Company.
- 6.3.2 Service providers must treat all information related to the Bidding Process as strictly confidential and must not use it for any purpose other than for preparation and submission of a Proposal.
- 6.3.3 TransPeshawar Company will not return any Proposal or any information provided along therewith.

6.4 **Fraud and Corruption**

- 6.4.1 It is TransPeshawar Company policy to require that procuring entities and employers (including beneficiaries of public funds), as well as Service providers, suppliers and contractors under PPP or public-funded contracts, observe the highest standard of ethics during the procurement and execution of such contracts.
- 6.4.2 In pursuit of this policy, TransPeshawar Company:
 - (a) defines, for the purposes of this provision, the terms set forth below as follows:

Coercion means harming or threatening to harm, directly or indirectly, persons, or their property to influence their involvement in the Bidding Process, or affect the execution of the Service Agreement.

Collusion means a scheme or arrangement between two or more Service providers, with or without the knowledge of the government, designed to establish financial offers or prices at artificial, non-competitive levels.

Corrupt Practice means the offering, giving, receiving, or soliciting, of anything of value to influence the action of a public official in the Bidding Process or in contract execution and includes inter alia bribery, extortion or coercion, which involves threats of injury to person, property or reputation.

Fraudulent Practice means a misrepresentation of facts in order to influence the Bidding Process or the execution of a contract to the detriment of the procuring entity, and includes collusive practices among Service providers (prior to or after the submission of Proposals) designed to establish bid prices at artificial, non- competitive levels and to deprive the procuring entity of the benefits of free and open competition.

Restrictive Practice means any act, scheme, plan or agreement such as forming a group, clique, cartel, trust, syndicate, combine, pool and the like or arriving at any understanding or arrangement among Service providers, Consortium Members, Subcontractors, or the Affiliates of any of these entities, with the objective of restricting, subverting or manipulating a full and fair competition in the Bidding Process.

Undesirable Practice means (i) establishing contact with any person connected with or employed or engaged by TransPeshawar Company with the objective of canvassing or lobbying or (ii) in any manner influencing or attempting to influence the Bidding Process.

- (b) will exclude from the Bidding Process any Service provider found to be engaging or having engaged in any Corrupt Practice, Collusion, Coercion, Fraud, Fraudulent Practice, Undesirable Practice or Restrictive Practice in competing for the provision of the Required Services; and
- (c) will denounce to relevant authorities any Service provider found to be engaging or having engaged in any Corrupt Practice, Collusion, Coercion, Fraud, Fraudulent Practice, Undesirable Practice or Restrictive Practice in competing for the provision of the Required Service, which may result in the Service Agreement being cancelled and/or such Service provider incurring civil and criminal liability under the applicable laws and regulations and being declared ineligible, for a period of ten (10) years, to be awarded any PPP or public-funded contract in the Islamic Republic of Pakistan.

6.5 **Governing Law and Rules**

- 6.5.1 The provisions of Islamic Republic of Pakistan shall govern all matters relating to this RFP.

Schedule 1 Comment Form

Name of Service provider: _____

Comment 1

Subject	
Location in RFP (clause and page number)	
Original wording in Sub-Concession Agreement	
Comment / motivation for amendment	
Suggested amended wording	

Comment 2

Subject	
Location in RFP (clause and page number)	
Original wording in Sub-Concession Agreement	
Comment / motivation for amendment	
Suggested amended wording	

Comment 3

Subject	
Location in Service Agreement (clause and page number)	
Original wording in Sub-Concession Agreement	
Comment / motivation for amendment	

Suggested amended wording	
---------------------------	--

Comment 4

Subject	
Location in Service Agreement (clause and page number)	
Original wording in Sub-Concession Agreement	
Comment / motivation for amendment	
Suggested amended wording	

Comment 5

Subject	
Location in Service Agreement (clause and page number)	
Original wording in Sub-Concession Agreement	
Comment / motivation for amendment	
Suggested amended wording	

Comment 6

Subject	
Location in Service Agreement (clause and page number)	
Original wording in Sub-Concession Agreement	
Comment / motivation for	

amendment	
Suggested amended wording	

Comment 7

Subject	
Location in Service Agreement (clause and page number)	
Original wording in Sub-Concession Agreement	
Comment / motivation for amendment	
Suggested amended wording	

Comment 8

Subject	
Location in Service Agreement (clause and page number)	
Original wording in Sub-Concession Agreement	
Comment / motivation for amendment	
Suggested amended wording	

Comment 9

Subject	
Location in Service Agreement (clause and page number)	
Original wording in Sub-Concession Agreement	
Comment / motivation for amendment	
Suggested amended wording	

Comment 10

Subject	
Location in Service Agreement (clause and page number)	
Original wording in Sub-Concession Agreement	
Comment / motivation for amendment	
Suggested amended wording	

For and on behalf of (*name of Service provider*)

(*signature of Authorized Representative*)

(*name, title and date*)

Schedule 2 Business Structure (Individual/partnership/corporation etc.,)

To be submitted by a Service provider which is an individual, partnership or corporation and etc.

Name of Service provider: _____

Contact Information of Service provider:

Address	
Website	
Contact Person	
Telephone	
Fax	
Email	

Entity which fulfils the **Financial Capability** requirement:

Name of Entity	
Relationship to Applicant	
Address	
Website	
Contact Person	
Telephone	
Fax	
E-mail	

Entity which fulfils the **Required Services Experience** requirement:

Name of Entity	
Relationship to Applicant	
Address	
Website	
Contact Person	
Telephone	
Fax	
E-mail	

For and on behalf of (*name of Service provider*)

(*signature of Authorized Representative*)

(*name, title and date*)

Schedule 3 Business Structure (consortium)

To be submitted by a Service provider which is a Consortium

Name of Consortium: _____

Consortium Members

	Member	Other member	Other member
Name			
Percentage Interest in the Consortium			
Type of Legal Entity (corporation/partnership)			

Notes: 1) *Insert columns as necessary to table above*

2) *Attach supporting attested documents*

Contact Information of Consortium Members

Consortium Member	
Address	
Website	
Contact Person	
Telephone	
Fax	
Email	

Consortium Member	
Address	
Website	
Contact Person	
Telephone	
Fax	
Email	

Consortium Member	
Address	
Website	
Contact Person	
Telephone	
Fax	
Email	

(Insert tables as necessary)

Entity which fulfils the **Financial Capability** requirement:

Name of Entity	
Relationship to Applicant	
Address	
Website	
Contact Person	
Telephone	
Fax	
E-mail	

Entity which fulfils the **Required Services Experience** requirement:

Name of Entity	
Relationship to Applicant	
Address	
Website	
Contact Person	
Telephone	
Fax	
E-mail	

For and on behalf of (*name of Service provider*)

(*signature of Authorized Representative*)

(*name, title and date*)

Schedule 4 Proposal Submission Letter

To be submitted by the Service provider

I, (name), (citizenship), of legal age, with office address at (address), as the Authorized Representative of (name of Service provider), hereby certify for and on behalf of (name of Service provider) that:

1. (name of Service provider) is bidding for the provision of the Required Services for Operations and Maintenance of Pink Buses in Mardan and hereby submitting its Proposal, which shall remain valid and binding upon (name of Service provider) for a period of one hundred eighty (180) days from the Proposal Submission Date;
2. (name of Service provider) confirms that all statements made and the information and documents provided in its Proposal, including statements made by all Consortium Members, their Affiliates and proposed Subcontractors, are true and correct, and any misrepresentation or false statement made therein shall be a ground for its disqualification;
3. (name of Service provider) authorizes TransPeshawar Company to conduct any inquiries or investigations to verify the statements, documents, and information submitted in its Proposal, and to seek clarification from its clients and bankers regarding any technical and financial aspects; (name of Service provider) also permits third parties to supply information required to verify statements and information submitted in its Proposal;
4. (name of Service provider) acknowledges the right of TransPeshawar Company to reject its Proposal and to cancel the Bidding Process at any time, without incurring any liability, and accepts all the terms and conditions of the Request for Proposals;
5. (name of Service provider), including all Consortium Members, their Affiliates and proposed Subcontractors, have not at any time during the Bidding Process engaged in any Corrupt, Fraudulent, Coercive, Undesirable, or Restrictive Practices, nor have a Conflict of Interest;
6. (name of Service provider) waives any right to and shall not seek or obtain any restraining order, writ of injunction or prohibition or any other form of coercive judicial, quasi-judicial or administrative writ, process or issuance against TransPeshawar Company inconvenient the Bidding Process; and
7. (name of Service provider) acknowledges that TransPeshawar Company is undertaking this Bidding Process in the performance of its functions to ensure the provision of a critical basic necessity and that, therefore, the provision of the Required Services is of paramount public interest and importance and that TransPeshawar Company will suffer serious and irreparable damage on account of any breach by (name of Service provider) of these undertakings, and agree that the breach of these undertakings shall result in (name of Service provider)'s automatic disqualification from the Bidding Process.

For and on behalf of (name of Service provider)

(signature of Authorized Representative)

(name, title and date)

**Schedule 5 Authority to Bid and Designation of Authorized Representative
(partnership/corporation)**

To be submitted by a Service provider which is a partnership or corporation

I, (Corporate Secretary or equivalent officer), hereby depose and state that:

I am a citizen of the (Islamic Republic of Pakistan), of legal age and a resident of (Pakistan);

I am the duly elected (Corporate Secretary or equivalent officer) of (name of Service provider), a (corporation/partnership) organized and existing under and by virtue of the laws of (Pakistan);

At a regular/special meeting of the Board of Directors/Partners of the Firm, held on (date) at (place), in which meeting a quorum was present and acting throughout, the following resolutions were unanimously passed and approved:

1. That (name of Service provider) be, and is, authorized to participate in the Bidding Process and to bid for the provision of the Required Services for TransPeshawar Company;
2. That (name of Representative) be and is hereby appointed as the authorized representative of the Service provider during the Bidding Process, authorized to execute, sign, and receive documents for, and otherwise act in the name of, the Service provider; and
3. That any and all acts done and/or performed by (name of Representative) under and by virtue of this resolution be, as they are hereby, confirmed and ratified.

These resolutions have not been revoked, amended or modified and remain valid and binding on the Service provider;

That the above resolutions are in accordance with the records of the Service provider.

For and on behalf of (name of Service provider)

(signature of Corporate Secretary or equivalent officer)

(name, title and date)

**Schedule 6 Authority to Bid and Designation of Authorized Representative
(Consortium)**

For a Service provider which is a Consortium, to be submitted by each Consortium Member

I, (Corporate Secretary or equivalent officer), hereby depose and state that:

I am a citizen of the (Islamic Republic of Pakistan), of legal age and a resident of (Pakistan);

I am the duly elected (Corporate Secretary or equivalent officer) of (name of Consortium Member), a (corporation/partnership) organized and existing under and by virtue of the laws of (Pakistan);

At a regular/special meeting of the Board of Directors/Partners of the Firm, held on (date) at (place), in which meeting a quorum was present and acting throughout, the following Resolutions were unanimously passed and approved:

1. That the Firm be, and is, through a Consortium consisting of the following Members and their respective nationalities and percentage interests in the Consortium, authorized to participate in the Bidding Process and bid for the provision of the Required Services for TransPeshawar Company;

Name of Consortium Member	Nationality	% Interest

(Insert rows as necessary)

2. That (name of Authorized Representative) be and is hereby appointed as the authorized representative of the Firm, authorized to execute, sign, and receive documents for, and otherwise act in the name of, the Firm;
3. That the Firm in the exercise of its interest in the Consortium hereby authorizes (name of Authorized Representative) as representative of the Consortium during the Bidding Process for the provision of the Required Services, and for such purpose shall have the authority to execute, sign and receive documents for, and otherwise act in the name of the Consortium; and
4. That any and all acts done and/or performed by (name of Authorized Representative) under and by virtue of this resolution be, as they are hereby, confirmed and ratified.

These resolutions have not been revoked, amended or modified and remain valid and binding on the Firm;

That the above resolutions are in accordance with the records of the Firm.

For and on behalf of (*name of the Firm*)

(*signature of Corporate Secretary or equivalent officer*)

(*name, date and title*)

Schedule 7 Bid Bond

To be submitted by the Bank providing the Bid Bond

Whereas (name of Service provider) has submitted a Proposal for the provision of the Required Services for TransPeshawar Company,

I, (name), (citizenship), of legal age, with office address at (address), hereby declare for and on behalf of (name of Bank) that (name of Bank) is bound to TransPeshawar Company in the sum of one million Pakistani Rupees (PKR 1,000,000) for payment to TransPeshawar Company.

(name of Bank) undertakes to pay to TransPeshawar Company up to the above amount upon receipt of its first written demand, without TransPeshawar Company having to substantiate its demand, provided that in its demand TransPeshawar Company will note that the amount claimed by it is due because (name of Service provider) has violated one of the conditions stated in the Request for Proposals.

This Bid Bond will expire, (a) if the Service provider is a Winning Service provider, upon the submission of Performance Security, or (b) if the Service provider is not a Winning Service provider, upon the earlier of (i) seven (7) days after submission of Performance Security by successful Service providers and (ii) thirty (30) days after the expiry date of the Service provider's Proposal.

Any demand for payment under this guarantee must be received by (name of Bank) on or before the date of expiry of the Bid Bond.

For and on behalf of (name of Bank)

(signature of Corporate Secretary or equivalent officer)

(name, title and date)

Schedule 8 Key Personnel

To be submitted by the Service provider for each Key Personnel (one per position only)

Name	
Employer	
Position	
Nationality	
Date of birth	

Key Experience

Employer	
Position	
Start date	
End date	
Description of projects undertaken	

(Insert tables as necessary)

Educational Background

College degree:	School:	Year graduated:
Graduate degree:	School:	Year graduated:

For and on behalf of (*name of Service provider*)

(*signature of Authorized Representative*)

(*name, title and date*)

Schedule 9 Financial Offer

To be submitted by the Service provider

I, (name), (citizenship), of legal age, with office address at (address), as the Authorized Representative of (name of Service provider), hereby declare for and on behalf of (name of Service provider) that:

1. (name of Service provider) has examined the information provided in the Request for Proposals (including annexures) and the Service Agreement;
2. (name of Service provider) has examined the specifications of diesel buses and made all due diligence in estimation of all operation and maintenance costs of the system envisioned under the Agreement;
3. (name of Service provider) has examined the routes and made all due diligence in estimation of passenger revenue of the system envisioned under the Agreement;
4. (name of Service provider) hereby submits its Financial Proposal, which includes cost of all services mentioned in RFP, Service Agreement and its attachment (Annexures), which shall remain valid and binding upon (name of Service provider) for a period of one hundred eighty (180) days from the Proposal Submission Date; and
5. The monthly revenue offered by (name of Service provider) to the TransPeshawar is of an amount of (integer amount in words) Pakistani Rupees (PKR) as follows:-

Financial Quote	Amount in Pakistani Rupees in words (Amount in integer)
Monthly revenue offered by the Service Provider/ Operator to TransPeshawar including cost of income tax for provision of all services mentioned in RFP/ Contract including its attachments	

For and on behalf of (name of Service provider)

(signature of Authorized Representative)

(name, title and date)

Schedule 10 Affidavit of Integrity Pact

**DECLARATION OF FEES, COMMISSIONS AND BROKERAGE ETC. PAYABLE BY THE
SUPPLIERS/CONTRACTORS OF GOODS, SERVICES & WORKS**

[Name of service provider/operator] hereby declares its intention not to obtain or induce the procurement of any contract, right, interest, privilege or other obligation or benefit from Government of KPK (GoKPK) or any administrative subdivision or agency thereof or any other entity owned or controlled by it (GoKPK) through any corrupt business practice.

Without limiting the generality of the foregoing, [Name of service provider/operator] represents and warrants that it has fully declared the brokerage, commission, fees etc. paid or payable to anyone and not given or agreed to give and shall not give or agree to give to anyone within or outside Pakistan either directly or indirectly through any natural or juridical person, including its affiliate, agent, associate, broker, consultant, director, promoter, shareholder, sponsor or subsidiary, any commission, gratification, bribe, finder's fee or kickback, whether described as consultation fee or otherwise, with the object of obtaining or including the procurement of a contract, right, interest, privilege or other obligation or benefit in whatsoever form from GoKPK, except that which has been expressly declared pursuant hereto.

[Name of service provider/operator] certifies that it has made and will make full disclosure of all agreements and arrangements with all persons in respect of or related to the transaction with GoKPK and has not taken any action or will not take any action to circumvent the above declaration, representation or warranty.

[Name of service provider/operator] accepts full responsibility and strict liability for making any false declaration, not making full disclosure, misrepresenting facts or taking any action likely to defeat the purpose of this declaration, representation and warranty. It agrees that any contract, right, interest, privilege or other obligation or benefit obtained or procured as aforesaid shall, without prejudice to any other right and remedies available to GoKPK under any law, contract or other instrument, be voidable at the option of GoKPK.

Notwithstanding any rights and remedies exercised by GoKPK in this regard, [Name of service provider/operator] agrees to indemnify GoKPK for any loss or damage incurred by it on account of its corrupt business practices and further pay compensation to GoKPK in an amount equivalent to ten times the sum of any commission, gratification, bribe, finder's fee or kickback given by [Name of service provider/operator] as aforesaid for the purpose of obtaining or inducing the procurement of any contract, right, interest, privilege or other obligation or benefit in whatsoever form from GoKPK.

Signature & Stamp

Subscribed and sworn to me this _____ day of _____ 2018

**VEHICLE SERVICE PROVIDER AGREEMENT
FOR OPERATIONS AND MAINTENANCE OF
PINK BUSES IN MARDAN**

between

TransPeshawar Company

and

[service provider]

Date: 20 December 2018

CONTENTS

PART A - GENERAL	1
1. Preliminary Matters	1
2. Appointment of Service provider.....	2
3. Performance Guarantee	2
4. Payment for Services	3
5. Tax.....	3
PART B - THE VEHICLES	3
6. The Vehicles	3
7. Delivery, Care and Ownership of the Vehicles.....	3
PART C - SERVICE PROVIDER RESPONSIBILITIES.....	4
8. General Obligations – Vehicles and Operations	4
9. Operations of the Vehicle Operating Company.....	4
10. Operating Licenses	5
11. <i>Deleted Intentionally</i>	5
12. Drivers.....	5
13. Conductors/ Collectors	6
14. Co-operation with Other Contractors	6
15. Equipment on Vehicles.....	6
16. Employment	7
17. Uniforms.....	7
18. Image and Marketing.....	7
19. Monitoring of the Services	7
20. Incident Reporting	7
21. Other responsibilities.....	8
PART D - MAINTENANCE OF VEHICLES.....	8
22. General Obligations.....	8
23. Maintenance.....	8
24. Spare Parts	9
25. Tools and equipment.....	9
26. Fuel stocks.....	9
PART E - AUTHORISED REPRESENTATIVES, PROTOCOLS AND SERVICES NOTICES	9

27. Authorised Representative	9
28. Service Notices, Protocols and Amendments	9
PART F – LIQUIDATED DAMAGES	10
29. Liquidated Damages	10
PART G – WARRANTIES AND CHANGE IN OWNERSHIP	11
30. Warranties, Undertakings and Indemnities	11
31. Deleted Intentionally	13
PART H - FORCE MAJEURE, NECESSARY ACTION, BREACH, TERMINATION AND DISPUTE RESOLUTION	13
32. Force Majeure	13
33. Step-in and Necessary Action	14
34. Breach and Termination	14
35. Dispute resolution.....	16
PART I - MISCELLANEOUS MATTERS	17
36. Hazardous Substances	17
37. Intellectual Property.....	17
38. Insurance	17
39. Restricted Companies	17
40. System stability	18
PART J - FINAL PROVISIONS	18
41. Addresses and notices	18
42. Change in Law	19
43. Remedies.....	19
44. Confidentiality.....	19
45. Severance	20
46. No agency	20
47. Corruption and Fraud	20
48. Entire Agreement	20
49. No stipulation for the benefit of a third person	20
50. No representations	20
51. Amendment.....	20
52. Indulgences.....	21
53. General co-operation.....	21

54.	Governing law	21
55.	Language	21
56.	Independent advice	21
57.	Good faith.....	21
58.	Survival of rights, duties and obligations.....	21
59.	Assignment	22
60.	Waiver	22
61.	Costs.....	22
ANNEX A		1
DEFINITIONS AND INTERPRETATION		1
1.	Definitions	2
2.	Interpretation	7

THIS VEHICLE SERVICE PROVIDER AGREEMENT (the “**Agreement**”) is made on [.....]
2018

BETWEEN

1. **TRANSPESHAWAR (THE URBAN MOBILITY COMPANY)**, a company incorporated under section 42 with Security Exchange Commission of Pakistan on February 09, 2017 with company registration no.0105691 and having registered office at Ali Tower, Second Floor, University Road, Peshawar, KPK, Pakistan (“**Employer**”); and
2. **<Insert name of the Company/Partnership/Individual>**, a company/partnership/individual incorporated in [.....], with company registration no. [.....] and whose registered address is at [.....] (the “**Service provider**”).

Employer and the Service provider are individually referred to herein as a “**Party**” and collectively as the “**Parties**”.

WHEREAS:

- A. Employer is a corporate entity established by the Government of Khyber Pakhtunkhwa, Pakistan responsible for the Operations and Maintenance of Pink buses in Mardan.
- B. Employer intends to enter into agreement with Service provider (selected through a competitive bidding process) who will provide operation and maintenance of the Vehicles as part of the Project.
- C. The Service provider is a company or other legal entity which is entering into and performing this Agreement.
- D. Employer wishes to appoint the Service provider on a non-exclusive basis to provide the Services and the Service provider wishes to accept such appointment and carry out the Services, in accordance with the terms and conditions of this Agreement.

NOW THE AGREEMENT PROVIDES:

PART A - GENERAL

1. Preliminary Matters

1.1 Definitions and Interpretation

- 1.1.1 The defined words and expressions set out in Clause 1 of Annex A [*Definitions and Interpretation*] hereof and the provisions relating to the construction and interpretation of the Agreement set out in Clause 2 of Annex A [*Definitions and Interpretation*] hereof shall apply to the Agreement.
- 1.1.2 In the event of any inconsistency between the provisions of the body of this Agreement and the Annexes, or between any of the Annexes, the conflict shall be resolved according to the following descending order of priority:
 - (a) the body of this Agreement, including Annex A;
 - (b) Annex B [Operational Specifications Schedule];
 - (c) Annex C [Performance Guarantee], and
 - (d) The RFP and Proposal of service provider

1.2 Effect of this Agreement

- 1.2.1 The Parties hereby agree that this Agreement shall immediately be binding on them as of the Effective Date.

1.3 Conditions Precedent

1.3.1 Employer shall issue a Service Notice indicating the date upon which all the Conditions Precedent have been fully satisfied (and/or waived as applicable) and otherwise when the Services are to commence.

1.3.2 The Conditions Precedent that are required to be satisfied are as follows:

- (e) the Service provider has provided to Employer the Performance Guarantee in accordance with clause 2.2.2; and

2. Appointment of Service provider

2.1 Appointment

2.1.1 Employer's signing this Agreement shall indicate its appointment of the Service provider to provide the Services. Such appointment shall only be effective as of the Effective Date.

2.1.2 The Service provider hereby accepts the appointment by Employer and agrees to provide the Services in accordance with the terms and conditions of this Agreement.

2.2 Commencement of the Services and Term of Contract

2.2.1 The Service provider shall provide the Services from the Commencement Date until the Termination Date.

2.2.2 Unless this Agreement is earlier terminated, the Service provider shall continuously provide the Services contemplated under this Agreement (as may be amended pursuant to its terms) for a term of three years (extendable on performance basis) commencing from the commencement date. The Employer reserve the right to cancel the term of Contract anytime during the term subject to violation of the terms and conditions contained in this agreement. The Contract can be extended upto eight (08) years subject to:-

- i) Satisfactory performance of the Contract, and / or
- ii) If Employer decided to increase minimum travelled kilometres by two times then employer will give first right of refusal to service provider and service provider refuse to increase.
- iii) If major changes are not required in the contract by the Employer.

3. Performance Guarantee

3.1 The Service provider shall ensure that it maintains with Employer a valid and enforceable Performance Guarantee until the Contractor has fulfilled all its obligations under the Agreement. The Service provider shall have delivered to Employer as a Condition Precedent the duly executed Performance Guarantee in the form attached hereto as Annex C and in the amount of PKR 5,000,000 (Rupees Five Million). The Performance Guarantee shall have a term of one year and shall be renewed or replaced no later than thirty (30) days before its expiry.

3.2 The Performance Guarantee shall be issued by a Scheduled Bank in Pakistan.

3.3 Subject to the fulfilment by the Service provider of all of its obligations under this Agreement, the Performance Guarantee shall be released by Employer within thirty (30) days after the Termination Date.

3.4 All fees, taxes and expenses associated with preparing, providing, issuing, extending, replacing, replenishing or stamping (if applicable) of the Performance Guarantee shall be borne by the Service provider.

4. Payment for Services

- 4.1 Payment by the service provider will be transferred to the designated bank account of the Employer in advance. Service Provider will submit deposit slip one week before start of the operation month.
- 4.2 Employer reserve the right to deduct/ liquidate the amount from Performance Security partially, if the monthly payments are not deposited within prescribed time.

5. Tax

- 5.1 To the extent that the Services or any additional activities and/or services offered by the Service provider pursuant to this Agreement are taxable, the Service provider agrees to bear all Applicable taxes, charges, duties and/or tariffs by itself (including Sales Tax on Services) and, upon request from Employer, provide proof that such obligations have been satisfied in full.
- 5.2 The Employer shall be responsible for annual Token taxes of buses.

PART B - THE VEHICLES

6. The Vehicles

6.1 The Fleet

- 6.1.1 Fleet of Seven (07) buses will be provided by Employer.
- 6.1.2 The fleet shall be delivered to the Service provider in Peshawar within seven (07) days of the Commencement Date or at such other time and place agreed between the Parties. The Operator shall start operations within seven (7) days after delivery.
- 6.1.3 For the duration of this Agreement, unless agreed otherwise in writing by the Parties, the Service provider shall use the Vehicles solely for the provision of the Services in accordance with this Agreement.
- 6.1.4 The Service provider shall be a lessee of the Vehicles and shall have the rights and obligations of a lessee to possess and use the Vehicles solely for the purposes expressly provided for in this Agreement and/or agreed in writing between the Parties.
- 6.1.5 Legal title and ownership of the delivered Vehicles (including all associated tools and equipment) shall remain with TPC for eight years. The legal title and ownership will be transferred to the Operator pursuant after satisfactory performance of eight (08) years. The Operator shall be a lessee of the Vehicles for eight (08) years and shall have the rights and obligations of a lessee to possess and use the Vehicles solely for the purposes expressly provided for in this Agreement and/or agreed in writing between the Parties.
- 6.1.6 TPC agrees to complete all necessary formalities and execute all documents to effect the legal transfer of title, interest and ownership of the Vehicles to the Operator after eight (08) years.
- 6.1.7 The Service provider shall not create or allow the creation of any encumbrance in any manner of any or all of the Vehicles without the prior written consent of Employer.

7. Delivery, Care and Ownership of the Vehicles

- 7.1 Employer shall deliver or procure the delivery of the Vehicles allocated to the Service provider on the relevant Vehicle Delivery Date(s) (tentatively) and the Service provider shall be obliged to accept such delivery in accordance with this Agreement.

- 7.2 At the time of delivery of the Vehicles, the Service provider and Employer shall jointly carry out an inspection of the Vehicles delivered to the Service provider. The state and condition of each Vehicle shall be recorded in writing and that writing signed by the Service provider and Employer.
- 7.3 The Vehicles shall be properly maintained by the Service provider in accordance with the manufacturer's standards and/or requirements.
- 7.4 Employer shall be entitled to conduct unscheduled inspections of each Vehicle to ensure that it continues to be in compliance with the Operational Specifications Schedule and in satisfactory operational condition (fair wear and tear excluded). If any Vehicle is found not to be in compliance with the Operational Specifications Schedule or in unsatisfactory condition, Employer shall immediately inform the Service provider and the Service provider shall, within a reasonable time or a time determined by Employer, effect the required repairs/replacement at its own cost.

PART C - SERVICE PROVIDER RESPONSIBILITIES

8. General Obligations – Vehicles and Operations

- 8.1 The Service provider shall operate the Vehicles in accordance with this Agreement (including the Operational Specifications Schedule) and the Applicable Law.
- 8.2 The service provider should ensure that the vehicles be operated only for female's passengers as public transport service and operation of buses on routes specified by Employer. Children up to the height of (0.9) meter should only be allowed to travel on the vehicles.
- 8.3 The Service provider shall ensure that the Vehicles at all times are in compliance with the Operational Specifications Schedule, the requirements of any applicable specifications and the Applicable Law.
- 8.4 The Service provider shall maintain detailed vehicle maintenance and repair records for the duration of this Agreement. Employer shall be entitled to audit such records upon giving the Service provider no less than twenty-four (24) hours' notice. The Service provider shall also provide these records (or any portions thereof) as may be reasonably requested by Employer.
- 8.5 The Service Provider shall be responsible for renewal of Vehicle Fitness Certificate in accordance with Applicable Law.
- 8.6 Unless expressly specified in this Agreement, the Service provider shall solely be responsible for all cost and/or expenses associated with the fit-out, furnishing, administration, office space and/or any and all operational costs associated with its operations until the Termination Date.

9. Operations of the Vehicle Operating Company

- 9.1 The service provider shall maintain schedule as per passenger demand and ensure minimum average travelled kilometre of 40 km per bus per day for public transport passengers on specified route estimated bi-monthly.
- 9.1.1 The Service provider may not refuse to convey a person on a Trip or part thereof unless:
- (a) Passenger is male and above 0.9 meter of height.
 - (b) the passenger Capacity will be exceeded at the time in question; or
 - (c) such person is or becomes violent, offensive, abusive, engages in illegal conduct or represents a threat to other occupants of the Vehicle; or
 - (d) such person refuses to pay the fare or presents an invalidated ticket.

- 9.2 The Service Provider shall ensure services for seven (07) days a week.
- 9.3 Temporary interruptions, delays or deviation from scheduled Trips
- 9.3.1 The cancellation of Trips by the Service provider shall only be permitted if such cancellation is due to:
- (a) unforeseen road closures, public unrest, weather conditions (subject to prior agreement with Employer), vehicle unsafe condition, or any Event of Force Majeure; or
 - (b) immediate danger to life and/or personal injury and/or serious damage to property,
- in which event, Employer and the Service provider shall meet in good faith on an urgent basis, to agree upon the deviation from the Trips to be allowed and the expected date and/or time of recommencement of the Trips, or if the Parties fail to reach agreement within one (1) hour after having met for the first time, Employer's decision shall be final and binding on the Parties.
- 9.4 Skill and care in rendering uninterrupted Services
- 9.4.1 The Service provider shall exercise the highest degree of skill, care and diligence in the provision of the Services to the reasonable satisfaction of Employer.
- 9.4.2 Without limiting the generality of the foregoing, the Service provider shall provide the Services at a standard which would reasonably avoid the incurring of Liquidated Damages as contemplated in the Operational Specifications Schedule.
- 9.4.3 The Service provider acknowledges and accepts that it is imperative for the success of the System that the Services are rendered without interruption or delay and undertakes to do all things reasonably necessary to ensure such uninterrupted, prompt and efficient service.
- 9.5 Compliance with standard operating and control procedures and requirements
- 9.5.1 The Service provider shall at all times comply with any standard operating and control procedures and requirements for the day to day administration, monitoring, control and performance of this Agreement as may be reasonably determined by Employer from time to time and the specific circumstances under which the System operates from time to time, which shall include the Operational Specifications Schedule.
- 9.6 Revenue Collection
- 9.6.1 The Service provider shall be responsible for the collection of passenger revenue and charge the fare as notified by the Government. The Service provider will keep such revenue generated from passengers.
- 10. Operating Licenses**
- 10.1 The Service provider shall maintain the validity of all Operating Licences for the duration of this Agreement and shall ensure that the terms or conditions of such Operating Licenses are not contravened. The operator shall obtain route permit/route licenses required for the operations of buses.
- 11. Deleted Intentionally**
- 12. Drivers**
- 12.1 The Service provider shall hire Drivers with valid PSV license and who are suitably qualified and shall ensure that all Drivers for duration of the Services remain suitably qualified, trained and meet the requirements set out in the Operational Specifications Schedule and any Applicable Laws.

- 12.2 Notwithstanding any Liquidated Damages that may be applied pursuant to this Agreement, in relation hereto, where a Driver operates a Vehicle in contravention of any Applicable Law and/or the requirements of the Operational Specifications Schedule, Employer shall be entitled to demand (and the Service provider shall be obliged to promptly comply with such demand) that such Driver is immediately removed from the Vehicle and replaced with another Driver who is suitably qualified.

13. Conductors/ Collectors

- 13.1 The Service provider shall hire Female conductors/ Collectors in each bus and shall ensure the conductors for duration of Services and shall meet the requirements of the Applicable Laws.
- 13.2 Conductors/ Collectors shall be responsible for the security check of the passengers entering into the buses.
- 13.3 Conductors/ Collectors shall be responsible for issue of fare tickets and collection of fares.

14. Co-operation with Other Contractors

- 14.1 Where interaction between the Service provider and any Other Contractors/Service providers is required in accordance with this Agreement, in practice or in accordance with a Service Notice or Protocol, for the efficient and effective operation of the system, the Service provider shall co-operate with Other Contractors/Service providers and shall take such reasonable steps as may be required to formulate the necessary operating procedures and practices by agreement with Other Contractors, in accordance with the Service Notice or Protocol, as the case may be.
- 14.2 Should the Service provider and Other Contractors fail to reach an agreement as contemplated in clause 14.1, Employer shall be entitled to issue a Protocol to regulate their interaction or make a final determination in the event of a dispute between them, as the case may be.
- 14.3 In any event, notwithstanding the provisions above, Employer shall at all times be entitled to issue Protocols regulating the interaction between the Service provider and Other Contractors/Service providers.
- 14.4 The Service provider shall be obliged to follow such Protocols, which, in the event of a conflict, shall supersede any agreement between the Service provider and Other Contractors in accordance with clause 14.1 above.

15. Equipment on Vehicles

- 15.1 The Service provider shall, if required and/or where applicable, take all necessary steps to make the Vehicles available to Employer and its contractors for the purposes of installation, removal or maintenance of any equipment:
- 15.1.1 within twelve (12) hours of Employer or its contractors requesting such access for purposes of maintenance or servicing;
 - 15.1.2 within twenty-four (24) hours of Employer or its contractors requesting such access for purposes of maintenance or servicing of the Vehicles at a location other than a Depot; and
 - 15.1.3 within one (1) hour in emergency situations (subject to traffic conditions and completion of trip) and where the relevant Vehicle is required for the provision of the Services.
- 15.2 Where equipment on a Vehicle which other Contractors are required to maintain and repair malfunctions and results in a Vehicle being removed from the Services, the Service provider shall make such Vehicle available to the relevant Contractor immediately for repair of the aforesaid malfunction.

16. Employment

- 16.1 The Service provider shall recruit and employ all employees necessary to provide the Services, including Drivers, collectors/ conductors, mechanics, washer/cleaner, inspectors and all other administrative and management staff.
- 16.2 The Service provider shall, in recruiting staff to comply with its obligations in accordance with this Agreement, and shall where appropriate, provide any training required (including but not limited to driving, customer service, emergency management and services) to render such persons suitable to provide the Services required under this Agreement.
- 16.3 After consideration of the Service provider's statement and such further information as Employer may request, Employer shall be entitled, in its sole discretion, to waive all or part of any applicable Liquidated Damages under the Operational Specifications Schedule.

17. Uniforms

- 17.1 The Service provider shall ensure that its Employees are appropriately attired in the Uniforms prescribed in the Operational Specifications Schedule (as may be amended from time to time).

18. Image and Marketing

- 18.1 The Service provider shall not use any image, brand name, company name or his parent company name, markings, graphics and/or signage of Employer for any purpose except with the written approval of Employer.
- 18.2 The service provider shall comply with instructions from Employer from time to time regarding branding in terms of the use of graphics, brand name, company name, information, signage, information, and advertising.
- 18.3 Advertising inside and on back side of the buses can be done with the location approved by Employer.
- 18.4 Advertisements on bus shelters can be done by Service Provider with prior approval from Employer.
- 18.5 The Service Provider, with compliance of Clause 18.1, 18.2, 18.3 and 18.4, will keep the revenue generated from advertisements locations specified in this section.

19. Monitoring of the Services

- 19.1 Employer shall be entitled to require regular written reports by the Service provider in such reasonable form, detail and frequency as may be determined by Employer or to call meetings with the Authorised Representative of the Service provider on reasonable notice, for any purposes regarding the performance of the Services and/or the implementation of this Agreement.
- 19.2 An Authorised Representative of Employer shall at all reasonable times be given access to the Vehicles, Stops, Employees and any place where the Services (or any portion thereof) are being performed to satisfy itself as to the Service provider's compliance with its obligations under this Agreement and for purposes of assessing the Service provider's performance against agreed KPIs.

20. Incident Reporting

- 20.1 Should the Service Provider become aware of events or circumstances which have prevented, are preventing or will prevent the Service provider from providing the Services, the Service provider shall immediately after becoming so aware, advise Employer of such events or circumstances and also indicate the manner in which the provision of the Services were, are or are going to be impacted.

- 20.2 In addition to any obligations under Applicable Law, the Service provider shall immediately after its occurrence notify Employer or its Authorised Representative of any accident relating to the Services (whether or not a Vehicle has been involved and including accidents at the Depot) in which persons have been injured or killed.
- 20.3 The Service provider shall be required to report all other incidents as may be further defined by a Protocol, excluding such incidents as described in clause 20.2 above, to Employer in writing within two (2) Business Days of the Service provider becoming aware or where a prudent Service provider should have reasonably become aware of the incident.
- 20.4 The Service provider shall report any acts of vandalism or damage to the Stations to Employer immediately of becoming aware of their occurrence.

21. Other responsibilities

- 21.1 The Service provider shall be responsible for the safe disposal of waste, oil, lubricant or water containing any variation of such lubricant in accordance with the Applicable Law.
- 21.2 The Service provider shall at its own cost comply with all labor, employment, occupational health and safety regulations and standards applicable to the Services.
- 21.3 The Service provider shall be liable for and pay all traffic fines incurred as a result of the use of the Vehicles, as well as any additional Liquidated Damages set out in the Operational Specifications Schedule.
- 21.4 The Service Provider shall be responsible for toll tax, adda fee etc., if any along the route.
- 21.5 Depot for buses will be the responsibility of the Service provider. Employer will provide space for parking of buses in Abdul Wali Khan University (Garden Campus) to facilitate bus operations. However, this shall not be considered as right of service provider or excuse for termination of contract. If parking space is not provided by the employer and the service provider arranged its own space than government will facilitate to declare that space as a terminal.
- 21.6 The Service provider shall clean the buses on regular basis.

PART D - MAINTENANCE OF VEHICLES

22. General Obligations

- 22.1 The Service provider shall, at all times during the term of this Agreement, ensure that all Buses utilised in rendering of the Services are kept in a state of good repair and maintained in accordance with the Vehicle Supplier requirements and/or recommendations and the provisions of this Agreement. Notwithstanding anything to the contrary contained in this Agreement, the Service provider shall:
- 22.1.1 be liable for any damage caused to the Vehicles in accordance with its obligations under this Agreement; and
- 22.1.2 at all times, unless expressly stated otherwise in this Agreement, be responsible for the service, maintenance and upkeep of the Vehicles, during the Contract Period.

23. Maintenance

- 23.1 The Service provider shall at all times be required to service, maintain and repair the Vehicles at its own cost and in strictly in accordance with the specifications, requirement and/or recommendations of the Vehicle Supplier as notified to the Service provider from time to time. The Service provider shall not do anything which has the effect of voiding any warranty provided by a Vehicle Supplier in respect of any of the Vehicles. The Service provider shall do all things required to ensure that Employer does not in any way breach its obligations under the Vehicle Sale Agreement.

- 23.2 The Service provider shall maintain a complete and detailed record of all service, maintenance and/or repairs (including the cost of any such service) for each Vehicle and shall, upon reasonable notice, make such records available to Employer for audit and/or inspection.

24. Spare Parts

- 24.1 The Service provider shall be responsible for the provision of all spare parts required for the performance of the Services.

25. Tools and equipment

- 25.1 The Service provider is required to provide the required tools and equipment to maintain the Vehicles and/or otherwise to provide the Services in accordance with the Operational Specifications Schedule.
- 25.2 To the extent that Employer has agreed to assist the Service provider in providing the tools and equipment, the Service provider shall be responsible for the care and safekeeping of this equipment and shall be required to replace and supplement any missing equipment. All tools and equipment supplied by Employer, if any, shall be the property of Employer and returned to Employer on termination date of this contract agreement.
- 25.3 Upon delivery of any tools and/or equipment from Employer to the Service provider, the Parties shall jointly inspect and record the delivery and acceptance of such tools and/or equipment and the record of such delivery/acceptance must be retained by the Service provider and produced to Employer upon request.

26. Fuel stocks

- 26.1 The Service provider shall be responsible to refuel buses prior to starting a trip. The Service provider shall provide Employer, upon its request, fuel consumption data per Vehicle.
- 25.2 Fuelling cannot be done when passengers are on-board.

PART E - AUTHORISED REPRESENTATIVES, PROTOCOLS AND SERVICES NOTICES

27. Authorised Representative

- 27.1 Employer and the Service provider shall notify each other, by no later than five (5) days after the Effective Date, of the identity and contact details of their Authorised Representatives. Each Party shall be entitled to replace such Authorized Representative by notice to the other Party.
- 27.2 Unless it is stated otherwise in the notice of a Party, a Party's Authorized Representative shall be entitled to bind such Party for any and all purposes connected with this Agreement.
- 27.3 All Service Notices and other notices required under or pursuant to this Agreement, unless expressly stated otherwise in this Agreement (or instructed in writing by the Party to whom notice is to be given) shall be directed to the Authorised Representative of such Party.
- 27.4 Without derogating from the generality of this clause 27, Employer and the Service provider, as the case may be, shall be entitled to appoint further Authorised Representatives for specific matters as detailed in its notification of such Authorized Representative.

28. Service Notices, Protocols and Amendments

- 28.1 Employer shall be entitled to amend Number of buses on routes, Stops and Routes (include addition & deletion of Routes and Stops) (and the allocation of any of the aforementioned, or a Service) or to give notice from time to time, in accordance with clause 28.2. Such amendments shall be subject to the availability of required Vehicles and the provisions of this Agreement in respect of applicable notice periods.
- 28.2 In the event that Employer wishes to amend the items listed in clause 28.1 above, it shall do so by delivery of a Service Notice to the Service provider in which case the following notice periods shall apply:

Amendment	Service Notice Period shall not be less than
Routes, Schedule and/or Stops, where no changes to Operating Licences are required	Seven (7) days
Routes, Schedule and/or Stops where changes to Operating Licences are required	Ten (10) Business Days, provided that the Service provider need not start operation of the amended Schedule, and/or Stop before the Operating Licence is granted

28.3 *Deleted intentionally:*

28.4 Employer shall be entitled to issue reasonable Protocols or amend previously issued Protocols on twenty-four (24) hours' notice to the Service provider in the case of urgent matters and on seven (7) days' notice in respect of all other matters.

28.5 *Deleted intentionally:*

28.6 *Deleted intentionally:*

PART F – LIQUIDATED DAMAGES

29. Liquidated Damages

29.1 Employer shall be entitled to impose Liquidated Damages on the Service provider in accordance with the provisions of this clause 29 and the Operational Specifications Schedule for the Service provider's failure to achieve certain KPIs as indicated in the Operational Specifications Schedule.

29.2 The Parties agree that the amounts specified in this clause 29 and the Operational Specifications Schedule for the Service provider's failure to achieve certain KPIs represent the likely loss to Employer as a result of any failure of the Service provider to meet the KPIs and are reasonable and constitute liquidated damages and not a penalty. The Service provider further waives, to the extent permitted by Applicable Law, any defence as to the validity and quantum of Liquidated Damages set out in this Agreement on the grounds that such Liquidated Damages are void as penalties or otherwise.

29.3 Employer shall be entitled to conduct audits of the Service provider's operations at any time without notice in order to ensure the continued compliance with this Agreement and that the Service provider continues to achieve the various indicated KPIs. Such audits may be conducted in relation to the Vehicles, the parking space, Stops, Service provider's staff, Service provider's offices (including service and performance records) and any other place where any element of the Service is being performed.

29.4 To the extent that Employer discovered an instance of the Service provider's failure to achieve a particular KPI, Employer shall notify the Service provider with details of the particular KPI, the details of the failure and the applicable Liquidated Damages as indicated in the Operational Specification Schedule. Employer may at its discretion specify period and type of certain failure which should be cured/rectified in specific period.

29.5 If Liquidated Damages are imposed, then Employer shall be entitled to withhold and/or deduct the imposed amounts from the Service provider. Employer shall be entitled to, in its sole discretion, waive (whether wholly or partially) any Liquidated Damages that is incurred by the Service provider.

29.6 The maximum amount of Liquidated Damages that may be imposed on the Service provider in any given month is as indicated in the Operational Specification Schedule.

PART G – WARRANTIES AND CHANGE IN OWNERSHIP

30. Warranties, Undertakings and Indemnities

30.1 Service provider Warranties

- 30.1.1 The Service provider acknowledges that Employer has entered into this Agreement relying on the strength of the warranties given to Employer by the Service provider and that the warranties are given with the intention of inducing Employer (which has been so induced) to enter into this Agreement on the basis that such warranties are and shall be correct for the duration of this Agreement.
- 30.1.2 Each Service provider Warranty shall be a separate Warranty and in no way limited or restricted by any reference to, or inference from, the terms of any other Warranty or by any other provision in this Agreement.
- 30.1.3 The Service provider accordingly warrants and undertakes that:
- (a) it is properly constituted and incorporated in accordance with the Applicable Law;
 - (b) it has the power, authority and legal capacity to enter into and exercise its rights and perform its obligations under this Agreement;
 - (c) it has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
 - (d) the obligations expressed to be assumed by the Service provider under this Agreement are legal, valid, binding and enforceable to the extent permitted by Applicable Law;
 - (e) it will hold, in cash, an amount equivalent to the acquisition cost of all required tools, equipment, furniture and other basic business materials required for the operating of its business, plus the necessary working capital required during the pre-operational and initial operational period;
 - (f) it is and will be in compliance with all Applicable Laws;
 - (g) the Service provider and its shareholders, are not subject to any obligation, non-compliance with which is likely to cause a material breach of this Agreement;
 - (h) no claim is presently being assessed and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of the knowledge of the Service provider, pending or threatened against it (including its shareholders) or any of its assets which will or might have a material adverse effect on the ability of the Service provider to perform its obligations under this Agreement;
 - (i) it is not the subject of any other obligation, compliance with which will or is likely to have a material adverse effect on the ability of the Service provider to perform its obligations under this Agreement;
 - (j) no proceedings or other steps have been taken and not discharged (nor threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues;
 - (k) all information disclosed by or on behalf of the Service provider to Employer is true, complete and accurate in all material respects and the Service provider is not aware of any material facts or circumstances not disclosed to Employer which would, if disclosed, be likely to have an adverse effect on Employer's decision (acting reasonably) to award this Agreement to the Service provider;

- (l) it is not in breach of the provisions relating to Restricted Companies as set out in this Agreement; and
- (m) all insurance premiums in respect of insurance obligations placed on the Service provider in accordance with this Agreement have been timely paid and none are in arrears.

30.2 Service provider Undertakings

The Service provider undertakes with Employer that:

- 30.2.1 it will give Employer immediate notice upon becoming aware that any judicial or court proceedings, mediation, litigation, arbitration, administrative or adjudication by or against the Service provider before any court or Regulatory Authority may be threatened or pending;
- 30.2.2 it will not cease to be lawfully registered in Islamic Republic of Pakistan or transfer in whole or in part its undertaking, business or trade outside the country;
- 30.2.3 it shall not change or cease its business or start any other business which is materially different from that to be carried on by it under this Agreement;
- 30.2.4 it shall immediately notify Employer of any discussions and/or negotiations that may result in a change in the ownership structure of the Service provider or its ultimate parent company (if applicable).

30.3 Employer and Service Provider Indemnities

- 30.3.1 The Service provider shall take steps to ensure the safety of property and all persons while they are being conveyed in the buses or while they are in, entering or leaving premises under the control of the Service provider. In particular, the Service provider shall be responsible for Passengers whilst they are on a Vehicle and for Passengers whilst they are embarking on or disembarking off such Vehicle.
- 30.3.2 The Service provider shall be liable for any loss or damages resulting from damage to property including Employer property, or the death of or injury to any person which is caused directly or indirectly by an intentional or negligent act or omission of the Service provider, its agents, Employees or sub-contractors.
- 30.3.3 The Service provider indemnifies and agrees to hold Employer harmless against all claims, demands, suits, proceedings, judgments, damages, loss, costs, charges, fines, penalties, taxes and expenses, of whatsoever nature incurred by either of the Parties, or by any third party, in consequence of a failure by the Service provider to comply with the terms of this Agreement or any Applicable Law.
- 30.3.4 Nothing contained in this clause 30.3 shall be deemed to render the Service provider liable for, or require it to indemnify Employer against, any compensation or damages with respect to injuries or damage to persons or property resulting from any negligent act or omission of Employer or its agents or employees in respect of any claims, demands, lawsuits, damages, costs, charges and expenses in respect thereof or pertaining thereto and each Party hereby indemnifies the other against any claims, demands, lawsuits, damages, costs, charges and expenses incurred by such other Party in consequence of the negligent acts or omissions of the other Party's agents or employees.

30.4 All warranties, representations, undertakings, indemnities and other obligations made, given or undertaken by the Service provider in this Agreement are cumulative and none shall be given a limited construction by reference to any other.

31. Deleted Intentionally

PART H - FORCE MAJEURE, NECESSARY ACTION, BREACH, TERMINATION AND DISPUTE RESOLUTION

32. Force Majeure

- 32.1 If either Party is prevented in whole or in part from discharging its obligations pursuant to this Agreement as a result of an Event of Force Majeure, such Party shall, as soon as reasonably practicable, notify the other Party accordingly. The aforementioned notice shall contain the following information:
- 32.1.1 the obligations which are affected and the extent to which the relevant Party cannot perform those obligations;
 - 32.1.2 a detailed description of the Event of Force Majeure;
 - 32.1.3 an estimate of the time period which the Event of Force Majeure is envisaged to continue; and
 - 32.1.4 the measures proposed to be adopted to remedy or minimise the effects of and costs arising from the Event of Force Majeure. If the Service provider is the Party prevented from discharging its obligations as a result of the Event of Force Majeure and Employer is of the opinion that the measures proposed are not adequate, it shall advise the Service provider by Service Notice. Such Service Notice may propose alternate or additional measures which in the opinion of Employer may curtail the Event of Force Majeure and/or the costs arising therefrom. Notwithstanding the provisions of this clause 32.1.4, the Service provider shall be obliged to take all proactive steps as may be reasonably possible in anticipation of Events of Force Majeure so as to enable the Service provider to mitigate the financial effects thereof, including but not limited to, the entering into of appropriate contractual arrangements with its Employees.
- 32.2 The Party prevented from discharging its obligations pursuant to this Agreement as a result of an Event of Force Majeure shall:
- 32.2.1 use all reasonable endeavours to remedy or minimise the effects of the Event of Force Majeure; and
 - 32.2.2 take all reasonable and necessary steps available to it as contemplated in clause 32.1.4 to mitigate any loss suffered by such Party or the other Party or any passengers as a result of that Party's failure to discharge its obligations pursuant to this Agreement.
- 32.3 In the event that an Event of Force Majeure affects the Service provider's ability to perform any of its obligations under this Agreement and to the extent that the Services, or any part thereof, are suspended, the Service provider shall not be entitled to claim payment from Employer for such suspended Services, or any additional costs incurred by the Service provider as a result of the Event of Force Majeure or in relation to any steps taken by the Service provider in mitigating the effects of the Event of Force Majeure.
- 32.4 In the event that the Service provider is the Party affected by an Event of Force Majeure, Employer may, in response to the notice issued by the Service provider in accordance with clause 32.1, issue a Service Notice to the Service provider indicating any part of the Services which should nonetheless be performed by the Service provider for the period during which the Event of Force Majeure subsists.
- 32.5 If an Event of Force Majeure no longer prevents the Service provider from performing its obligations under this Agreement, the Service provider shall be entitled to a reasonable period, taking into account the extent to which it has wound down its operations during the period of Force Majeure, to re-establish the Services in compliance with its obligations under this Agreement.

- 32.6 If an Event of Force Majeure continues uninterrupted for more than one hundred eighty (180) days and continues to prevent a Party from performing all of its obligations under this Agreement, either Party shall be entitled to terminate this Agreement upon fourteen (14) days' notice to the other Party, provided that before doing so the Parties shall first have met to find a mutually satisfactory solution for remedying such Event of Force Majeure and no Party shall terminate this Agreement unless the Parties are unable to agree on a solution.
- 32.7 Neither Party shall have any liability to the other in respect of the termination of this Agreement as a consequence of an Event of Force Majeure or as a result of any failure to carry out any of its obligations hereunder resulting from an Event of Force Majeure.

33. Step-in and Necessary Action

- 33.1 If the Service provider commits a material breach of this Agreement to such an extent that Employer is compelled to step in in order to ensure that the Services or any part thereof are continued seamlessly or if Employer reasonably believes that the Service provider is unable to perform the Services or a substantial part thereof in the manner contemplated in this Agreement, Employer shall be entitled to give the Service provider a notice.
- 33.2 The notice pursuant to clause 33.1 shall set out:
- 33.2.1 details of the material breach or reasons for Employer's belief (and shall refer to previous relevant notifications, if any) that the Service provider is or will be unable to provide the Services or any part thereof;
 - 33.2.2 the remedial action which the Service provider should take within the period specified by Employer; and
 - 33.2.3 the date upon which Employer intends to commence the Necessary Action in the event that the Service provider fails to take remedial action.
- 33.3 In the event that the Service provider fails to take such remedial action within the period specified in Employer's notice, Employer shall be entitled to proceed to take the Necessary Action at the Service provider's cost and expense, and may, in its discretion, liquidate partially or fully the Performance Guarantee.
- 33.4 *Deleted intentionally.*
- 33.5 *Deleted intentionally.*

34. Breach and Termination

- 34.1 If the Service provider commits a material breach of this Agreement and fails to remedy the breach within ten (10) Business Days after receipt from Employer of a notice calling upon it to do so or such other time as specified by Employer then Employer shall be entitled, in addition to and without prejudice to any other right it may have under Applicable Law or in accordance with this Agreement, to seek specific performance of this Agreement or to terminate this Agreement forthwith on notice to the Service provider and in either event, to recover such damages as it may have sustained.
- 34.2 For purposes of this Agreement, a material breach shall include but not be limited to the foregoing if the Service provider:
- 34.2.1 fails to provide or maintain the Performance Guarantee (in case of extension); or
 - 34.2.2 at any time, is Financially Distressed; or
 - 34.2.3 in the opinion of Employer, commits a Prohibited Act; or
 - 34.2.4 goes into liquidation, whether provisionally or finally (other than a voluntary liquidation for the purpose of amalgamation or reconstruction to which Employer has given its prior written consent); or
 - 34.2.5 has judgment of a material nature taken against it likely to affect the Service provider's status as a going concern and fails to satisfy or apply to have the same set aside within seven (7) days of becoming aware thereof; or

- 34.2.6 delegates, cedes or sub-contracts this Agreement or part thereof in contravention of the provisions hereof without having obtained Employer's prior written consent; or
 - 34.2.7 Average daily travelled kilometres for passenger service are less than forty (40) kilometres reported through tracking system installed by employer.
 - 34.2.8 contravenes the provisions of Operational Specifications Schedule; or
 - 34.2.9 fails to obtain or maintain as required any of the necessary Operating Licences/permits to be used in the rendering of the Services or has such necessary Operating Licences withdrawn, cancelled, suspended or revoked; or
 - 34.2.10 acts or attempts to act in a fraudulent or otherwise illegal manner in obtaining or executing a contract with any government department, provincial administration, municipality, public body, company or person; or
 - 34.2.11 violates or attempts to violate any Applicable Law or otherwise commits any criminal act; or
 - 34.2.12 enters into any agreement or arrangement, whether legally binding or not, with any other person, firm or company to refrain from formally responding to Employer's calls for proposals or the entering into of any negotiations with Employer in relation to this Agreement; or
 - 34.2.13 Abandons, suspend services or otherwise repudiates the Services or any of its obligations under this Agreement; or
 - 34.2.14 consistently fails to observe any provision of this Agreement or the Operational Specifications Schedule (despite being given notice in relation thereto), whether or not Liquidated Damages have been imposed, with the result that the Services may be regarded by Employer as being materially defective; or
 - 34.2.15 incurs Liquidated Damages equal to or exceeding the maximum amount of Liquidated Damages as indicated in the Operational Specifications Schedule consecutively for few months.
 - 34.2.16 commits a breach of any payment obligation in accordance with this Agreement and fails without justification to make payment within thirty (30) Business Days after receipt from the employer of a notice calling upon it to do so,
- 34.3 If Employer:
- 34.3.1 commits a material breach of this Agreement (other than a breach of payment obligations) and fails to remedy the breach within ten (10) Business Days after receipt from the Service provider calling upon it to do so; or
- then the Service provider shall be entitled, in addition to and without prejudice to any other right it may have under Applicable Law or under the terms of this Agreement, to seek specific performance of the terms of this Agreement or to terminate this Agreement upon sixty (60) days' notice to Employer and in either event, to recover such costs, losses and damages as it may have sustained.
- 34.4 In the event of termination of this Agreement:
- 34.4.1 Employer shall be entitled to immediately take possession of all Vehicles and the Parking space and the Service provider shall be required to surrender its Operating Licences/permits and other assets required for the performance of the Services to Employer; and
 - 34.4.2 Employer may immediately appoint auditors to check and verify all relevant books, records and other data of the Service provider and the Service provider shall give full cooperation in that regard and make all such information available to Employer on request.

35. Dispute resolution

35.1 Disputes

- 35.1.1 For the purposes of this clause 35, the term “dispute” shall be interpreted in its widest sense and shall include any dispute or difference in connection with or in respect of the conclusion or existence of this Agreement, the carrying into effect of this Agreement, the interpretation or application of the provisions of this Agreement, the Parties’ respective rights and obligations in accordance with and arising out of this Agreement or the validity, enforceability, rectification, termination or cancellation, whether in whole or in part, of this Agreement.
- 35.1.2 Save as otherwise provided for in this Agreement, any dispute between the Parties arising in connection with this Agreement shall be resolved in accordance with the provisions of this clause 35.

35.2 Resolution by Chief Executives

- 35.2.1 Any dispute arising in connection with this Agreement may be referred by either Party to the Chief Executive of the Service provider and the Chief Executive of Employer (or such other senior executives as the relevant Parties may determine) who shall attempt to resolve the matter within ten (10) Business Days of the dispute being so referred to them or within such other time as may be agreed between the Parties.

35.3 Arbitration

- 35.3.1 If the Parties are unable to resolve the dispute pursuant to clause 35.2, either Party shall be entitled to refer a dispute to arbitration in accordance with this clause 35 by notifying the other Party in writing of its intention to do so.
- 35.3.2 The arbitration proceedings shall be carried out under the procedures, rules and regulations of Arbitration Act, 1940 and its successors, and such procedures, rules and regulations shall be deemed to be incorporated into this clause 35.3 by reference. Any such arbitration shall be subject to the Applicable Law.
- 35.3.3 The seat of the arbitration shall be Pakistan and all arbitration hearings shall be held in Peshawar unless otherwise agreed in writing by the Parties.
- 35.3.4 Unless otherwise required by Employer, such arbitration shall be conducted in the English language and the award of any arbitrator or arbitral panel, together with the reasons for the determination, shall be written in the English language.
- 35.3.5 Unless otherwise required by Employer, all evidence, submissions or documents presented at the arbitration in a language other than in the English language shall be accompanied by a simultaneous English language translation thereof, if oral, or if written, a certified English language translation.
- 35.3.6 The arbitrator or arbitral panel shall have full power to open up, review and revise any determinations, decisions or findings in relation to the dispute.
- 35.3.7 The obligations of the Parties shall not be altered by reason of the arbitration being conducted during the term of the Agreement.
- 35.3.8 Any monetary award in any arbitration shall be denominated and payable in PKR.
- 35.3.9 The Parties agree that all interim or final decisions and/or awards of the arbitrator or arbitral panel shall:
 - (a) be binding on the Parties and shall be given effect and implemented forthwith by them; and

- (a) be subject to the confidentiality restrictions in this Agreement and except as provided by agreement between the Parties, may not be publicised or otherwise disclosed provided always that nothing in this clause shall prevent either Party from applying to any court of competent jurisdiction to enforce the award.
- 35.3.10 The Parties hereby expressly agree irrevocably to waive all rights and recourse to appeal or challenge, and neither Party shall request the local courts to open up, revise or review, the final award of the arbitrator or arbitral panel save and except in the specific instances set out in Arbitration Act, 1940.
- 35.3.11 Reference of a dispute to arbitration shall not in any way vitiate nor invalidate the Agreement neither shall it be grounds for the Service provider to cease performing its obligations nor for Employer to terminate the engagement of the Service provider under the Agreement and the Service provider shall proceed with its obligations with all due diligence.

PART I - MISCELLANEOUS MATTERS

36. Hazardous Substances

- 36.1 The Service provider shall ensure that any hazardous materials or equipment used or intended to be used in the provision of the Services are stored safely and in safe keeping in accordance with all Applicable Law, ensure that all such materials are properly and clearly labelled on their containers, promptly inform Employer of all such materials being used or stored and comply with any other reasonable requirement of Employer in respect of such materials and equipment.

37. Intellectual Property

- 37.1 The Service provider acknowledges that it shall not acquire any right, title or interest in or to the Intellectual Property of Employer and that all Intellectual Property developed pursuant to this Agreement (other than Intellectual Property belonging to the Service provider or any third party) shall vest exclusively in Employer, save to the extent that the Parties otherwise agree in writing.
- 37.2 Should the Service provider acquire title to any Intellectual Property of Employer or which is developed pursuant to this Agreement by operation of law (thus, where Employer in effect pays for its development) such Intellectual Property (other than Intellectual Property belonging to the Service provider or any third party) shall be deemed to have been assigned by the Service provider to Employer.

38. Insurance

- 38.1 The parties agree to, at their own costs, establish and maintain no less than the minimum types and levels of insurances that are required by Applicable Law.
- 38.2 The Service provider shall be liable for any claims for passenger liability or public liability which are repudiated by Employer's insurer's due to any act or omission of the Service provider, its directors, agents or Employees in providing the Services.

39. Restricted Companies

- 39.1 Restricted Companies and/or their shareholders shall not:
 - 39.1.1 be a shareholder in the Service provider;
 - 39.1.2 be subcontractors of the Service provider, or

- 39.1.3 be a party to a partnership, joint venture, consortium, arrangement with the Service provider regarding any other work relating to services provided by the System Control service provider.

40. System stability

- 40.1 The Parties hereby agree to establish a joint task team comprising TPC, the Operator and the Other Operators to develop proposals for combatting piracy and Route invasions.

PART J - FINAL PROVISIONS

41. Addresses and notices

- 41.1 The Parties choose for the purposes of this Agreement the following addresses:
- 41.1.1 Employer: TransPeshawar (The Urban Mobility Company), Ali Tower, Second floor, University Road, Peshawar, Pakistan.
- 41.1.2 The Service provider: [•].
- 41.2 Any legal process to be served on any of the Parties may be served on it at the physical address specified for it in clause 41.1 and it chooses that address for all purposes under this Agreement.
- 41.3 Any notice required by this Agreement to be given in writing shall, if given by telefax, email or cell phone-based short message service ("sms"), be regarded as having been given in writing for purposes of this Agreement, provided that the Parties may only utilise sms notification for operational authorisations in circumstances where operational action is required immediately for example, in the case of emergency Route changes, other changes to operations contemplated in this Agreement due to an emergency, Event Service related changes or such similar urgent operational matters.
- 41.4 Where operational authorisations are required, Employer will issue and log an authorisation number and any relevant notice in accordance with this clause 41 shall quote such authorisation number.
- 41.5 A notice to any of the Parties which is sent by registered post in a correctly addressed envelope to the address specified for it in clause 41.1 shall be deemed to have been received (unless the contrary is proved) within fourteen (14) days from the date it was posted, or which is delivered to the Party by hand at the physical address specified for it in clause 41.1, shall be deemed to have been received on the day of delivery, provided it was delivered to a responsible person during ordinary business hours.
- 41.6 Each notice by telefax to a Party at the telefax number specified for it in accordance with clause 41.1 shall be deemed to have been received (unless the contrary is proved) within four (4) hours of transmission if it is transmitted during normal business hours of the receiving Party or within four (4) hours of the beginning of the next Business Day after it is transmitted, if it is transmitted outside those business hours.
- 41.7 Any notice by email to a Party at the email addresses of its Authorised Representatives shall be deemed to have been received (unless the contrary is proved) within twenty (20) minutes of transmission if transmitted at any time during which the Services are ordinarily rendered and if transmitted outside such time, within ten (10) minutes of recommencement of the rendering of the Services.
- 41.8 Any notice by sms to a Party at the mobile numbers of its Authorised Representatives shall be deemed to have been received (unless the contrary is proved) within twenty (20) minutes of transmission if transmitted at any time during which the Services are ordinarily rendered and if transmitted outside such time, within twenty (20) minutes of recommencement of the rendering of the Services.
- 41.9 Any notice in accordance with this clause 41 given by sms shall be followed by a telefax or email confirming the contents and date of transmission of such sms.

- 41.10 Notwithstanding anything to the contrary in this clause 41, a notice or other communication actually received by any of the Parties (and for which written receipt has been obtained) shall be adequate notice or communication to it notwithstanding that the notice was not sent to or delivered at its chosen address.
- 41.11 Any Party may by a notice to the other Parties change its physical or postal address, telefax number, email address or mobile number for the purposes of this clause 41 to any other physical or postal address, telefax number, email address or mobile number provided that the change shall become effective on the seventh (7th) day after the receipt of the notice.

42. Change in Law

- 42.1 The Service provider acknowledges and agrees that it shall take full risk and responsibility for a Change in Law occurring. Notwithstanding the foregoing, if a Change in Law occurs or is imminent that affects the rights and obligations of the Service provider under this Agreement, the Service provider shall notify Employer within fourteen (14) days of the date of such Change in Law occurring or (if earlier) coming to the attention of the Service provider and the Parties shall discuss the effects of the Change in Law and endeavour to arrive at a resolution.
- 42.2 Any resolution reached between the Parties shall be recorded in writing and such record shall be signed by both Parties. The Service provider acknowledges and agrees that any decision to change the financial accordance with the Agreement or vary the scope of Services as a result of the Change in Law shall be adjusted with mutual consent of the parties.

43. Remedies

- 43.1 No remedy conferred by this Agreement is intended to be exclusive of any other remedy which is otherwise available at law, by statute or otherwise. Each remedy shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law, by statute or otherwise. The election of any one or more remedy by any of the Parties shall not constitute a waiver by such Party of the right to pursue any other remedy.

44. Confidentiality

- 44.1 Each Party shall at all times keep in confidence the Confidential Information of the other Party which it may acquire for the purposes of or in connection with this Agreement (whether prior to or after the Commencement Date) and shall not use or permit the use of such Confidential Information and shall procure that its employees shall not use the Confidential Information, for any other purpose and shall not disclose such Confidential Information to any third party.
- 44.2 Notwithstanding clause 44.1, a Party may disclose the Confidential Information of the other Party to such former Party's employees or Authorised Representatives to the extent that such employees or Authorised Representatives need to know the Confidential Information and shall ensure that such employees or Authorised Representatives are aware of and comply with, the confidentiality obligations contained in this clause 44.
- 44.3 Each Party shall take all such steps as may be reasonably necessary to prevent the Confidential Information of the other Party from falling into the hands of an unauthorised third party.
- 44.4 The Service provider shall not make any comments to the media relating to this Agreement and any related matter nor shall it respond to any queries from the media without the prior written approval of Employer.

45. Severance

- 45.1 In the event that any provision of the Agreement is held by any judicial or other competent authority to be illegal, invalid or unenforceable that provision shall be severed to the extent necessary to make the Agreement enforceable, and it shall not affect or impair the validity, legality or enforceability of any of the other provisions of the Agreement.

46. No agency

- 46.1 No provision of this Agreement shall be construed as constituting an agency, partnership, or joint venture between the Parties and neither Party shall have any express or implied Employer to bind the other Party in any way or to represent the other Party unless specifically provided to the contrary in this Agreement, and, for the avoidance of doubt, this clause 46 shall not affect or otherwise derogate from the obligations and powers of the Service provider in relation to handing over of the Vehicles to other authorised parties as contemplated in this Agreement.
- 46.2 The Service provider is an independent contractor performing the Agreement. The Service provider is not an employee or agent of Employer.

47. Corruption and Fraud

- 47.1 The Service provider warrants that in entering into the Agreement it has not committed any Prohibited Act.
- 47.2 In the event that the Service provider is contacted by a Public Official requesting or suggesting that the Service provider act in a manner which would constitute a Prohibited Act, the Service provider shall immediately provide Employer in writing with full details of the request (including the identity of the Public Official making the request).
- 47.3 Without prejudice to clause 47.2, the Service provider shall ensure that its staff undertaking activities in connection with the Agreement are subject to similar obligations to those set out in this clause 47 and the Service provider shall enforce such obligations.
- 47.4 In the event that the Service provider fails to comply with the requirements of this clause 47 Employer shall be entitled to terminate the Agreement pursuant to clause 34.1.
- 47.5 The Service provider shall sign affidavit of Integrity Pact attached as Schedule 12 in Request for Proposal.

48. Entire Agreement

- 48.1 This Agreement constitutes the entire agreement between the Parties in relation to all matters contained herein, including all understandings, rights, responsibilities, duties and obligations and supersedes all prior arrangements, representations, communications, negotiations, agreements and contracts (whether written or oral) made between or entered into by the Parties with respect thereto prior to the Effective Date. None of the Parties shall have any claim or right of action arising from any undertaking, representation or warranty not included in this Agreement.

49. No stipulation for the benefit of a third person

- 49.1 Save as is expressly provided for in this Agreement, no provision of this Agreement constitutes a stipulation for the benefit of a third person which, if accepted by the person, would bind any Party in favour of that person.

50. No representations

- 50.1 A Party may not rely on any representation which allegedly induced that Party to enter into this Agreement, unless the representation is provided in this Agreement.

51. Amendment

- 51.1 Except as set out elsewhere in this Agreement, no modification, amendment, addendum or variation to the accordance with the Agreement shall be effective or binding, unless it:

- 51.1.1 is made in writing; and
- 51.1.2 expressly sets out the modification, amendment, addendum or variation to the accordance with the Agreement; and
- 51.1.3 refers to the Agreement; and
- 51.1.4 is signed and dated by a representative of each Party.

52. Indulgences

- 52.1 The grant of any indulgence, extension of time or relaxation of any provision by a Party under this Agreement shall not constitute a waiver of any right by the grantor or prevent or adversely affect the exercise by the grantor of any existing or future right of the grantor.

53. General co-operation

- 53.1 The Parties shall co-operate with each other and shall each execute and deliver to the other Party such other instruments and documents and take such other actions as may be reasonably requested from time to time in order to carry out, evidence and confirm their rights and the intended purpose of this Agreement.
- 53.2 Each of the Parties undertake at all times to do all such things, perform all such acts and take all such steps within its power and control, as may be necessary for and incidental to the putting into effect or maintenance of the terms, conditions and import of this Agreement and ensuring that the Services are rendered consistently at the highest possible standard expected by Employer.
- 53.3 Each Party agrees to provide all information reasonably requested by the other in the exercise of their respective rights and performance of their obligations under this Agreement, subject to the confidentiality provisions of clause 44 of this Agreement.

54. Governing law

- 54.1 This Agreement is to be governed, interpreted and construed in accordance with the laws of the Islamic Republic of Pakistan.

55. Language

- 55.1 Unless expressly notified in advance by Employer, the primary language of the Agreement shall be English. All documents and communications issued between the Parties shall be in English. Unless expressly notified in advance by Employer, all minutes of meetings shall be issued in English.

56. Independent advice

- 56.1 Each of the Parties hereby respectively agrees and acknowledges that:
 - 56.1.1 it has been free to secure independent legal advice as to the nature and effect of each provision of this Agreement and that it has either taken such independent legal advice or has dispensed with the necessity of doing so; and
 - 56.1.2 each provision of this Agreement (and each provision of the Annexes) is fair and reasonable in all the circumstances and is part of the overall intention of the Parties in connection with this Agreement.

57. Good faith

- 57.1 The Parties shall, at all times, act in good faith towards each other and shall not bring the other Party into disrepute.

58. Survival of rights, duties and obligations

- 58.1 The Surviving Provisions will survive termination or completion of the Agreement.
- 58.2 In the event that the Agreement is terminated or completed, neither Party shall be liable to the other Party except:

- 58.2.1 under the Surviving Provisions; or
- 58.2.2 in respect of any breach of the Agreement occurring before such termination or completion; or
- 58.2.3 any rights or liabilities between the Parties that were pre-existing as at the date of termination or completion.

59. Assignment

- 59.1 The Service provider shall not cede, assign, delegate or transfer any of its rights or obligations under the Agreement, or any part of it, or any benefit or interest therein, to any third party or Entity without the prior written consent of Employer.
- 59.2 Notwithstanding anything to the contrary stated in this Agreement, Employer shall be entitled, without requiring the consent of the Service provider, to cede, assign, delegate or transfer any rights and/or obligations under this Agreement to any third party.

60. Waiver

- 60.1 Subject to clause 60.2, no relaxation, forbearance or delay by a Party in enforcing the Agreement will prejudice, affect or restrict the rights, responsibilities, obligations, powers or remedies of that Party nor shall any waiver by either Party of any such rights, responsibilities, obligations, powers or remedies, or of any breach of the Agreement, be deemed to be a waiver of any other right, responsibility, obligation, power or remedy, or of any later or continuing breach of, the Agreement.
- 60.2 Any waiver of a Party's rights, responsibilities, obligations, power or remedies arising out of, under or in connection with the Agreement shall be in writing, dated and signed by the representative of the Party granting such waiver, and shall specify the right, responsibility, obligation, power or remedy and the extent to which it is being waived. No waiver of a breach of a term of the Agreement operates as a waiver of any other breach of that term, or of a breach of any other term, of the Agreement.

61. Costs

- 61.1 Any costs, including all legal costs of an attorney and own client basis and taxes, incurred by a Party arising out of or in connection with a breach by another Party shall be borne by the Party in breach.

Signed on 2018

Witnesses

.....

for TransPeshawar (The Urban Mobility
Company)

.....
duly authorised and warranting such Employer

Name:

Position:

Signed on 2018

Witnesses

.....

for [Company]

.....
duly authorised and warranting such []

Name:

Position:

ANNEX A
DEFINITIONS AND INTERPRETATION

1. Definitions

1.1 In the Agreement, the following words and expressions shall have the meanings set out below:

- 1.1.1 “**Abandon**” means wholly or substantially cease to carry out the Services for ten (10) consecutive days or during thirty (30) days (whether consecutive or not) in any year, except when relieved of the obligation to do so by the express provisions of this Agreement;
- 1.1.2 “**Agreement**” means this agreement as amended from time to time and including the Annexes;
- 1.1.3 “**Annexes**” means the annexes attached to this Agreement;
- 1.1.4 “**Applicable Law**” means any constitution, statute, ordinance, treaty, decree, proclamation, rules, regulations or subordinated legislation or other legislative measure, as amended from time to time, including all national and provincial statutes and legislation and all municipal by-laws, as well as the common law and customary law and any judgment, decision, order or rule of any court or tribunal with relevant jurisdiction and any decision made by judicial or administrative bodies in accordance with any of the foregoing;
- 1.1.5 “**Authorised Representatives**” means persons authorised in writing by Employer and the Service provider respectively, as contemplated in accordance with clause 27;
- 1.1.6 “**Bus Kilometres**” means kilometres travelled by a Vehicle. The Bus Kilometres on Routes as determined by multiplying the number of Trips as set out in the Schedule, multiplied by the Trip Distance;
- 1.1.7 “**Business Day**” means any day other than a Saturday, Sunday or public holiday in Pakistan;
- 1.1.8 “**Capacity**” means the maximum number of passengers that may be carried in a particular Vehicle, including all seated and standing passengers, as further defined in the Operational Specifications Schedule;
- 1.1.9 “**Change in Law**” means:
 - (b) the adoption of a new Law; or
 - (c) a change in or repeal of a existing Law,which after the Effective Date results in:
 - (a) a change in the taxes, duties or levies payable by the Service provider in respect of the Services; or
 - (b) a change in or the repeal of any other requirement for the performance of the Services;
- 1.1.10 “**Change in Ownership**” means:
 - (a) any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the shares in the Service provider (including the control over the exercise of voting rights conferred on those shares, control over the right to appoint or remove directors or the rights to dividends); and/or

- (b) any other arrangements that have or may have or which result in the same effect as paragraph (a) above of this definition of Change in Ownership;
- 1.1.11 **“Commencement Date”** means the date on which the Services shall commence as notified by Employer by way of a Service Notice
- 1.1.12 **“Conditions Precedent”** means the conditions precedent in clause 1.3;
- 1.1.13 **“Confidential Information”** means all information, without limitation, of whatsoever nature:
 - (a) relating to the Disclosing Party’s business, operations, processes, drawings, sketches, plans, models, product information, know-how, market opportunities, customers and business affairs;
 - (b) relating to the relationship of the Disclosing Party with its customers and suppliers; or
 - (c) relating to the contents of this Agreement and any other information received pursuant to this Agreement,
 but excludes information which:
 - (a) constitutes an Operational Data; or
 - (b) is required to be disclosed under any law or regulation, or by any Regulatory Body, including any stock exchange on which a Receiving Party may be listed, provided that the Receiving Party in question shall first consult with the Disclosing Party before making any such disclosure, statement or announcement; or
 - (c) is in the public domain or enters into the public domain in any way, provided that the entry of such information into the public domain did not entail a breach of this Agreement by the Receiving Party; or
 - (d) the Receiving Party can show it was within its possession or knowledge, such information being in its use or having been recorded in its files, computers or other recording media, prior to receipt thereof from the Disclosing Party and which information was not previously acquired by the Receiving Party under any obligations of confidence or unlawfully; or
 - (e) is disclosed by the Receiving Party with the prior written approval of the Disclosing Party; or
 - (f) was disclosed by the Disclosing Party to a third party without restriction on disclosure or use, including without limitation, by way of a patent specification; or
 - (g) is hereafter disclosed or made available in good faith to the Receiving Party from a source other than the Disclosing Party, without breach by the Receiving Party of any obligation of confidentiality or non-use owed to the Disclosing Party or without breach by such other source who, to the knowledge of the Disclosing Party, is not subject to an obligation of confidentiality or non-use owed to the Disclosing Party; or

- (h) is developed independently by the Receiving Party without reference to the Confidential Information;
- 1.1.14 **“Disclosing Party”** means the Party disclosing Confidential Information to the Receiving Party;
- 1.1.15 **“Drivers”** means those Employees who drive and operate the Vehicles;
- 1.1.16 **“Effective Date”** means when this Agreement has been signed by each Party, the latest of the dates upon which this Agreement was signed by any Party;
- 1.1.17 **“Employees”** means the employees of the Service provider, or of any subcontractor contracted by the Service provider to perform a part of the Service;
- 1.1.18 **“Encumbrance”** means:
- (i) any mortgage, pledge, lien, assignment or cession conferring security, hypothecation, security interest, preferential right or trust arrangement or other encumbrance securing any obligation of any person or any other charge (whether equitable or otherwise) of whatsoever nature or howsoever described; or
 - (j) any arrangement under which money or claims to, or for the benefit of, a bank or other account may be applied, set off or made subject to a combination of accounts so as to effect discharge of any sum owed or payable to any person; or
 - (k) any other type of preferential agreement or arrangement (including any title transfer and retention arrangement), the effect of which is the creation of a security interest;
- 1.1.19 **“Entity”** means any natural or juristic person, association, business, close corporation, company, concern, enterprise, firm, partnership, limited partnership, joint venture, trust, undertaking, voluntary association, body corporate and any similar entity;
- 1.1.20 **“Event of Force Majeure”** means an act of God or public enemy, fire, explosion, earthquake, perils of the sea, flood, storm or other adverse weather conditions, war declared or undeclared, act of terrorism, civil war, revolution, civil commotion or other civil disorder, sabotage, riot, blockade, embargo, strikes (excluding strikes by Service provider drivers or staff), lock-outs or other labour disputes, sanctions, epidemics, act of any Government, compliance with law, regulations or lawful demands of any Government or Governmental agency;
- 1.1.21 **“Financially Distressed”** means that:
- (l) it appears to be reasonably unlikely that the Service provider will be able to pay all of its debts as they become due and payable within the immediately ensuing 6 Months; or
 - (m) the Service provider’s liabilities exceed its assets by more than fifteen percent (15%) at any time,
- and **“Financial Distress”** shall have a corresponding meaning;
- 1.1.22 **“Financial Year”** means, at any time, the financial year of the Service provider starting on January and ending on 31 December;

- 1.1.23 **"Fleet"** means all Vehicles required to provide the Services as contemplated in this Agreement.
- 1.1.24 **"Intellectual Property"** means any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how, trade secrets and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites;
- 1.1.25 **"KPI"** means the key performance indicator;
- 1.1.26 **"Liquidated Damages"** means the amounts to be deducted from the monthly payments for the Service provider pursuant to particular service level failures as set out in the Operational Specifications Schedule and in accordance with clause 29 or otherwise paid by the Service provider to Employer;
- 1.1.27 **"Month"** or **"Monthly"** means a calendar month;
- 1.1.28 **"Necessary Action"** means any action that Employer deem necessary and appropriate in the event that the Service provider failed to take remedial action pursuant to clause 33;
- 1.1.29 **"Operating Licence"** means any licence, consent or permit required by the Service provider to enable it to provide the Services under this Agreement;
- 1.1.30 **"Operational Data"** means any operational data defined as such in the Operational Specifications Schedule or identified as "Operational Data" by Employer, which shall include, among others, location of Vehicles, kilometres travelled, fares collected, and which will be available to the Service provider, Other Service providers and the System Control service provider;
- 1.1.31 **"Operational Specifications Schedule"** means the schedule annexed hereto as Annex B;
- 1.1.32 **"Other Contractors"** means collectively, the System Control service provider or any subcontractor of the System Control service provider (or any member of the consortium making up the System Control service provider) and any other contractors (excluding Other Service providers) appointed by Employer;
- 1.1.33 **"Other Service provider"** means any other vehicle Service provider appointed by Employer to operate public transport services as a part of the System or service provider of Employer;
- 1.1.34 **"Party"** means a party to this Agreement;
- 1.1.35 **"Passenger Service Vehicle Licence"** means an Operating Licence required to be obtained by the Service provider from Government of Pakistan or its Provinces for its Drivers as one of the Conditions Precedent;
- 1.1.36 **"Performance Guarantee"** means the unconditional, irrevocable on-demand performance guarantee in the specimen form attached hereto as Annex F provided to Employer by the Service provider pursuant to clause 2.2.2;

- 1.1.37 **“PKR”** means Pakistani rupee;
- 1.1.38 **“Prohibited Act”** means:
- (n) offering, giving or agreeing to give to a Public Official a gift or consideration of any kind as an inducement or reward for:
 - (i) doing or not doing (or for having done or not having done) any act; or
 - (ii) showing or not showing (or for having shown or not shown) favour or disfavour to any person,
- in relation to the award or performance of the Agreement or any other agreement with Employer; or
- (o) entering into an agreement for which commission has been paid or has been agreed to be paid by the Service provider or on its behalf, or to its knowledge, unless before the relevant agreement is entered into, particulars of any such commission and of the terms of any such agreement for the payment thereof have been disclosed in writing to Employer; or
 - (p) committing any offence under the Applicable Law creating offences in respect of fraudulent acts; or
 - (q) defrauding, attempting to defraud or conspiring to defraud Employer;
- 1.1.39 **“Project”** means the Operations and Maintenance of Pink Buses in Mardan;
- 1.1.40 **“Protocol”** means a protocol and/or a standard operating procedure issued from time to time by Employer indicating how, among other things, Services are to be rendered, the manner in which the Service provider and Other Service providers should work together, the exact procedures to be followed in order to comply with service level requirements set out in the Operational Specifications Schedule and any other ancillary matters;
- 1.1.41 **“Public Official”** means an official or employee of a government owned or controlled enterprise or any Regulatory Body and shall include any individual defined as a public official in an Applicable Law;
- 1.1.42 **“Quarter”** or **“Quarterly”** means a consecutive period of three (3) Months commencing from the start of a Financial Year or calendar year, as the case may be;
- 1.1.43 **“Receiving Party”** means the Party receiving Confidential Information from the Disclosing Party;
- 1.1.44 **“Regulatory Body”** means any governmental, semi-governmental, administrative, fiscal or judicial ministry, department, commission, authority, tribunal, agency, municipality or body, and shall include the provider of electricity, gas, water, wastewater, telecoms and other such public services, and any body with a regulatory function under the Applicable Law;
- 1.1.45 **“Restricted Companies”** means Other Service providers and/or Other Contractors;
- 1.1.46 **“Restricted Share Transfer”** means the transfer of shares or any interest in shares of the Ownership outside the Lock-in Period that may result in the Change of Ownership;

- 1.1.47 **“Routes”** means the routes for each of the Services set out in the Operational Specifications Schedule (and includes start point, end point and specific path), as may be amended by Employer by way of delivery of a Service Notice to the Service provider in accordance with the terms and conditions of this Agreement;
- 1.1.48 **“Service”** or **“Services”** means the public transport services to convey passengers and any other services to be rendered by the Service provider on the terms and conditions of this Agreement;
- 1.1.49 **Deleted Intentionally**
- 1.1.50 **“Service Notice”** means a notice given to the Service provider by Employer in accordance with this Agreement;
- 1.1.51 **“Stations/ Stops”** means places at which Vehicles are to come to a stop in order for passengers to embark or disembark from the Vehicles, as specified by Employer, but excluding Stations;
- 1.1.52 **“Surviving Provisions”** means clauses 1 (Preliminary Matters); 34 (*Breach and Termination*); 35 (*Dispute resolution*); 37 (*Intellectual Property*); 41 - 61 (*Part J - Final Provisions*) and this Annex A;
- 1.1.53 **“Termination Date”** means One (01) year from the Commencement Date or the date on which an earlier termination pursuant to the terms of the Agreement takes effect;
- 1.1.54 **“Trip”** means the journey undertaken by Vehicles in accordance with the Schedule;
- 1.1.55 **“Trip Distance”** means the kilometres of each Trip determined as follows:
- (r) The kilometres specified in the Operational Specifications Schedule or otherwise agreed between the Parties,
- 1.1.56 **“Uniform”** means the uniform to be worn by those Employees of the Service provider required to fulfil their duties in view of members of the public, as prescribed in the Operational Specifications Schedule and includes the name tag issued to each Employee by Service provider;
- 1.1.57 **“Vehicle Delivery Date”** means a date on which the Service provider takes delivery of the Vehicles, or such other date as may be agreed between the Parties;
- 1.1.58 **“Vehicle Dispatch Plan”** means a plan of dispatching the Vehicles to be provided by the Service provider to Employer pursuant to clause 9.1;
- 1.1.59 **“Vehicles”** means the vehicles provided by Employer, to be made available to the Service provider, for purposes of rendering the Services and specified in the Operational Specifications Schedule.
- 1.1.60 **“Warranty”** means the warranties and undertakings given to Employer by the Service provider, set out in clause 30;
- 1.1.61 **“Week”** or **“Weekly”** means the period commencing at 00h00 on Monday and ending at 24h00 on Sunday each calendar week.

2. Interpretation

2.1 In the Agreement:

- 2.1.1 in the event of conflict between the Annexes and the provisions of this Agreement (excluding the Annexes), the provisions of the Agreement shall prevail;
- 2.1.2 any definition in this Agreement, shall bear the same meaning and apply throughout this Agreement including Annexes hereto, unless otherwise stated or inconsistent with the context in which it appears;
- 2.1.3 the singular includes the plural and vice versa;
- 2.1.4 a reference to a statutory provision includes any subordinate legislation made from time to time under that provision and includes those provisions as amended, consolidated, re-enacted or replaced from time to time;
- 2.1.5 a reference to a document includes the document as modified from time to time and any document replacing it, in each case in the manner permitted by the Agreement;
- 2.1.6 a reference to a gender includes the other genders;
- 2.1.7 a reference to any government agency or body, if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or functions removed ("defunct body"), means the agency or body that performs most closely the functions of the defunct body;
- 2.1.8 a reference to an "agent" shall mean any person with a contractual relationship with a Party and carrying out activities or obligations on behalf of that Party;
- 2.1.9 a reference to a "subsidiary" shall be a reference to a subsidiary as defined in the Companies Act, 2017;
- 2.1.10 references in this Agreement to "clauses" or to "Annexes", are to clauses of and Annexes to this Agreement;
- 2.1.11 references to notices or requests made or received by any of the Parties shall, unless expressly provided otherwise in this Agreement, refer to notices or requests in writing;
- 2.1.12 references to "agree" or "agreed" shall require the agreement to be recorded in writing and signed by the authorised representatives of the Parties;
- 2.1.13 no rule of construction shall be applied to the disadvantage of a Party to this Agreement because that Party was responsible for or participated in the preparation of this Agreement or any part of it;
- 2.1.14 unless otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a Business Day, the next succeeding Business Day;
- 2.1.15 references to day/s, month/s or year/s shall be construed as Gregorian calendar day/s, month/s or year/s, as the case may be;
- 2.1.16 if a definition imposes substantive rights and obligations on a Party, such rights and obligations shall be given effect to and shall be enforceable, notwithstanding that they are contained in a definition;
- 2.1.17 a reference to a Party includes that Party's successors and permitted assigns;

- 2.1.18 the use of the word “including” followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it and it shall be construed as if it were followed by “without being limited to”.

Annex B
Operational Specifications Schedule

1. OPERATOR RESPONSIBILITIES

1.1 General

- 1.1.1 The Operator shall ensure that all buses are in satisfactory operational condition (fair wear and tear excluded). This means, in particular, that all buses should be clean and tidy, well-maintained, driveable and meeting all health and safety requirements.
- 1.1.2 Employer shall be entitled to conduct random inspections of any bus.
- 1.1.3 Employer shall be entitled to prohibit the use of particular bus should any inspection reveal any defects and/or health and safety issues which renders the bus unsuitable for use. The prohibition of use of any bus shall not in any way release the Operator from any of its obligations pursuant to the Agreement. The Operator shall be fully responsible for the buses allocated to it, while in its possession.

1.2 Drivers

- 1.2.1 The Operator shall, by no later than ten (10) Days after the Commencement Date and/or the appointment of a Driver, furnish to employer in respect of each Driver, copies of:
 - (a) an appropriate valid driver's licence (PSV License).
- 1.2.2 Where employer has reason to believe that a Driver poses a risk to the safety of passengers, or where a member of the public requests employer to investigate the conduct of a particular Employee of the Operator, employer shall notify the Operator in writing accordingly (setting out the reasons for its belief, where applicable), and the Operator shall be obliged to take all such steps as may be necessary, including, where appropriate, conducting an immediate investigation into the allegations and if appropriate, effecting the suspension of such Driver/Employee pending the finalisation of appropriate disciplinary action. The Operator shall report on the investigation to employer and if any disciplinary enquiry is instituted, the Operator shall report the outcome thereof to employer immediately upon such enquiry being completed.

1.3 Training of the Drivers

- 1.3.1 Employer shall be entitled to perform regular spot checks and examinations in order to ensure that the skill levels of Drivers are maintained in accordance with employer's requirements
- 1.3.2 The Operator shall also, at its own cost, ensure that Drivers are trained properly to operate public service vehicles.

1.4 Uniforms

- 1.4.1 Employer requires all Employees who are required to fulfil their duties in view of the public to wear Uniforms at all relevant times during the rendering of the Services. The Operator shall ensure that its Employees are appropriately attired in the prescribed and/or agreed Uniforms.
- 1.4.2 The Operator shall take such reasonable steps as may be necessary to ensure that the Uniforms are kept in good condition and worn in a professional manner and in accordance with the high standards required by employer in relation to the branding.

1.5 Public relations

- 1.5.1 In order to ensure that the Services are rendered in a seamless manner and that the Services as experienced by members of the public are consistent with employer's expectation of a high-quality bus system and are regarded as such by the general public, the Operator shall ensure that Employees:
 - (a) communicate with passengers and members of the public in a customer-friendly, professional and helpful manner;
 - (b) refrain from conduct which may bring employer and the bus system into disrepute; and
 - (c) deal with customer complaints in a responsive and courteous manner.
- 1.5.2 In complying with clause 1.5.1, the Operator shall ensure that all Employees receive appropriate training in the following areas:
 - (a) service requirements of passengers with disabilities;
 - (b) management of confrontational or difficult passengers;
 - (c) customer care and customer relations;
 - (d) the role of a Driver;
 - (e) passenger safety, which shall include, amongst other things, procedures pertaining to safe embarking and disembarking of passengers and ensuring that bus doors are closed only when it is safe to do so.
- 1.5.3 Should the Operator become aware of an Employee that is not fit and proper to execute his/her duties effectively, the Operator shall take appropriate action immediately.

1.6 Passengers

- 1.6.1 For the duration of the Agreement and subject always to Protocols issued by employer from time to time the Operator shall be obliged to:
- (a) collect and hand over any lost property to the owner;
 - (b) display any information provided to it by employer for display on Vehicles or flags on special events;
 - (c) ensure that bus drivers and conductors are able to inform customers regarding timetables, Routes, fares, basic way-finding information and other transport services;
 - (d) respond to any complaints forwarded to it by employer within three (03) days.
- 1.6.2 The Operator shall be responsible for operation and maintenance of the air conditioning system in buses in order to ensure that during operations average interior temperature is between 23°C and 25°C when the outside ambient temperature is higher than 25°C.

1.7 Capacity

- 1.7.1 The provisional number of passengers that may be carried in a particular bus, including all seated and standing passengers, is 40.

1.8 Image, Marketing and Advertising

- 1.8.1 The Operator shall comply with instructions from employer from time to time regarding branding in terms of the use of graphics, information, signage, information, advertising and Vehicle livery and will co-operate with and participate in agreed marketing programmes as directed by employer.
- 1.8.2 Subject to clause 1.8.3 and clause 1.8.4, the Operator shall be permitted to affix or display advertising material in dedicated areas approved by the Employer on the interior of the Vehicles and generate revenues out of such advertising activity.
- 1.8.3 The content of any advertising affixed or displayed by the Operator shall be approved by employer prior to such being affixed and/or displayed anywhere within any Vehicle. Upon employer's request, the Operator shall immediately provide employer with all documents, information and materials related to any advertising activity, including any agreements made by the Operator with third parties for carrying out such advertising activity. If employer objects to any of the details notified by the Operator, such objection shall be recorded in writing and employer and the Operator shall endeavour in good faith to resolve the issues giving rise to such objection. In the event of a failure to reach a resolution, employer's position on the issue shall prevail.

- 1.8.4 The Operator shall ensure that any advertising material on the interior of the Vehicles is not deceitful, political, pornographic, provocative, terrorising or violent, that it is befitting employer's image and brand and that it otherwise conforms to the applicable Law.
- 1.8.5 Advertisement shall be allowed inside and on the back of the buses with the locations approved from the Employer.
- 1.8.6 Approximately 15 number of shelters are provided in Mardan along the route. The bus operator shall be allowed under this contract to generate revenue through advertisement from these shelters subject to permission required by any applicable law or any department. Bus operator will also be responsible for maintenance of these shelters, if bus operator is allowed and handed over these shelters for advertisement. Even, if one shelter is used for advertisement, the bus operator will be responsible for maintenance of all shelters.

1.9 Route and Stops

- 1.9.1 The route will start from Baghdada Chowk near Government Girls School to Abdul Wali Khan University (Garden Campus) via Government Girls Degree College, Muqam Chowk bus stop, Malakand Chowk bus stop, Abdul Qadeer Khan Chowk, College Chowk bus stop, Bacha Khan Chowk, Ansi College bus stop, BISE Mardan bus stop, Bacha Khan Medical College, Sport Complex Mardan, Peshawar Model School, Mardan bus stop, Toru CNG Bus Stop. The approximate route length is 12 kilometers.
- 1.9.2 An indicative map showing the Stops will be provided by employer. The alignment of routes, location of stops, may from time to time, be changed by employer.

1.10 Fleet & Equipments

- 1.10.1 Fleet. The fleet shall consist of 07 (Seven) 9-metre buses. The functional specifications are also attached as Schedule 1, however, these functional specifications are descriptive and not restrictive in nature and deviations by employer from these specifications shall not be considered as violation of the Agreement. These technical and functional specifications shall further be verified jointly by the employer and Operator at the time of take-over of Vehicles.
- 1.10.2 E-ticketing devices. Nine (09) Handheld/ Mobile devices with portable Bluetooth mini thermal printers (including Carry Pouches/ Cases) and 12 numbers of thermal paper rolls will be provided for sale of tickets. Bus Operator will be responsible for operation and maintenance of these Handheld e-ticketing devices. It is mandatory to use Handheld ticketing device for sale of tickets. Back up cost of these e-ticketing system will be borne by TransPeshawar. Additional cost of Thermal Paper Rolls for tickets and recharging of devices will be the responsibility of Bus Operator. E-ticketing vendor will provide training to 20 to 25 people in one session. Data

Sim for Handheld/ Mobile devices will be purchased by the service provider along with operational cost. Ownership of these devices will be transferred automatically to the service provider after two (02) years. In case of contract expiry or early termination, these devices shall be returned to TransPeshawar/ Employer.

- 1.10.3 GPS Tracking. GPS trackers are installed in each bus which will be used to monitor the bus position and its route. This system will be used for verification of travel kilometers. Tracking data will be uploaded to cloud server and maintain there. TransPeshawar will cover the capital and operation cost of this facility.

1.11 Maintenance of the Vehicles

1.11.1 Maintenance

- (a) The Operator is required to provide suitably qualified staff to maintain all the buses during the term of the Agreement.
- (b) The costs of the Maintenance Staff shall be borne by the Operator.

1.11.2 Detailed maintenance obligations

The Operator's maintenance and repair obligations shall include, but not be limited to:

- (a) repair and/or replacement of tyres and/or wheels subject to accident damage, excessive wear and tear and uneven wear and the Operator shall at all times adhere to the tyre specifications as determined by employer and or manufacturer from time to time;
- (b) supply and top-up of lubricants;
- (c) supply of fuel and fuel additives;
- (d) any repair or replacement required, necessitated or caused as a result of, or generally resulting from, or in connection with, the following:
 - (i) accidental or intentional damage;
 - (ii) labour disturbances attributed to the Operator's employees;
 - (iii) improper or negligent use of buses;
 - (iv) use of buses in breach of the terms and conditions of the Agreement;

- (v) incompetence of the Operator or the employees, subcontractors or any third party in driving, handling, working, or otherwise dealing with the Vehicles;
- (vi) minor repairs strictly necessary and carried out in an emergency situation or breakdown;
- (vii) shock loading conditions and/or adverse driving conditions (and including, but without limitation, the exceeding of legally permitted gross vehicle and/or gross combination mass (provided that the Vehicle is equipped with the technology to inform the Driver when such mass is exceeded), speed limits and/or RPM (revolutions per minute);
- (viii) the theft of the Vehicles;
- (ix) failure to comply with the manuals applicable to buses, provided that the manuals have been furnished to the Operator;
- (x) the use of contaminated fuel or fuel not approved by vehicle supplier, additives and/or lubricants;
- (xi) the repair or replacement, as the case may be, of or to the paintwork, chrome, trims (including but without limitation, carpets, seats, railings and handles), emblems, body work, upholstery, cab structure, windscreen, mud flaps, windows and glass generally, bulbs, the repair of any road and stone damage to the paintwork;
- (xii) attending to breakdowns and generally delivery to or collection or transportation from the point of service, salvage or breakdown (other than as set out above or below);
- (xiii) jump-starting the Vehicles;
- (xiv) work done outside operating hours, regarding attendance to breakdowns and regarding emergency repairs;
- (xv) non-compliance by the Operator with any other obligations under the maintenance provisions specified in the Agreement and the relevant Vehicle Maintenance Agreement;
- (xvi) theft of the Vehicle equipment and components;
- (xvii) tampering with the Vehicle odometer, controls and any other specialised vehicle equipment;

- (xviii) operating the Vehicles in a manner that may harm the Vehicles' electrical and driveline components;
- (xix) the bus component damage due to the Operator's negligence in checking and maintaining oil, lubricant and fluid levels as stipulated in the applicable Vehicle Supplier operating manual;
- (xx) operation of the bus on routes and road surfaces for which the bus was not designed unless specifically authorised by employer.

In addition, the Operator shall, among other things:

- (a) perform the required regular checks, in accordance with the manuals (which shall be furnished to the Operator) and including the checking of coolant levels, lubricant levels, tyre pressure and the like and the introduction of anti-freeze or the application of rust inhibiting agents;
- (b) replace lost parts including, but not limited to, spare wheels, fire extinguishers, first-aid kits, warning triangles and lamps, tools, jack, service booklets and the like and perform any testing or maintenance of such items;
- (c) wash the buses on a regular basis (save for a complete wash of the chassis, engine, gearbox, front and rear axle, at the time of carrying out routine service and maintenance work where this is undertaken by the Vehicle Supplier) and clean the interior of buses;
- (d) attend to the fitment, service or repair of any parts or equipment necessary pursuant to any Applicable Law which may come into force after the Signature Date;
- (e) carry out maintenance and repairs of buses in accordance with industry best practice to maintain Technical Specifications and meet Functional Specifications;
- (f) carry out brake testing as required;
- (g) keep and use the Buses in a proper and prudent manner and ensure that only duly qualified and competent persons are allowed to drive the Vehicles and amongst other things, but without limitation, ensure that the Vehicles are not operated improperly or negligently;
- (h) ensure that the Vehicle Supplier's running-in instructions and proper responses to systems warnings are fully understood and properly observed;

- (i) ensure that legally permitted gross vehicle and/or gross combination mass is not exceeded during operation which was agreed at take-over time;
- (j) not overload the buses nor use it for any purpose for which it is not designed;
- (k) ensure that no components of the buses are removed or exchanged except where defective and in the course of normal service, repair or replacement and generally ensure that the buses are operated in a complete condition;
- (l) ensure that regular checks are made by the Operator of all oils, coolants, additives and electrolyte levels and that such levels are correctly maintained in accordance with the manuals;
- (m) take all reasonable steps and precautions to minimise damage to the buses and in particular, but without limitation, in the event of any defect or failure occurring in the buses;
- (n) service the Vehicle at the relevant intervals in accordance with the relevant Vehicles' manuals and employer's instructions;
- (o) promptly repair the Vehicles in accordance with the relevant Vehicles' manuals and employer's instructions;
- (p) ensure that only fuel and additives as prescribed by the Vehicle Supplier are used;
- (q) in the event that the Operator proposes to use any alternative to the additive as prescribed by the Vehicle Supplier, first obtain authorisation from employer and reasonable conditions may be imposed;
- (r) cause the buses to be used only for their specified use;
- (s) be responsible for maintenance and repair of all subsystems and equipment in Vehicles and recoup any missing or theft items;
- (t) allow employer's Authorised Representative to inspect buses, have access to and be entitled to, download, all information available from the Vehicles (whether from onboard computers or otherwise) including the kilometres travelled by the Vehicles;
- (u) be responsible for all daily pre-trip checks prior to the buses leaving the parking area including necessary functionality checks in relation to the On-board Units.

1.12 Registration of Vehicles

- 1.12.1 Employer shall bear the cost of registration of the vehicles. TransPeshawar will be the owner of the vehicles and will be responsible for Annual Token Tax.

1.13 Monthly Operations Reports

- 1.13.1 No later than 1700 hrs on the 3rd (third) Business Day of each month, starting on the last Business Day of the first calendar month after the Commencement Date, the Operator shall submit to employer a report on the performance of its obligations under the Agreement during the previous month ("**Monthly Operations Report**"), covering at a minimum:
- (a) road safety performance, including full details on any Severe Accident, Material Accident, Minor Accident, emergency or traffic offence;
 - (b) punctuality performance, including full details on percentage of Untimely Departures, Actual Headway Time and Excess Headway Time;
 - (c) Fleet performance, including full details on any Severe Vehicle Defect maintenance operations on the Vehicles;
 - (d) other indicator as agreed between the Operator and employer or identified by the Operator in its Service Delivery Plan;
 - (e) any improvement of the Services, including full details on any relevant Passenger complaint, any suggested adjustment of the VOC Timetable and any performance improvement measure taken by the Operator.

1.14 Spare parts

- 1.14.1 The Service provider shall provide Spare parts and the supply of spare parts shall cover the period of the contract.
- 1.14.2 Except above, the Operator shall take responsibility of provision of all replacement parts and supplies for all maintenance issues. The Operator shall procure any future spare parts and supplies pursuant to documentation provided by the Vehicle Supplier or required for maintenance and/ or operation.
- 1.14.3 The Operator will be responsible for all materials and associated costs for repair actions caused by road collisions or other unscheduled incidents.
- 1.14.4 The Operator shall keep record of each spare part used, reason for replacement, total spare used, remaining spare parts etc. and follow Protocol issued by employer for use, record and inventory of the same. The Operator shall provide to employer such record in prescribed time.

1.15 Tools and equipment

- 1.15.1 The Operator shall provide tools, software and diagnostic equipment which it deems necessary to carry out the Services in accordance with the Agreement.

1.16 Fleet Inspections

- 1.16.1 Employer may at all reasonable times, directly or through a employer-appointed independent agent, observe, inspect and satisfy itself with the observance by the Operator of the Fleet.

1.17 Liquidated Damages

- 1.17.1 If the service provider found in breach of any of the clause of contract agreement, liquidated damages @ Rs 5000 per instance will be applicable.
- 1.17.2 The Liquidated damages are to be deposited at the end of each month by the service provider. Failure to deposit the liquidated damages, the required amount will be partially withdrawn/ liquidated from the performance security.
- 1.17.3 Liquidated damages per month shall not exceed 10% of Performance Security. If the amount exceeds the value of Performance Security, the contract will be terminated and the service provider has to return the buses immediately to the Employer.
- 1.17.4 Failure to comply with the clause 1.17.3 may result in termination of the Agreement as well as Blacklisting of the company.

Schedule 1

Technical & Functional Specifications of Buses

(Attached as Annex-D)

Annex C
PERFORMANCE GUARANTEE

(To be printed on Judicial Stamp Paper of Prescribed Fee)

[TO BE ISSUED ON JUDICIAL PAPER OF PRESCRIBED FEE BY BANK LICENSED TO CONDUCT BUSINESS IN THE ISLAMIC REPUBLIC OF PAKISTAN]

This **Performance Guarantee No.** <Insert No.> is made on <Insert date> 2018 (the “**Guarantee**”)

Ref: Letter of Award for Operations and Maintenance of Pink Buses in Mardan dated <Insert date> 2018 (the “**Agreement**”)

Beneficiary: **TRANSPESHAWAR (THE URBAN MOBILITY COMPANY)**, a company incorporated with Security Exchange Commission of Pakistan in February 09, 2017, with company registration No.0105691 and whose registered address is at Ali Tower, Second Floor, University Road, Peshawar, KPK. (“**employer**”)

1. GUARANTEE

- 1.1 We <Insert name of Bank> Bank (the “**Guarantor**”) have been informed that <Insert name of the Company> (the “**Service provider**”) has been awarded the Agreement relating to the Operations and Maintenance of Pink buses in Mardan (the “**Project**”).
- 1.2 The Guarantor hereby irrevocably and unconditionally undertakes to pay to employer on its first demand for payment, without regard to any objections or defences to employer’s demand from the Service provider or any other person, an amount or amounts not exceeding in total **PKR ----- (in words)**.

2 TIME FOR PAYMENT

- 2.1 Any amount demanded by employer shall be paid by Guarantor to employer within seven (07) calendar days of receipt of the employer’s demand for payment stating that the Service provider is in breach of its obligations arising under, out of or in connection with the Agreement and the Guarantor shall have neither the right nor the duty or obligation to challenge the accuracy or sufficiency of such statement or the amount specified in the demand.

3 VALIDITY OF GUARANTEE

- 3.1 This Guarantee shall come into force on the date hereof and shall remain valid until <insert date> whereupon this Guarantee shall expire and be returned to the Guarantor.

4 PAYMENT FREE OF DEDUCTIONS AND WITHHOLDINGS

- 4.1 Any payment under this Guarantee shall be made free and clear of, and without deduction for or on account of, any present or future taxes, levies, imposts, duties, charges, fees, deductions or withholdings of any nature whatsoever and

by whomsoever imposed.

5 Notices and Demands for Payment

- 5.1 Any demand for payment made under this Guarantee shall be delivered by hand or registered courier and be deemed to be duly made at the time of, and on the date of, delivery.
- 5.2 Any notice given under this Guarantee shall be deemed to be duly given:
- A. in the case of facsimile transmission, on the date and at the time shown on the transmission report by the machine from which the facsimile was sent, subject to the machine producing a report that the facsimile was sent in its entirety to the contact details of the addressee stated in Schedule 1 (the “**Contact Details**”); and
 - B. in the case of email:
 - (A) at the time of receipt by the sender of an email acknowledgement from the intended addressee’s information system showing that the email has been delivered to the email address of that addressee; or
 - (B) if no email acknowledgement is received, then at the time the email enters an information system which is under the control of the intended addressee (and the addressee shall make available at the request of the sender, evidence of such time); and
 - C. in the case of delivery by hand or registered courier, at the time of and on the date of delivery.
- 5.3 Any notice or demand given or made by employer or the Guarantor relating to this Guarantee shall be in English.

6 ASSIGNMENT

- 6.1 Employer shall have the right to assign the rights and benefits under this Guarantee.

7 DISPUTE RESOLUTION

- 7.1 This Guarantee shall be governed by, interpreted and construed in accordance with the laws of the Islamic Republic of Pakistan. Each Party consents to the jurisdiction of the courts in the Islamic Republic of Pakistan.

EXECUTED for and on behalf of
[**GUARANTOR**]

.....

(signed)

.....

Name

Witnesses:

SCHEDULE TO THE PERFORMANCE GUARANTEE

<p>For employer:</p> <p>Transpeshawar Company <Address line1> <Address line2> <Address line3> Tel: <Insert employer's telephone number> Fax: <Insert employer's fax number> Email: <Insert employer's email address> For the Attention of <_____></p>
<p>For the Guarantor:</p> <p><Insert Guarantor's Name> <Address line1> <Address line2> <Address line3> Tel: <Insert Guarantor's telephone number> Fax:<Insert Guarantor's fax number> Email:<Insert Guarantor's email address> For the Attention of <_____></p>

TECHNICAL SPECIFICATIONS

Item No	Minimum technical requirements for Pink Buses	
1	Passenger Capacity	Minimum 40 Passengers (Seating + Standing)
2	Vehicle length	8 meter to 9 meters approx.
3	Vehicle width (not including mirrors)	2 meter to 2.5 meter
4	Vehicle height (from road surface to highest point on roof) (maximum)	3 meter to 3.5 meter
5	Step	1-2 Steps
6	Floor height (from road surface to interior floor at doorways)	350 mm
7	Ceiling height in passenger area (from interior floor to ceiling) (minimum)	1900 to 2000 mm
8	Clearance at doorway (from interior floor to door header) (minimum)	1900 mm
9	Number of wheelchair bays	1
10	Standing passenger density (maximum)	5 passengers per m ²
	Steering	
11	Steering Type	Power steering
12	Driver compartment	Driver compartment on right-hand side of vehicle for vehicle operation on left-hand side of roadway. The design of Driver Cabin would be such that it prevents passenger-driver interaction in normal conditions, does not block the view of side mirrors and with proper air conditioning inside. Driver Cabin should be designed in a way to prevent blocking of driver's line of sight from standing passengers.
	Axle loads	
13	Axle load, front axle	3000 kg to 3200 kg
14	Axle load, mid- and rear-axles	5000 kg to 5500 kg
	Doors	
15	Number of median-sided passenger doorways	1
16	Number of curb-sided passenger doorways	1
17	Free door width per passenger door (minimum)	1200 mm
18	Wheel Chairs Ramp	Manual Folding Ramps for Wheel Chairs on both doors
19	Door Opening and Closing requirements	Electrically Operated
	Engine	

20	Emission Standard	Euro II (maximum)
21	Type	Diesel Engine minimum 4 stroke
22	Power ratio (minimum)	10 kW per ton gross vehicle
23	Power on gradient (minimum)	Maintain 70 km/hr on 4% up grade and 40 km/hr on 8% up grade when fully loaded
24	Projected maximum operating velocity (maximum)	80 km/hr
25	Engine cooling system	Heavy duty radiator systems to efficiently dissipate heat.
	Performance Features	
26	Internal noise standard	80 to 85 dba
27	External noise standard	85 to 90 dba
28	External noise standard when idling	65 to 75 dba (approx.)
29	Turning radius, outer wheel track (maximum)	9.25 meter (max)
30	Tires	Size 7.5-16-14 PR (Qty: 7 No's)
31	Suspension	Leaf Spring
32	Fuel Tank Capacity	100 Liter (Minimum)
	Break System	
33	Service brake	Vacuum servo brake system
34	Parking brake	Mechanical internal expanding on transmission output shaft.
35	Exhaust brake	Electric-vacuum actuator
36	Chassis and Body Structure	The chassis and associated components will be of a design and use protective material or give techniques such that a bus can be expected to have 10 years reliable life under normal high-ICEs, with intensity urban operational conditions of routine maintenance.
37	Body Structure	Monocoque / ladder frame
38	Rust Proofing	The body and frame should remain rust free for the minimum period of 5 years
39	Insulation	The body should be fitted with heat and noise insulation (Non Flammable) so that interior noise shall not exceed 85 dBA during any part of the cycle.
40	Passenger Seats	Seats should be ergonomically designed, placed keeping in view the passenger comfort & durability to withstand daily wear & tear. Seats should be covered with water and dust proof fire retardant material.

41	Driver Seat	2-Way manual adjustable driver seat provided (Forward & backward + Backrest Reclining) With seat belt provided
42	Front Windscreen	Laminated safety toughened glass min 5 mm thick, plain, flat with curved corners and crack proof with demisting system to ensure the screen is kept clear all the times in bus operation.
43	Wiper and Washer	Electrically operated 02 wipers at front windshield with washers
44	Rear Windscreen	Tempered /toughened glass min 5 mm thick and crack proof
45	Floor	Floor material using waterproof Plywood material with minimum thickness 10 mm covered with PVC mat.
46	Sun Visor	Sunscreen (visor blind) with a ratchet type blind adjustable height. Material types blackout curtain made of solar screen with grey colour.
	Communication System	
47	Announcement	Announcement System with internal and external speakers.
48	Surveillance camera	1 No of Surveillance camera with data storage for the period of minimum 5 days.
49	Reverse Camera	1 reverse camera with display screen at the driver's dash board.
50	Destination board	Provided at front ,rear, left, right & interior side of vehicle
	Air Conditioning	
51	Saloon Temperature	Saloon Temperature should be maintained throughout the bus up to a maximum of 25 Degree Celcius in following conditions: <ul style="list-style-type: none"> • Harsh ambient conditions (especially in hot summer seasons) with atmospheric temperature up to 50 Degree Celcius • Winter season with minimum temperature up to -1 Degree Celsius • 100% Humidity • Dust Level above Normal • Bus door operations (Open, dwell, close for an average period of 45 seconds each time) at stations having average inter-distance of 700-1200 Meters
52	Air Curtains	Air curtains on all access doors to avoid loss / gain of heat and/or cool air when doors are frequently opened for boarding and alighting of passengers. Type of air curtains, their power consumption etc. would be accounted for while deciding engine power.
	Paint	
53	Internal Paint	
54	Sustainability	Paint to sustain daily wear & tear and rust proofing up to 5 years

55	Useful life	Useful life of Paint up to 5 years
56	Color Shade	Color Shade will be provided in due course
	External Paint	
57	Sustainability	Paint to sustain daily wear & tear and rust proofing up to 5 years
58	Useful life	Useful life of Paint up to 5 years
59	Color Shade	Color Shade will be provided in due course
	Color Scheme	
60	Exterior, interior colour schemes and logo/graphics	Exterior, interior color schemes and logo/graphics would be painted as directed by the Client. Information, on seats, for reservation for persons with disabilities, ladies, senior citizens (details will be provided in due course)
61	Safety and Emergency Exit	Safety and Emergency exit provisions should be fully compliant to acceptable international standards including but not limited to signs, safety instructions, emergency roof exits, fire extinguishers, emergency hammers, emergency bells, switching of doors to manual operations, etc.
62	Warranty	The offered product must be covered by the warranty of Minimum 1 Year / 100,000 Km
63	Training of Driver	The awarded contractor should provide on-site training (Min 2 day) for the drivers for the proper use of Buses in daily operations
64	After –sales services required	Bidder should provide contact details of their own local Hanger-shop/own Service Centre(s) OR a local company/workshop who will provide after-sale services in districts of Peshawar, Mardan and Mardan of Khyber Pakhtunkhwa province of Pakistan for after – sales service to ensure future O & M.
65	Manual	One copy of the Operators and Owner's instruction and maintenance manual in English and Urdu
66	Instruction	All signs and instruction in the vehicle shall be in English and Urdu