



REQUEST FOR PROPOSAL (RFP)

for

**Supply of Diesel to Generators and rendering of Allied Services for
Peshawar Sustainable BRT Project**

Tender No. TPC/Operations/FS-01

Date: 25.02.2020

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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 a legal entity which includes company, partnership, corporation, Consortium or joint venture which participates in the Bidding Process.

Bid Bond has the meaning given to it in paragraph 6.5.4.

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

BRT means a flexible, rubber-tired rapid transit mode that combines stations, bus stops, vehicles, services, running ways, and technological elements into an integrated system.

Coercion, Collusion, Corrupt Practices, Fraud, Restrictive Practices and Undesirable Practices have the meanings given to them in paragraph 8.4.2.

Consortium means an unincorporated association of juridical persons bound by contract or law, solidarily 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, solidarily 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.

Service Agreement means, the Service Agreement attached with this Request for Proposal.

Financial Proposal has the meaning given to it in paragraph 6.4.1.

Winning Service provider means the Lowest Evaluated Service provider as determined by TransPeshawar Company after having declared responsive and qualified technically.

KPPRA means the Khyber Pakhtunkhwa Public Procurement Regulatory Authority.

Net Worth means total assets minus total 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 5.1.1.

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.

Technical Proposal has the meaning given to it in paragraph 6.4.1.

Monthly Charges shall mean the amount payable by TPC to the Service Provider for one month of Services.

TransPeshawar (The Urban Mobility Company) or "TransPeshawar Company" or "TPC" means the entity responsible for BRT project design, procurement, implementation and ongoing BRT operations and management of service contracts, a public Company (Section 42 Company) registered on February 09, 2017 with Security Exchange Commission of Pakistan with address: - 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 provided to the recipient 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 issued to the Service providers 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 service provider for Supply of Diesel and allied services for Peshawar Sustainable BRT Project; 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 Peshawar Sustainable BRT Corridor System.
- 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 - PESHAWAR SUSTAINABLE BRT CORRIDOR SYSTEM DETAILS

3.1 Background

The Peshawar BRT system is planned to be built in three (3) stages and will ultimately constitute an important part of the public transport system in Peshawar.

- 3.1.1 The estimated total length of the proposed BRT corridor is approximately 28.0 kilometres, with an at-grade section of approximately 12 kilometres and elevated section of approximately 13 kilometres.
- 3.1.2 BRT services are expected to be provided following the "Direct-Service" concept. According to this concept, routes will start outside the BRT corridor, join and then pass along the BRT corridor and leave the corridor at different stations according to their existing route. When running on the corridor, the BRT vehicles will pick up passengers from BRT stations, and when running outside BRT corridor, passengers will board from curb-side BRT vehicle stops.
- 3.1.3 The system is expected to be an "open" BRT system, meaning that passengers need to validate and pay for their journey using their fare medium (e.g. a contactless smart card) via validators at the BRT vehicle doors.
- 3.1.4 The Peshawar Sustainable BRT Corridor System involves among others the following roles:
 - (a) BRT Vehicle Service Providers (VSPs);
 - (b) System Control Service Provider (SCSP).

3.2 **Infrastructure**

- 3.2.1 The approximately 28.0-kilometre-long corridor for the Peshawar BRT planned is expected to consist of:
 - (a) BRT infrastructure (stations, dedicated lanes, depot) designed and built following international best practices and quality standards;
 - (b) sidewalks, mixed-traffic lanes and non-motorized transport lane along the BRT;
 - (c) improvement of access roads and surrounding areas in favour of non-motorized transport and potential feeder services.
- 3.2.2 Thirty (30) BRT stations are expected to be constructed, with an average distance of approximately 900 meters between stations.

3.3 **Operations**

- 3.3.1 It is intended that the BRT System shall be operated so that:
 - (a) BRT vehicles shall provide a combination of stopping and express services on the trunk routes;
 - (b) most stations shall have passing lanes in order to allow express BRT vehicles to overtake stopping BRT vehicles;

- (c) passengers shall board onto and alight from BRT vehicles on the right-hand side from stations located in the median of the roadway that is part of the BRT infrastructure, or on the left-hand side from the pavement or comparable when off the BRT infrastructure;
- 3.3.2 The estimated maximum capacity of the system is approximately twenty thousand (20,000) passengers per direction per hour.
- 3.3.3 The estimated maximal load during the morning peak hour is approximately five thousand (5,000) passengers per direction per hour.

SECTION 4 – BRT DIESEL SUPPLY SERVICE PROVIDER REQUIREMENTS

4.1 Required Services

TransPeshawar invites bids for supply of Diesel to Generators and rendering of allied services in Peshawar BRT system. The scope of this Tender covers a total of **34** Generators installed at Stations, KPUMA office and other facilities. In total, there are 01 Generator sets of 455 KVA, 26 Generator sets of 110 KVA and 07 Generator sets 88 KVA each. Auxiliary fuel tanks of **500** litres (approximately) have also been installed with generators. More detailed requirements are mentioned in Operation Specification Schedule. General specifications of generators are provided as Annex – E.

SECTION 5 – BIDDING PROCESS

5.1 Planning

- 5.1.1 This Request for Proposals introduces the Bidding Process for the procurement of Required Services. The indicative overall planning for the Bidding Process is presented below:

Milestone	Party Responsible	Target Date
Issuance of Request for Proposal (RFP)	TransPeshawar Company	25.02.2020
Pre-Bid Meeting	TransPeshawar Company	05.03.2020(Thursday) 10:30 AM
Queries by the Bidder	Service providers	05.03.2020
Upload of Pre-Bid Minutes along with clarifications	TransPeshawar Company	06.03.2020

Milestone	Party Responsible	Target Date
Proposal Submission Date	Service providers	12.03.2020 (Thursday) 03:00 PM
Notification of the Results of the Evaluation and Appointment of Winning Service provider	TransPeshawar Company	Tentatively in March, 2020
Signing Date of Service Agreement and Compliance with other Requirements	Winning Service provider and TransPeshawar Company	Tentatively in April, 2020

5.2 Information Sources

5.2.1 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 5.3);

5.2.2 Service providers relying on information from other sources or the public domain do so at their own risk.

5.3 Pre-Bid Meeting

5.3.1 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

5.3.2 The pre-bid meeting shall be organised at a date specified in Article 5.1.1.

5.4 Questions and Answers on the Request for Proposals

5.4.1 The Service providers shall have the opportunity to ask questions concerning the Request for Proposals by the date specified in Article 5.1.1. 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 charbagh@hotmail.com,
ashfaq.rauf@gmail.com

- 5.4.2 The Service provider's questions shall be treated anonymously.
- 5.4.3 TransPeshawar Company shall endeavour to respond to all clarification or information requests, however requests received later than date specified in Article 5.1.1 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.
- 5.4.4 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.
- 5.5 Submission of Comments on the RFP/ Service Agreement**
- 5.5.1 The Service providers shall have the opportunity to submit comments concerning the RFP/Service Agreement before the Comment Submission Date specified in paragraph 5.1.1. Comments shall be submitted in conformity with Schedule 9 and shall be sent by email to the address specified in paragraph 5.4.1. The Service providers' comments shall be treated anonymously.
- 5.5.2 TransPeshawar Company shall endeavour to respond to all comments and may decide to issue a revised RFP / Service Agreement taking some or all of the comments into consideration. Every such response and, if applicable, the revised RFP / Service Agreement shall, upon being issued, be sent in the shortest possible time to all Service providers.
- 5.5.3 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.
- 5.6 Formation and Modification in the Composition of a Consortium**
- 5.6.1 Service providers can make Joint Venture / Consortium to meet requirements of the Request for Proposal.
- 5.6.2 TransPeshawar Company will not accept any modification in the composition of a Consortium / JV after Bid Submission.

5.7 Rejection of Proposals

5.7.1 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.

5.7.2 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.

5.7.3 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.

5.8 Cancellation of the Bidding Process and Proclamation of the Bidding Process as Unsuccessful

5.8.1 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.

- 5.8.2 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.
- 5.8.3 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.
- 5.8.4 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.

5.9 Opening and Evaluation of Proposals

- 5.9.1 The opening of the Technical Proposals shall occur fifteen minutes after the Proposal Submission Date at the address indicated in paragraph 6.3.1. 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.
- 5.9.2 TransPeshawar Company shall evaluate the Technical Proposals in accordance with the provisions of SECTION 7. TransPeshawar Company shall then inform all Service providers of the results in writing.
- 5.9.3 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.

- 5.9.4 TransPeshawar Company shall evaluate the Financial Proposals in accordance with the provisions of SECTION 7. TransPeshawar Company shall then inform all Service providers who have been qualified for the evaluation of their Financial Proposal of the results in writing.

5.10 Signing of the Service Agreement

- 5.10.1 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 seven (07) 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 seven (07) days after submission of performance security.
- 5.10.2 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.
- 5.10.3 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 6 – INSTRUCTIONS TO SERVICE PROVIDERS/ BIDDING PROCESS

6.1 General Terms that the Proposal Must Fulfil

- 6.1.1 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).
- 6.1.2 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.

6.2 Proposal Package

- 6.2.1 The Proposal must be submitted in a master envelope containing two inner envelopes, i.e. the Technical Proposal envelope and the Financial Proposal envelope.
- 6.2.2 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 6.3.1;

- (c) The warning: "Do not open before <insert Proposal Submission Deadline>";
 - (d) The wording: "Master envelope – Proposal for Supply of Diesel to Generators and rendering of Allied Services for Peshawar Sustainable BRT Project".
- 6.2.3 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**";
 - (b) One (1) certified true copy of the Technical Proposal, clearly marked as "**COPY NO. ____**"; and
 - (c) One (1) readable flash drive containing an electronic copy of Technical Proposal document, in either Microsoft Word (.doc) or Portable Document Format (.pdf) format.
- 6.2.4 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
 - (b) One (1) certified true copy of the Financial Proposal, clearly marked as "**COPY NO. ____**".
- 6.2.5 In the event of any discrepancy between an original and the copies, the original shall prevail.

6.3 Submission of Proposal

- 6.3.1 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), Ali Tower, Second Floor, University Road, Peshawar, KPK, Pakistan.
- 6.3.2 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.

6.4 Content of Proposal

- 6.4.1 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 1 or Schedule 2
Technical Proposal Submission Letter	Schedule 3
Authority to Bid and Designation of Authorized Representative	Schedule 4 or Schedule 5
Bid Bond	Schedule 6
Affidavit of Integrity Pact	Error! Reference source not found.
Other Documents	Other documents shall be submitted in conformity with Section 7 of RFP
Financial Proposal	
Financial Offer	Schedule 7

6.5 Technical Proposal

- 6.5.1 The Service provider must submit a **Business Structure** in conformity with Schedule 1 (or, in case the Service provider is a Consortium, Schedule 2).
- The Business Structure must be signed and dated by the Authorised Representative.
 - In the case of a Consortium, each Consortium Member shall appoint one, and only one, of their number to be the lead member (**Lead Member**) who shall be authorised by each Consortium Member to represent and irrevocably bind all members of that Consortium in all matters relating to the procurement process for the provision of the Required Services, including, but not limited to, the submission of the Bid on behalf of the Consortium. Lead Member of the Consortium / Joint Venture must be one of the locally registered Company registered under Companies Act 2017 with Security and Exchange Commission of Pakistan. All members shall be jointly and severally liable for the execution of the Service Agreement.

- 6.5.2 The Service provider must submit a **Technical Proposal Submission Letter** in conformity with Schedule 3.
- (a) The Technical Proposal Submission Letter must be signed and dated by the Authorised Representative.
- 6.5.3 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 4 (or, in case the Service provider is a Consortium, Schedule 5).
- (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).
- 6.5.4 The Service provider must submit a **Bid Bond** of five hundred thousand Pakistani Rupees (PKR 500,000) in conformity with Schedule 6 or in Shape of Call Deposit Receipt (CDR) or Demand Draft. Call Deposit Receipt (CDR) or Demand Draft shall be in the name of Chief Executive Officer, TransPeshawar (The Urban Mobility Company).
- (a) The Bid Bond must be provided by the Service provider from Schedule Bank in Pakistan. In case of Joint Venture / Consortium submitting Bid Bond through Bank guarantee, the Bid Bond must be on the name of all members of JV / Consortium. In case of Joint Venture / Consortium submitting Bid Bond in the Shape of Demand Draft or Call Deposit Receipt (CDR), the Bid Bond may be on the name of any one member of JV / Consortium.
- (b) The Bid Bond can be claimed by TransPeshawar Company in case of:
- (i) Withdrawal from the Bidding Process during Bid Validity Period;
- (ii) Failed to submit Performance Security within prescribed time;
- (iii) 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) In case of annulment, Bid Bond shall be returned to the bidder.

- (e) The Bid Bond must be signed and dated by the Corporate Secretary or equivalent officer of the bank providing the Bid Bond.

6.5.5 The Service provider must submit a **Technical Proposal** in conformity with paragraph 7.1.1. of the RFP.

- (a) The Technical Offer must be signed and dated by the Authorised Representative.

6.6 Financial Proposal

6.6.1 The Service provider must submit a **Financial Offer** in conformity with Schedule 7.

- (a) The Financial Offer must be signed and dated by the Authorised Representative.

SECTION 7 - EVALUATION

7.1 Responsiveness Criteria

7.1.1 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; and
- (c) the Proposal does not contain any condition or qualification(s).

7.1.2 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.

7.2 Evaluation Criteria

7.2.1 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
Organisational structure	05	Current Organizational structure if the firm has a well-defined	Organization Chart (In case of JV, apply to all members)

		departmental structure, such as Accounts, operations, HR/Admin, Quality Management etc No Organization Chart/Hierarchy: 0 Organization Chart/Hierarchy: 5	
Total number of human resource managed by the company	05	Less than 20 = 0 Points 20 or more =05 Points	List of Human Resources Employed stating Designation and Contact numbers (Duly attested). (In case of JV, any one member of the JV/Consortium can fulfil this criteria)
Number of clients with minimum monthly supply of 10,000 litres of Diesel or more.	20	< 5 Clients = 0 From 5 – 15 Clients = 05 Marks From 16 – 25 Clients = 10 Marks From 26 – 35 Clients = 15 Marks From 36 and above = 20 Marks	Verifiable details of clients along with particulars including company name, address, focal person, Contact No. and average monthly consumption.
Number of years of experience in supply of Diesel.	25	1 year to 5 years =05 Marks 5.1 year to 10 years =15 Marks 10.1 years and above =25 Marks	At least Income Tax returns of the first and last applicable year of quoted experience or any documentary evidence such as sales tax returns, invoices etc. For Petrol Pump Operators, Sales Certificates from OMC's for quoted period or any other valid evidence (In case of JV applicable to any one member).

Average Annual Turnover from petroleum business for the last 3 years or since inception if Earlier	30	Rs. 100 M to Rs. 199 M = 10 Marks Rs. 200 M to Rs. 299 M = 20 Marks Rs. 300 M & Above = 30 Marks	Audited Financial Statements or Income Tax Returns for last three years or any documentary evidence such as sales tax returns, invoices. For Petrol Pump Operators, Sales Certificates from OMC's for last three years.
Storage Capacity	15	10,000 to 50,000 Litres = 10 Marks Greater than 50,000 Litres = 15 Marks	Verifiable license from Explosive Department, Lease Agreement in case of storage in lease. Pictorial proof of storage tanks for which Client shall have the rights of site verification.
Total Technical Offer Score	100		

7.2.2 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.
- (c) Following documents shall be submitted as part of Technical Proposal: -
 - i. Copy of its company registration with the Securities and Exchange Commission of Pakistan or with one of the provincial Registrars of Firms.
 - ii. Audited Financial Statements of last three years (In case of JV/consortium apply to all) or Financial Statements as applicable in the country origin of operations.

- iii. Valid Registration Certificate for Income Tax from Government of Pakistan (FBR) and Sales Tax from Khyber Pakhtunkhwa Provincial Revenue Authority (KPRA). In case of JV, applicable to all members.
- iv. is on Active Tax Payer list with FBR and KPRA;
- v. Supporting documents mentioned in Article 7.2.1
- vi. Initials on RFP, Operator agreements and all its attachments as token of acceptance of terms and conditions.

(Notes: All documents must be supported by English translation, if in another language)

- 7.2.3 Among the Service providers having qualified for the evaluation of their Financial Proposal and having submitted a compliant Financial Proposal, the Service provider offering the lowest price shall be appointed as the First Winning Service provider/ best evaluated bid.

7.3 **Information**

- 7.3.1 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.

7.4 **Clarification**

- 7.4.1 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 5.4.1.
- 7.4.2 If a Service provider does not provide clarifications sought under paragraph 7.4.1. 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 8 - GENERAL MATTERS

8.1 **Responsibility of Service providers**

- 8.1.1 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.

8.2 Confidentiality

- 8.2.1 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.
- 8.2.2 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.
- 8.2.3 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.

8.3 Proprietary Data

- 8.3.1 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.
- 8.3.2 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.
- 8.3.3 TransPeshawar Company will not return any Proposal or any information provided along therewith except copy of Proposal and unopened Financial Proposal.

8.4 Fraud and Corruption

- 8.4.1 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 contract, observe the highest standard of ethics during the procurement and execution of such contracts.

8.4.2 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 public-funded contract in the Islamic Republic of Pakistan.

8.5 Governing Law and Rules

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

Schedule 1 Business Structure (partnership/corporation)

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

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 2 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 3 Technical Proposal Submission Letter

To be submitted by the Service provider on the letterhead of the firm/company

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 supply of Diesel to Generators and rendering of Allied Services for Peshawar Sustainable BRT Project 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 4 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 5 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 6 Bid Bond

To be submitted by the Bank providing the Bid Bond

Whereas (name of Service provider, in case of JV insert all names) has submitted a Proposal for the Tender: **Supply of Diesel to Generators and rendering of Allied Services for Peshawar Sustainable BRT Project** 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 ----- Pakistani Rupees (PKR -----) 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 signing of Agreement, or (b) if the Service provider is not a Winning Service provider, upon the earlier of (i) seven (7) days after signing of Agreement 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 7 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) 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
3. The Monthly Service charge offered by (name of Service provider) is of an amount of (integer amount in words) Pakistani Rupees (PKR (integer amount in numbers)) excluding price of the Diesel.

S.No	Financial Quote	Unit	Quantity (A)	Price/ Unit (PKR) (B)	Total Price = A x B (PKR)
1	Supply, Installation, Testing and Commissioning of New Flow Meters with 01-year warranty with specifications mentioned in this document and to be installed on auxiliary tanks. (The price shall be quoted exclusive of sales tax on services)	Nos	34		
2	Monthly Service charge offered by the service provider to TransPeshawar including cost of all taxes for provision of all services mentioned in RFP/ Contract including its attachments. (The price shall be quoted exclusive of sales tax on services)	Months	6		
Amount in Pakistani Rupees in words (Amount in integer)					

For and on behalf of (name of Service provider)

(signature of Authorized Representative)

(name, title and date)

Schedule 8 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 _____ 2020

Schedule 9 Comment Form

Name of Service provider:

Individual Clarification Meeting requested : Yes / No

Comment 1

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

Comment 2

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

Comment 3

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

Comment 4

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

Comment 5

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

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

Comment 6

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

Comment 7

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

Comment 8

Subject	
Location in Service Agreement (clause and page number)	

Original wording in Service Agreement	
Comment / motivation for amendment	
Suggested amended wording	

Comment 9

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

Comment 10

Subject	
Location in RFP (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)

**SERVICE PROVIDER AGREEMENT FOR SUPPLY
OF DIESEL TO GENERATORS AND RENDERING
OF ALLIED SERVICE FOR PESHAWAR
SUSTAINABLE BRT PROJECT**

between

TransPeshawar Company

and

[Service Provider]

Date: 25.02.2020

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THIS SERVICE PROVIDER AGREEMENT (the “**Agreement**”) is made on [REDACTED] 2020

BETWEEN

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

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

WHEREAS:

- A. TPC is a corporate entity established by the Government of Khyber Pakhtunkhwa, Pakistan responsible for design, procurement, implementation and ongoing BRT operations in the Peshawar BRT System.
- B. TPC intends to enter into agreements with suitable service provider (selected through a competitive bidding/ procurement process) who will provide supply of Diesel to Generators and rendering of Allied Service for Peshawar Sustainable BRT Project as part of the Project.
- C. The service provider is a company/ firm / Joint venture which is entering into and performing as per, this Agreement.
- D. TPC 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];
 - (d) Annex D [List of Generator]
 - (e) Annex E [Specifications of Generators]
 - (f) Annex F [Specifications of High-Speed Diesel]
 - (g) The RFP and Proposal of service provider including all appendixes / attachments.

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.

2. Appointment of Service Provider

2.1 Appointment

2.1.1 TPC'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 TPC 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 six months commencing from the Commencement Date. The term may be extended by another six months at the discretion of TPC.

3. Performance Guarantee

3.1 The Service provider shall ensure that it maintains with TPC a valid and enforceable Performance Guarantee until the Contractor has fulfilled all its obligations under the Agreement. The service provider shall have delivered to TPC the duly executed Performance Guarantee in the form attached hereto as Annex-C or other mode acceptable to TPC at the rate of 10% of the quoted 6-month service fee. The Performance Guarantee shall have a term of eight (08) months and shall be renewed or replaced and delivered to TPC no later than thirty (30) days before its expiry, in case of extension of term of the Agreement. TPC shall return the previously provided Performance Guarantee to the Service provider within fourteen (14) days of the receipt of the replacement of Performance Guarantee.

3.2 The Performance Guaranteed shall be issued by the Scheduled Bank of Pakistan. Subject to approval of TransPeshawar the Performance Guarantee may be submitted as Call Deposit Receipt or Pay Order in the name of CEO TransPeshawar.

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 TPC 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 TPC shall make payment for the Services provided, to the Service provider, in Pak Rupees through crossed cheque. In case of JV, the cross cheque shall be in the name of JV member nominated by the authorized representative.

4.2 The procedure for payments of Diesel Supplies to the Service Provider shall be as under:

4.2.1 The price of Diesel shall be paid on the regulated Diesel price of the respective petrol pump.

4.2.2 Payment of invoice shall be made within 7 days of receipt of the invoice. However, the invoice would be processed only if it is accompanied by reports required in Operation Specification Schedule.

4.3 The procedure for payment of Service fee for Fuel Supply Services shall be as under:

- 4.3.1 The Service Provider shall submit an Invoice to the TPC after completion of a month. The Invoice shall state the amount claimed and set forth in detail particulars of Services rendered during the month.
- 4.3.2 TPC shall make payment within fourteen (14) days of receipt of invoice after verification of due amount. TPC may withhold payment on account of defect(s) / short coming(s) in the services provided or deduct excess payments made in previous months.
- 4.4 TPC shall be entitled to set off against any amounts payable to the Service provider, any amount which may be due by the Service provider to TPC.
- 4.5 Any payment to the Service provider shall not constitute a waiver of any right held by TPC in respect of a breach of this Agreement by the Service provider.
- 5. Tax**
- 5.1 The Service Provider shall be entirely responsible for all applicable taxes, duties and other such levies imposed by the concerned local, provincial and federal authorities in Pakistan but is exclusive of Sales Tax on Services which shall be added by TPC over and above the quoted amount, as applicable/required under the relevant Tax Laws, to arrive at the Contract Price. Accordingly, the Contract Price shall be subject to adjustments for change in rate of Sales Tax on Services as and when applicable.
- 5.2 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 (Except Sales Tax on Services) and, upon request from TPC, provide proof that such obligations have been satisfied in full.
- 5.3 TPC may cease all payments to the Service provider in respect of any period during which the Service provider is not in compliance with the provisions of clauses 5.1 and 5.2 above. Upon such compliance by the Service provider, TPC shall effect payment of all amounts that had been withheld pursuant to this clause.

PART B – SERVICE PROVIDER RESPONSIBILITIES

6. General Obligations

- 6.1 The Service provider shall abide by all the terms, rules and regulations in accordance with this Agreement (including the Operational Specifications Schedule) and the Applicable Law.
- 6.2 Employ and engage trained and skilled staff (within 07 days of the award of contract) reasonably required to complete the duties of this contract to the satisfaction of TPC.
- 6.3 Provide the list of Service provider's personnel, along with their basic information, to TPC for security clearance and issuance of permit to the BRT Corridor. Furthermore, the Service provider shall provide registration details of vehicles, used for delivery and otherwise essential for the execution of services, requiring access to BRT corridor during refuelling hours.
- 6.4 Provide and cater for any kind of transportation needs for supply of diesel and human resource. The vehicles entered into the corridor must be in good working condition. The Service provider shall be responsible for the prompt removal of any vehicles broken down inside the BRT corridor.
- 6.5 The Service provider shall maintain vigilant supervision over its staff at all times. Dress code is to be applied with their service I.D for their distinct recognition. Apart from generally applied moral code the personnel of the service provide shall avoid to use any kind of toxic and narcotics, even BRT premises is a smoke free zone.
- 6.6 Be responsible, at all times, for the conduct of its personnel and take prompt and strict disciplinary action against any conduct not in compliance with TPC's rules, regulations and instructions issued from time to time.

- 6.7 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.
- 6.8 Ensure presence of its authorized representative(s) at any BRT site or TPC office at short but reasonable notice when so required by TPC and respond to queries of TPC in a timely manner.
- 6.9 Be responsible for the medical and accidental insurance of its staff, payment of all dues like Social Security, EOBI. TPC shall not accept any responsibility of the designated personnel in the event of death, injury, disability or illness that may take place while performing/executing services required under the scope of this contract. Any compensation or expenditure towards the treatment of such injury/disability or loss of life shall be the sole responsibility of the Service provider.
- 6.10 Be responsible that it does not engage or continue to engage any person having a criminal record/ conviction or otherwise undesirable persons.
- 6.11 Agree to remove from the site, whenever required to do so by the TPC, any personnel considered by TPC to be unsatisfactory or undesirable.
- 6.12 Be liable to the penalty and damages for any loss incurred or suffered/any damage caused to movable or immovable property of TPC, on account of delayed, deficient or inadequate Services, or any actions adversely affecting warranty of the Generators, or supply of substandard fuel, or interruption in the smooth operations of BRT Bus Service for reasons directly and solely attributable to the Service provider.
- 6.13 Report immediately to TPC any kind of material incident (to the extent of scope of Service Provider required as per this Contract) including but not limited to spillage of fuel, fuel theft, damage to TPC property and provide photographs of the incident.
- 6.14 Ensure their personnel do not enter into the BRT territory without valid entry cards/permit issued by the TPC.
- 6.15 The Service provider shall exercise the highest degree of skill, care and diligence in the provision of the Services to the reasonable satisfaction of TPC.
- 6.16 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.
- 6.17 The Service provider acknowledges and accepts that it is imperative for the success of the BRT 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.
- 6.18 Compliance with standard operating and control procedures and requirements
 - 6.18.1 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 TPC from time to time and the specific circumstances under which the BRT System operates from time to time, which shall include the Operational Specifications Schedule.

7. Operating Licenses

- 7.1 The Service provider shall maintain the validity of all Operating Licences required for such business, if any, for the duration of this Agreement and shall ensure that the terms or conditions of such Operating Licenses are not contravened. Any liability accrued or fine levied would be the sole responsibility of the Service Provider.

8. Drivers

- 8.1 Drivers hired for fuel tanks shall have a valid licence and are suitably qualified and skilled to meet the requirements set out in the Applicable Laws.

9. Co-operation with Other Contractors

- 9.1 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 BRT 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.
- 9.2 Should the Service provider and Other Contractors fail to reach an agreement as contemplated in clause 9.1, TPC 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.
- 9.3 In any event, notwithstanding the provisions above, TPC shall at all times be entitled to issue Protocols regulating the interaction between the Service provider and Other Contractors/Service providers.
- 9.4 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 9.1 above.

10. Access control

- 10.1 The Service provider shall coordinate with the System Control Service Provider to enter the corridor. The System Control Service Provider shall be primarily responsible for managing access control in BRT system.

11. Monitoring of the Services

- 11.1 TPC shall be entitled to require regular written reports by the Service provider in such reasonable form, detail and frequency as may be determined by TPC 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.
- 11.2 An Authorised Representative of TPC shall at all reasonable times be given access to the Vehicles, 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.

12. Incident Reporting

- 12.1 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 TPC 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.
- 12.2 In addition to any obligations under Applicable Law, the service provider shall immediately after its occurrence notify TPC or its Authorised Representative of any accident relating to the Services.
- 12.3 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 12.2 above, to TPC 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.

13. Other responsibilities

- 13.1 The Service provider shall be responsible for the safe disposal of waste, oil, lubricant or water or containing any variation of such lubricant in accordance with the Applicable Law.
- 13.2 The Service provider shall at its own cost comply with all labor, employment, occupational health and safety regulations and standards applicable to the Services.
- 13.3 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.

14. Maintenance

- 14.1 The Service provider shall at all times and its own cost be required to provide complete operation and maintenance of fuel supply assembly owned by TPC till base tank of Gensets in complete healthy working condition and in accordance with the specifications, requirement and/or recommendations of manufacturer. The assembly includes flow meters, auxiliary tanks, graduated dip rods, fuel delivery pipes from auxiliary tank to base tank, control valves, locking arrangement and other allied equipment / parts. Operation and maintenance of assembly shall also include repair / replacement / restoration of equipment/ parts without any effect to TPC ownership rights and levelling of auxiliary tanks if required.

15. Fuel stocks

- 15.1 The Service provider shall, for the duration of the Agreement, irrespective of actual or anticipated fuel delivery stoppages or shortage of fuel and electricity supply, ensure that it maintains, at its own cost, at all times adequate levels of fuel, in order to ensure a seamless and uninterrupted delivery of the Services.

PART C - AUTHORISED REPRESENTATIVES, PROTOCOLS AND SERVICES NOTICES

16. Authorised Representative

- 16.1 TPC 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.
- 16.2 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.
- 16.3 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.
- 16.4 Without derogating from the generality of this clause 16, TPC 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.

17. Service Notices, Protocols and Amendments

- 17.1 TPC shall be entitled to issue reasonable Protocols, code of conduct for service provider's staff or amend previously issued Protocols / code of conduct 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.

PART D – LIQUIDATED DAMAGES

18. Liquidated Damages

- 18.1 TPC shall be entitled to impose Liquidated Damages on the Service provider in accordance with the provisions of this clause 18 and the Operational Specifications Schedule for the Service provider's failure to achieve certain KPIs as indicated in the Operational Specifications Schedule.

- 18.2 The Parties agree that the amounts specified in this clause 18.2 and the Operational Specifications Schedule for the Service provider's failure to achieve certain KPIs represent the likely loss to TPC 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.
- 18.3 TPC 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.
- 18.4 To the extent that TPC discovered an instance of the Service provider's failure to achieve a particular KPI, TPC 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. TPC may at its discretion specify period and type of certain failure which should be cured/rectified in specific period.
- 18.5 If Liquidated Damages are imposed, then TPC shall be entitled to withhold and/or deduct the imposed amounts from the Service provider's next payable invoice, any subsequent invoice or in increments from several subsequent invoices.
- 18.6 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 E – WARRANTIES AND CHANGE IN OWNERSHIP

19. Warranties, Undertakings and Indemnities

19.1 Service provider Warranties

- 19.1.1 The Service provider acknowledges that TPC has entered into this Agreement relying on the strength of the warranties given to TPC by the Service provider and that the warranties are given with the intention of inducing TPC (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.
- 19.1.2 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.
- 19.1.3 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 on operation date 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 TPC 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 TPC which would, if disclosed, be likely to have an adverse effect on TPC'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.

19.2 Service provider Undertakings

The Service provider undertakes with TPC that:

- 19.2.1 it will give TPC 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;
- 19.2.2 it will not without the prior written consent of TPC (and whether by a single transaction or by a series of transactions whether related or not) sell, transfer, lend, encumber or otherwise dispose of the whole or any part of its business or assets;
- 19.2.3 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;
- 19.2.4 it shall not without the written consent of TPC incorporate any company or purchase or acquire or subscribe for any shares in any company save where such company is involved in the provision of the Services and/or Services;
- 19.2.5 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;
- 19.2.6 it shall immediately notify TPC 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).

19.3 TPC and Service provider Indemnities

- 19.3.1 The Service provider shall take steps to ensure the safety of property of BRT system.
 - 19.3.2 The Service provider shall be liable for any loss or damages resulting from damage to property including TPC 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.
 - 19.3.3 The Service provider indemnifies and agrees to hold TPC 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.
 - 19.3.4 Nothing contained in this clause 19.3 shall be deemed to render the Service provider liable for, or require it to indemnify TPC against, any compensation or damages with respect to injuries or damage to persons or property resulting from any negligent act or omission of TPC 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.
- 19.4 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.

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

20. Force Majeure

- 20.1 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:
- 20.1.1 the obligations which are affected and the extent to which the relevant Party cannot perform those obligations;
 - 20.1.2 a detailed description of the Event of Force Majeure;
 - 20.1.3 an estimate of the time period which the Event of Force Majeure is envisaged to continue; and
 - 20.1.4 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 TPC 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 TPC may curtail the Event of Force Majeure and/or the costs arising therefrom. Notwithstanding the provisions of this clause 20.1.4, 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.
- 20.2 The Party prevented from discharging its obligations pursuant to this Agreement as a result of an Event of Force Majeure shall:

- 20.2.1 use all reasonable endeavours to remedy or minimise the effects of the Event of Force Majeure; and
 - 20.2.2 take all reasonable and necessary steps available to it as contemplated in clause 20.1.4 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.
- 20.3 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 TPC 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.
- 20.4 In the event that the Service provider is the Party affected by an Event of Force Majeure, TPC may, in response to the notice issued by the Service provider in accordance with clause 20.1, 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. TPC shall in such event make payment to the Service provider for such Services in accordance with the Payment clause.
- 20.5 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.
- 20.6 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.
- 20.7 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.

21. Step-in and Necessary Action

- 21.1 If the Service provider commits a material breach of this Agreement to such an extent that TPC is compelled to step in in order to ensure that the Services or any part thereof are continued seamlessly or if TPC reasonably believes that the Service provider is unable to perform the Services or a substantial part thereof in the manner contemplated in this Agreement, TPC shall be entitled to give the Service provider a notice.
- 21.2 The notice pursuant to clause 21.1 shall set out:
 - 21.2.1 details of the material breach or reasons for TPC'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;
 - 21.2.2 the remedial action which the Service provider should take within the period specified by TPC; and
 - 21.2.3 the date upon which TPC intends to commence the Necessary Action in the event that the Service provider fails to take remedial action.
- 21.3 In the event that the Service provider fails to take such remedial action within the period specified in TPC's notice, TPC 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.

- 21.4 The service provider hereby agrees that TPC, in taking the Necessary Action, the service provider undertakes to co-operate and do all such things as may be necessary or any third party appointed by TPC and to ensure the seamless operation of the Services or any part thereof.
- 21.5 If TPC takes the Necessary Action, then without prejudice to any of TPC's remedies under the Agreement or the Applicable Law, for so long as and to the extent that such Necessary Action is taken and prevents the Service provider from performing any of its obligations under this Agreement:
- 21.5.1 the service provider shall be relieved from such obligations for the duration of the period in which TPC is taking the Necessary Action; and
- 21.5.2 without prejudice to TPC's rights to claim damages, the payments due and payable by TPC to the Service provider shall equal the amount the Service provider would have received if it were performing the obligations affected by the Necessary Action in full over such period, less:
- (a) any outstanding Liquidated Damages imposed, but not yet deducted as calculated in accordance with the provisions of this Agreement; and
- (b) an amount equal to TPC's unrecovered costs and/or expenses incurred pursuant to taking such Necessary Action.

22. Breach and Termination

- 22.1 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 TPC of a notice calling upon it to do so or such other time as specified by TPC then TPC 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.
- 22.2 For purposes of this Agreement, a material breach shall include but not be limited to the foregoing if the Service provider:
- 22.2.1 fails to provide or maintain the Performance Guarantee; or
- 22.2.2 in the opinion of TPC, commits a Prohibited Act; or
- 22.2.3 goes into liquidation, whether provisionally or finally (other than a voluntary liquidation for the purpose of amalgamation or reconstruction to which TPC has given its prior written consent); or
- 22.2.4 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
- 22.2.5 delegates, cedes or sub-contracts this Agreement or part thereof in contravention of the provisions hereof without having obtained TPC's prior written consent; or
- 22.2.6 contravenes the provisions of Operational Specifications Schedule; or
- 22.2.7 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
- 22.2.8 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
- 22.2.9 violates or attempts to violate any Applicable Law or otherwise commits any criminal act; or

- 22.2.10 enters into any agreement or arrangement, whether legally binding or not, with any other person, firm or company to refrain from formally responding to TPC's calls for proposals or the entering into of any negotiations with TPC in relation to this Agreement; or
 - 22.2.11 Abandons, suspend services or otherwise repudiates the Services or any of its obligations under this Agreement; or
 - 22.2.12 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 TPC as being materially defective.
- 22.3 If TPC:
- 22.3.1 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
 - 22.3.2 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 TPC of a notice calling upon it to do so,
- 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 TPC and in either event, to recover such costs, losses and damages as it may have sustained.
- 22.4 In the event of termination of this Agreement:
- 22.4.1 TPC shall be entitled to immediately take possession of all the equipment and the service provider shall be required to surrender its Operating Licences/permits and do all things necessary to transfer ownership and other assets required for the performance of the Services to TPC; and
 - 22.4.2 TPC 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 TPC on request.
- 23. Dispute resolution**
- 23.1 Disputes
- 23.1.1 For the purposes of this clause 23, 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.
 - 23.1.2 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 23.
- 23.2 Resolution by Chief Executives

- 23.2.1 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 TPC (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.

23.3 Arbitration

- 23.3.1 If the Parties are unable to resolve the dispute pursuant to clause 23.2, either Party shall be entitled to refer a dispute to arbitration in accordance with this clause 23 by notifying the other Party in writing of its intention to do so.
- 23.3.2 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 23.3 by reference. Any such arbitration shall be subject to the Applicable Law.
- 23.3.3 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.
- 23.3.4 Unless otherwise required by TPC, such arbitration proceeding 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.
- 23.3.5 Unless otherwise required by TPC, 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.
- 23.3.6 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.
- 23.3.7 The obligations of the Parties shall not be altered by reason of the arbitration being conducted during the term of the Agreement.
- 23.3.8 Any monetary award in any arbitration shall be denominated and payable in PKR.
- 23.3.9 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
 - (b) 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.
- 23.3.10 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.
- 23.3.11 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 TPC 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 G - MISCELLANEOUS MATTERS

24. Insurance

- 24.1 The service provider agrees to, at their own costs, establish and maintain no less than the minimum types and levels of insurances that are required by Applicable Law.

25. Restricted Companies

- 25.1 Restricted Companies and/or their shareholders shall not:
- 25.1.1 be a shareholder in the Service provider;
 - 25.1.2 be subcontractors of the Service provider, or
 - 25.1.3 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.

PART H - FINAL PROVISIONS

26. Addresses and notices

- 26.1 The Parties choose for the purposes of this Agreement the following addresses:
- 26.1.1 TPC: TransPeshawar (The Urban Mobility Company), Ali Tower, Second floor, University Road, Peshawar, Pakistan.
 - 26.1.2 The Service Provider: [•].
- 26.2 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 26.1 and it chooses that address for all purposes under this Agreement.

27. Change in Law

- 27.1 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 TPC 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.
- 27.2 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.

28. Remedies

- 28.1 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.

29. Confidentiality

- 29.1 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.

- 29.2 Notwithstanding clause 29.1, 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 29.
- 29.3 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.
- 29.4 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 TPC.

30. Severance

- 30.1 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.

31. No agency

- 31.1 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 TPC 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 31 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.
- 31.2 The Service provider is an independent contractor performing the Agreement. The Service provider is not an employee or agent of TPC.

32. Corruption and Fraud

- 32.1 The Service provider warrants that in entering into the Agreement it has not committed any Prohibited Act.
- 32.2 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 TPC in writing with full details of the request (including the identity of the Public Official making the request).
- 32.3 Without prejudice to clause 32.2, 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 32 and the Service provider shall enforce such obligations.
- 32.4 In the event that the Service provider fails to comply with the requirements of this clause 32 TPC shall be entitled to terminate the Agreement pursuant to clause 22.1.
- 32.5 The Service provider shall sign affidavit of Integrity Pact attached as Schedule 12 in Request for Proposal.

33. Overriding Effect of Entire Agreement

- 33.1 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.

34. No stipulation for the benefit of a third person

- 34.1 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.

35. No representations

- 35.1 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.

36. Amendment

- 36.1 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:

36.1.1 is made in writing; and

36.1.2 expressly sets out the modification, amendment, addendum or variation to the accordance with the Agreement; and

36.1.3 refers to the Agreement; and

36.1.4 is signed and dated by a representative of each Party.

37. Indulgences

- 37.1 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.

38. General co-operation

- 38.1 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.

- 38.2 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 TPC.

- 38.3 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 29 of this Agreement.

39. Governing law

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

40. Language

- 40.1 Unless expressly notified in advance by TPC, 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 TPC, all minutes of meetings shall be issued in English.

41. Independent advice

- 41.1 Each of the Parties hereby respectively agrees and acknowledges that:

41.1.1 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

- 41.1.2 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.

42. Good faith

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

43. Survival of rights, duties and obligations

- 43.1 The Surviving Provisions will survive termination or completion of the Agreement.
- 43.2 In the event that the Agreement is terminated or completed, neither Party shall be liable to the other Party except:
- 43.2.1 under the Surviving Provisions; or
- 43.2.2 in respect of any breach of the Agreement occurring before such termination or completion; or
- 43.2.3 any rights or liabilities between the Parties that were pre-existing as at the date of termination or completion.

44. Assignment

- 44.1 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 TPC.
- 44.2 Notwithstanding anything to the contrary stated in this Agreement, TPC 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.

45. Waiver

- 45.1 Subject to clause 45.2, 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.
- 45.2 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.

46. Costs

- 46.1 Any costs, including all legal costs of an attorney and own TPC 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 2019

Witnesses

for TransPeshawar (The Urban Mobility
Company)

.....

.....
duly authorised and warranting such TPC

Name:

Position: _____

Signed on 2019

Witnesses

.....

for [BRT 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 TPC and the Service provider respectively, as contemplated in accordance with clause 16;
- 1.1.6 **“BRT System”** means the bus rapid transit system in Peshawar known as Peshawar Sustainable BRT Corridor System or any other name that should be assigned to the Peshawar bus/transit system;
- 1.1.7 **“Business Day”** means any day other than weekend or public holiday in Pakistan as notified by Government of KPK;
- 1.1.8 **“Change in Law”** means:
 - (c) the adoption of a new Law; or
 - (d) 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;
- 1.1.9 **“Commencement Date”** means the date on which the Services shall commence as notified by TPC by way of a Service Notice.
- 1.1.10 **“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;

1.1.11 “**Corridor**” means dedicated lane from Chamkani Station to Kharkhano station which includes stations, roads turning points, terminals, etc.;

1.1.12 “**Disclosing Party**” means the Party disclosing Confidential Information to the Receiving Party;

1.1.13 “**Drivers**” means those Employees who drive and operate the Vehicles;

1.1.14 “**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;

1.1.15 “**Employees**” means the employees of the Service provider, or of any subcontractor contracted by the Service provider to perform a part of the Service;

1.1.16 “**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;
- 1.1.17 **“Entity”** means association, business, close corporation, company, concern, enterprise, firm, partnership, limited partnership, joint venture, trust, undertaking, voluntary association, body corporate and any similar entity which is registered as per law.
- 1.1.18 **“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, 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;
- 1.1.19 **“Financial Year”** means, at any time, the financial year of the Service provider starting on January and ending on 31 December;
- 1.1.20 **“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;
- 1.1.21 **“Invoice”** means a valid tax invoice as contemplated in clause 4;
- 1.1.22 **“KPI”** means the key performance indicator;
- 1.1.23 **“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 18 or otherwise paid by the Service provider to TPC;
- 1.1.24 **“Month” or “Monthly”** means a calendar month;

- 1.1.25 **“Necessary Action”** means any action that TPC deem necessary and appropriate in the event that the Service provider failed to take remedial action pursuant to clause 21;
- 1.1.26 **“Operating Licence”** means any licence, consent or permit required by the Service provider to enable it to provide the Services under this Agreement;
- 1.1.27 **“Operational Specifications Schedule”** means the schedule annexed hereto as Annex B;
- 1.1.28 **“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 TPC in connection with the BRT System;
- 1.1.29 **“Party”** means a party to this Agreement;
- 1.1.30 **“Performance Guarantee”** means the unconditional, irrevocable on-demand performance guarantee in the specimen form attached hereto as Annex C provided to TPC by the Service provider pursuant to clause 3;
- 1.1.31 **“PKR”** means Pakistani rupee;
- 1.1.32 **“Prohibited Act”** means:
- (l) 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 TPC; or
- (m) 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 TPC; or
 - (n) committing any offence under the Applicable Law creating offences in respect of fraudulent acts; or
 - (o) defrauding, attempting to defraud or conspiring to defraud TPC;
- 1.1.33 **“Project”** means the Peshawar Sustainable BRT Corridor System project carried out by TPC;
- 1.1.34 **“Protocol”** means a protocol and/or a standard operating procedure issued from time to time by TPC 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;

- 1.1.35 **“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;
- 1.1.36 **“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;
- 1.1.37 **“Receiving Party”** means the Party receiving Confidential Information from the Disclosing Party;
- 1.1.38 **“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;
- 1.1.39 **“Restricted Companies”** means Other Service providers and/or Other Contractors;
- 1.1.40 **“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;
- 1.1.41 **“Service Notice”** means a notice given to the Service provider by TPC in accordance with this Agreement;
- 1.1.42 **“Termination Date”** means the twelfth (2nd) anniversary of the Commencement Date or the date on which an earlier termination pursuant to the terms of the Agreement takes effect;
- 1.1.43 **“Warranty”** means the warranties and undertakings given to TPC by the Service provider, set out in clause 19;
- 1.1.44 **“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

The scope of this contract covers a total of 34 Generators (mostly) already installed at Stations, KPUMA office and Park and Ride and other facilities owned by TransPeshawar. Location and capacity of Generators are attached as Annex-G. In total, there are 01 Generator sets of 455 KVA, 26 Generator sets of 110 KVA and 07 Generator sets 88 KVA each. Auxiliary fuel tanks of 500 litres (approximately) have also been installed with generators.

1.1 General

The Service Provider shall: -

- 1.1.1 Provide fuelling in diesel generators in non-operational hours (11:00 PM to 5 AM) in time duration allowed and approved by TPC. In routine, generators will be refuelled at night in non-operational hours on need basis as scheduled by Service Provider and approved by TransPeshawar to meet the requirements of bus operations. TPC may also allow fuelling of generator's during bus operational hours (6:00 AM to 11:00 PM) in emergency situation or at time as directed by TransPeshawar. In case of emergency, TPC may direct with 6 hours' notice to service provider for fuelling in generators and service provider is required to fuel the generators/auxiliary tank. Entry to corridor in operational hours will be in accordance with SOP defined by TPC. Schedule for fuelling of Generators/ auxiliary tank will be provided by Service Provider and approved by TPC.
- 1.1.2 Make available at least two tank lorries/ vehicles of sufficient storage capacity to smoothly undertake and perform the fuelling activity. The resources and vehicles shall be sufficient to fuel all generators/ auxiliary tank in one night during non-operational hours. The tank lorries must be in good condition and be equipped with sealed digital dispensing units, flow meter and a power supply/ source (e.g. generator) to effectively carry out the decanting process including providing power to the flow-meter to be installed by Service Provider.
- 1.1.3 Supply, install, test, commission, operate & maintain and replace as and when required for smooth functioning of operation, a high quality, digital, branded, sealed, flow-meter on Auxiliary fuel tank with following specifications: -
 - a. Power Supply 12 or 24 VDC
 - b. Count Scope 1- 9999.99 Liters
 - c. Flow Range 05-90 Liters/Min
 - d. Range of Operation Temperature 0-50 C
 - e. Accuracy $\pm 1\%$
 - f. Backlit liquid crystal display (LCD) of digital meter
 - g. Paint Powder coating

- h. Fuel Intake socket of flow meter, designed such that fuel nozzle of dispensing unit should fit into the socket properly and there should be no leakage during fuelling.
- i. Counter Reset button
- j. Water proofing
- k. Lid/lock to secure the display unit and interface of the flow meter.
- l. To avoid from unauthorized access the flow meter should be encapsulated in steel casing with locking arrangement. The arrangement should be such that it can be opened and closed for inlet of flow meter during fuelling. Furthermore, the size of steel casing should be greater than flow meter, so that flow meter can easily be dismantled and installed again if required for maintenance/ replace / repair / restore.
- m. A system to measure fuel level in auxiliary tank by graduated dip rod.
- n. A backup battery in the meter to ensure safety of filling data if there is any power disconnection/failure during the fuel filling process.

Flow meter once installed on Auxiliary tank will be the property of TPC. Flow meter shall be installed within one month of contract signing along with proper seal/ security.

- 1.1.4 Ensure accurate recording of fuel quantity supplied/decanted. The flow-meters shall be used to monitor the quantity decanted into the Auxiliary tank at each delivery; therefore, the flow-meters must be of such quality/specifications that their readings, after calibration, should match those displayed by the dispensing unit attached on the delivery vehicle. In case of difference of reading in flow meter of delivery vehicle and auxiliary tank, lowest of the two will be taken for payment of fuel. If required, the service provider shall be responsible for levelling of Auxiliary tank to measure / read the dip chart already fixed on the tank.
- 1.1.5 Ensure timely calibration of both the dispensing units installed on the delivery vehicles, and the flow-meters installed on the auxiliary fuel tanks, through a recognized agency/firm, as approved by TPC.
- 1.1.6 Within 30 days of the award of the Contract, ensure calibration of all auxiliary tanks installed on sites and provide calibration reports and Dip charts. The Service Provider shall also provide dip chart for base tank. At the minimum, the calibration shall be conducted on a quarterly basis or earlier as may be needed. The calibration reports shall be submitted to TPC within one week of the end of the quarter. Under no circumstances shall the flow-meters be removed / replaced without prior approval of TPC.
- 1.1.7 Maintain on-site as well as off-site record (e.g. log book) of all re-fuelling activity. (Generator readings, quantity delivered at each supply, flow meter and graduated material dip rod readings etc.). Graduated dip rods must be made available at each station and shall be handed over and kept under the custody of Security Manager or other representative of TPC at the initiation of the Contract.

- 1.1.8 Guard against dispensing of impure or substandard Diesel to protect warranty rights of TransPeshawar by performing basic quality tests (Graduated Cylinder (1 L) Fuel Test, water test and flash point test) at each delivery on-site at location identified by TPC.
- 1.1.9 Ensure operational readiness to provide services and implement all controls (equipment, hardware, processes, mechanisms etc.) required under this RFP by the time of signing of the contract. Failure to achieve operational readiness may delay/cancel signing of the Contract, result in forfeiture of the Performance Security or imposition of liquidated damages or combination thereof.
- 1.1.10 Ensure security of fuel present in generators and auxiliary tanks, on 24-hour basis, 7 days per week (including public holidays), by implementing a system of theft prevention duly approved by the TPC.
- 1.1.11 Control unauthorized access to flow meters, auxiliary tanks, fuel delivery pipes from auxiliary tank to base tank, and control valves.
- 1.1.12 Recognize and respond to security threats or breaches during fuelling process.
- 1.1.13 Provide complete Operation and Maintenance of fuel supply assembly owned by TransPeshawar till base tank of Gensets in complete working condition. The assembly includes flow meters, auxiliary tanks, graduated dip rods, fuel delivery pipes from auxiliary tank to base tank, control valves, locking arrangement and other allied equipment / parts. Operation and Maintenance shall also include repair / replacement / restoration of equipment/ parts without any effect to TransPeshawar ownership rights and levelling of auxiliary tanks if required. This also includes calibration, repair and maintenance of flow meters already installed by TPC between auxiliary and generator sets. The motor along with sensor installed in between generator and auxiliary tank is out of scope of this contract.
- 1.1.14 Develop detailed Standard Operating Procedures (SOPs) for the following, to the satisfaction of TransPeshawar, and strictly abide by them: SOP for decanting of fuel and lab testing is attached as Annex-D and as amended time to time by TransPeshawar.
 - a. Decanting of fuel.
 - b. Lab testing of delivered fuel; the Service Provider shall arrange lab test report, of a randomly drawn sample of fuel taken on-site at location identified by TPC in presence of representative(s) from both TransPeshawar and the Service provider, twice a month. Two samples shall be taken at the cost of Service Provider from each sample; one by Service Provider for testing and other by TPC. The Services of a company (lab) of repute and approved by TransPeshawar shall be utilized for lab tests. The specifications of Pakistan Standards Institute (PSI) for High Speed Diesel shall be treated as benchmark for quality (Annex - F).

- c. TransPeshawar can also conduct three tests in a six-month period from a randomly taken sample, the cost of which shall be borne by Service Provider. Cost of additional test, if conducted by TransPeshawar, shall be borne by TransPeshawar.

- 1.1.15 Conduct activities including fuelling, collection of readings (including but not limited to graduated dip rod readings for auxiliary tank and base tank, engine running hours, percentage fuel level) and submission of reports as per schedule defined by the TPC. The reports shall be as per prescribed format of the TPC. The number and format of the reports are subject to change as need arises, decided by the TPC.

1.2 Spare parts

- 1.2.1 The Service provider shall maintain and replace flow meters as notified by TPC. In case service provider does not provide equipment within seven (07) working days, TPC will replace or maintain the required equipment and will deduct the invoice price from service provider monthly payment.

2. KEY PERFORMANCE INDICATORS

2.1 KPIs

- 2.1.1 The Service Provider's performance shall be evaluated by means of key performance indicators ("**KPIs**"). Failure to comply with KPIs ("**Failure Events**") shall lead to the application of performance deduction as per the below table ("**Performance Deduction**"):

Sr. No.	Description of Infraction	Penalty for Non-performance
1	Disruption in Operation of BRT Service due to failure of Service Provider to timely refuel the generators (within the allocated time slot) or in sufficient quantities.	$P = \text{Average No. of boarding Passenger at affected station(s) per hour}$ $D = \text{Downtime due to Service Provider's non-performance in hours}$ $F = \text{Fare (Rs.) as applicable at the time of invoiced month.}$ $K = P \times D \times F$ A penalty of an amount up to 'K' above may be levied
2	Ensure security of fuel present in auxiliary tanks, on 24-hour basis, 7 days per week (including public holidays), by implementing a system of theft prevention.	The Service Provider shall be liable to bear the actual cost of established stolen quantity estimated by the TPC. However, it is clarified here that the extent of liability of the Service Provider shall be limited to incidents of theft up to a maximum of 30 days preceding the date of identification of incident.
3	Failure to abide by any rules, regulations, instructions, SOPs, Contractual Obligations laid down by TPC	$A \times 5000$ in PKR per incident Where $A = 1$ to 10 will depend upon the sensitivity of the incident as decided by TPC

4	Failure to perform basic quality testing (Graduated Cylinder Fuel Test, water test and flash point test) at each delivery, as may be reported by TPC representative/inspector.	10% of Cost of Diesel Delivery (for that particular day) upon 1 st occurrence. 25% of Cost of Diesel Delivery (for that particular day) upon 2 nd occurrence. 50% of Cost of Diesel Delivery (for that particular day) upon 3 rd occurrence. 75% of Cost of Diesel Delivery (for that particular day) upon 4 th occurrence and onwards. <i>The TPC may terminate the contract and/or forfeit performance security after 4th occurrence.</i>
5	Failure to ensure accurate recording of fuel quantity supplied/decanted as may be reported by TPC representative/inspector.	10% of Cost of Diesel Delivery (for that particular day) upon 1 st occurrence. 25% of Cost of Diesel Delivery (for that particular day) upon 2 nd occurrence. 50% of Cost of Diesel Delivery (for that particular day) upon 3 rd occurrence. 75% of Cost of Diesel Delivery (for that particular day) upon 4 th occurrence and onwards. <i>The TPC may terminate the contract and/or forfeit performance security after 4th occurrence.</i>
6	Failure to contain spillage within acceptable fuel spillage levels as may be ascertained/reported by TPC representative/inspector along with a photographic evidence.	Cost of Estimated spillage above acceptable fuel spillage level as determined by TPC. + PKR 10,000/-
7	Failure to maintain adequate and up-to-date log book of all re-fueling activities (Generator readings, quantity delivered at each supply, flow meter reading, dip rod readings etc.) OR Failure to submit reports as per prescribed schedule and format.	5000 + (B x 1000) per instance in PKR where B is each additional day after the schedule prescribed by TPC (Maximum Limit is Rs 30,000 / Month for each incident)
8	Failure to ensure provision of resources including human resource and equipment within time period specified under scope of contract, reasonably required to complete the duties of this contract to the satisfaction of TPC.	Amount equivalent to 10% of Performance Security upon issuance of 1 st written notice. Amount equivalent to 30% of Performance Security upon issuance of 2 nd written notice. Forfeiture of performance security or termination of the contract or heavy penalty as per TPC's decision upon non-compliance to 3rd notice within specified time.
9	Failure to ensure presence of its authorized representative(s) at any BRT site or TPC office at short but reasonable notice when so required by	Rs. 20,000 per occurrence

	the TPC or respond to queries of TPC in a timely manner.	
10	Any Loss or damage caused to movable or immovable property of TPC or any other BRT Service Provider directly and solely attributable to the Service Provider.	Replacement / repair cost of damage caused as assessed by TPC.
11	Failure to remove broken-down delivery or staff vehicle from the BRT corridor before commencement of Operations	Actual cost of removing broken down vehicle from the BRT corridor if incurred by TPC + Rs. 20,000
12	Failure to arrange backup delivery vehicle within one hour in case of breakdown OR delay in fueling from the prescribed schedule due to poor condition /arrangements of delivery vehicle.	PKR 10,000 per incident
13	Failure to comply with O&M requirements as laid in scope of the contract within the following duration: - a) 07 Days of the identification of fault in cases involving supply of new Flow Meter or repair of existing Flow Meter b) 24 hours of the identification of fault In cases excluding (a)	10,000 + (Cx2000) for each incident in PKR where C = each additional day in case (a) after 07 days and each additional hour in case (b), after 24 hours (Max Limit Rs 50,000/- Per Month for each incident)
14	Failure to calibrate the dispensing units (installed on delivery vehicles), flow-meters (installed on fuel tanks) and auxiliary tanks or failure to provide calibration reports as per scope of the contract	10,000 + (Dx2000) for each incident in PKR where D = each additional day after the schedule prescribed by TPC (Max Limit Rs 30,000/- Per Month)
15	Ensure its personnel do not enter into the corridor without valid entry cards/permit issued by the TPC.	The offender shall be liable to pay the prescribed fine as notified by government.
16	Avoidance of Warranty due to supply and use of sub-standard fuel as described in scope of the contract	Up to 10% of the replacement Cost of Generator.
17	Failure to arrange lab test as per scope of the contract.	10,000 + (E x 2000) in PKR where E = each additional day after submission date prescribed by the TPC (Max limit Rs 30,000 Per Month)

2.1.2 Penalties will be imposed subject to the availability of concrete evidence.

2.2 Inspections

- 2.2.1 TPC may at all reasonable times, shall observe, inspect and satisfy itself with the observance by the Service provider of the Key Performance Indicators.

2.3 Definitions

For the purposes of this Schedule:

- 2.3.1 **Fuel or Diesel** shall mean High Speed Diesel (HSD).
- 2.3.2 **Acceptable Fuel Spillage** shall mean total fuel spillage within 10 litres per month.
- 2.3.3 **Deficient Fuel** shall mean that actual Diesel quantity (in litres) delivered to a site is less than the invoiced quantity and is further explained in the Contract.
- 2.3.4 **Sub-Standard Fuel** shall mean a sample of fuel, collected in the presence of the Service Provider, established as sub-standard in light of test result of a reliable lab, approved by the TPC, due to deviation of more than 5% from the Maximum and Minimum levels prescribed in the Pakistan Standards Institute (PSI) specifications for High Speed Diesel (Annex - F), except in the case of Sulphur content.
- 2.3.5 **Material deviation or reservation** is one which affects the scope, quality or performance of the Services or limits the Procurer's rights or the Service provider's obligations under the Contract.

STANDARD OPERATING PROCEDURES

In order to comply with the Contract for **Supply of Diesel to Generators and rendering of Allied Services for Peshawar Sustainable BRT Project**, the following Standard Operating Procedures (SOPs) are proposed:

1. LAB TESTING OF FUEL

- i. At the time of delivery of Diesel to Generators, TPC's representative can take sample of 1 liter of fuel, at any site, without any prior notification, once in every two weeks, in the presence of representative of SERVICE PROVIDER.
- ii. Before taking the sample, it would be ensured by both parties that the bottle is clean.
- iii. After taking the sample, bottle will be sealed with tape, which would be signed by both the representatives of TPC and SERVICE PROVIDER.
- iv. The sample will then be delivered to the Lab approved by TPC.
- v. Lab reports shall be attached by SERVICE PROVIDER with the Monthly Service Invoice.

2. DECANTING OF FUEL

i. Quality & Quantity Testing of Diesel (Flash Point, Water, Quantity)

At the time of delivery, the Contractor shall carry out basic testing of fuel, as required under the Contract. The results of the tests will be documented and provided to TPC in the office, along with Invoice of Diesel. However, in case, if any of the tests cannot be carried out due to any circumstances beyond the Contractor's control e.g. extreme wind, rain, malfunctioning of test equipment etc., TPC shall duly accept the limitation caused by such external factor(s) and carry on with the fueling activity. If, however, the tests cannot be conducted due to any other reason, then the TPC's representative shall take sample of fuel for testing at the next delivery in a clean bottle, sealed and signed by both parties, and carry on with the fueling activity.

ii. Fueling of:

a) Auxiliary Tanks

Following task will be carried out by Contractor /Service Provider for refueling Auxiliary Tank:

- Unlock Digital Meter, after confirming that it is already properly locked.
- Plug-in power supply into meter.
- Make sure that the Digital Meter reading is Zero in the presence of Field Inspector.
- Properly couple fueling nozzle from vehicle with meter inlet.
- Turn-on generator on vehicle.
- Turn-on Fueling dispenser on vehicle.
- Make sure that the reading at Fueling Dispenser is Zero in the presence of Field Inspector.

- Press the nozzle to start fueling.
- Observe any leakage at coupling between meter inlet and fueling nozzle and try to rectify if possible. In case such leakage is of a material nature, stop fueling in Auxiliary Tank and refuel base tank instead.
- After required liters of fueling, stop the nozzle.
- Turn-off generator on vehicle.
- Take the lower of readings displayed on (a) digital meter installed at auxiliary tank and (b) digital meter installed at Tank Lorry and note it down on the Delivery Note
- Turn-off Dispenser meter.
- Un-couple the nozzle and power supply wire from digital meter.
- Lock the meter.
- Recoil the power wire and fueling pipe in vehicle.
- Complete the Delivery Note of the site and get it signed by Field Inspector.
- Make sure all locks are in place before leaving the site.

b) BASE TANK

Base Tanks of Generators will only be fueled in case of problem with Auxiliary tank/meter or during installation of Digital Meters in early transition period or if instructed by TPC. Following steps will be carried out by Contractor for refueling Base Tank:

- Take reading of fuel preset in the tank in the presence of Field Inspector, from panel of the generator.
- Open the cap of fuel tank.
- Properly insert fueling nozzle in tank, to avoid any kind of spillage.
- Turn-on generator on vehicle.
- Turn-on Fueling dispenser on vehicle.
- Make sure that the reading at Fueling Dispenser is Zero in the presence of Field Inspector.
- Press the nozzle to start fueling.
- Observe if there is any leakage or spillage.
- In case of any leakage or spillage, stop fueling.
- Once filling has been completed, turn-off generator on vehicle.
- Note the reading on Dispenser meter for Delivery Note.
- Turn-off Dispenser meter.
- Take the nozzle out and recap the fuel tank.
- Recoil fueling pipe in vehicle.
- Complete the Delivery Note of the site and get it signed by Field Inspector.
- Make sure all locks are in place before leaving the site.

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> 2019 (the “**Guarantee**”)

Ref: Letter of Award for Supply of Diesel to Generators and rendering of Allied Services for Peshawar Sustainable BRT Project dated <Insert date> 2019 (the “**Agreement**”)

Beneficiary: **TRANSPESHAWAR (THE URBAN MOBILITY COMPANY)**, a Public Limited 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

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 Supply of Diesel to Generators and rendering of Allied Services for Peshawar Sustainable BRT Project (the “**Project**”).

- 1.1 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>

Generators				
S.No	Location	Names	Quantity	Capacity (KVA)
1		KPUMA Building		455
2	BS-00	Chamkani	1	110
3	BS-01	Sardar Ghari	1	110
4	BS-02	Chughal Pura	1	110
5	BS-03	Faisal Colony	1	110
6	BS-04	Old Haji Camp	1	110
7	BS-05	Lahore Adda	1	110
8	BS-06	Gulbahar Chowk	1	110
9	BS-07	Hashnagri	1	110
10	BS-08	Malak Saad Shaheed	1	110
11	BS-10	Khyber Bazar	1	110
12	BS-11	Shoba Bazar	1	110
13		Dabgari Staging Facility		110
14	BS-12	Dabgari Gardens	1	110
15	BS-13	Railway Station	1	110
16	BS-14	FC Chowk	1	110
17	BS-15	Saddar Bazar	1	110
18	BS-16	Mall Road	1	110
19		Aman Chowk	1	110
20	BS-19	Tehkal Payyan	1	110
21	BS-20	Tehkal Bala	1	88
22	BS-21	Abdara Road	1	88
23	BS-22	University Town	1	110
24	BS-23	Peshawar University	1	110
25	BS-24	Islamia College	1	110
26	BS-25	Board Bazar	1	110
27	BS-26	Mall of Hayatabad	1	110
28		Hayatabad depot		110
29	BS-27	Bab-e-Pashawar	1	88
30	BS-28	Hayatabad Phase 3	1	88
31	BS-29	Tatara Park	1	88
32	BS-30	PDA	1	88
33	BS-31	Hospital Chowk	1	88
34	BS-32	Karkhano Market	1	110

ANNEXURE - C: GENERAL SPECIFICATIONS OF GENERATORS

	DE88E0	DE110E2	455
Manufacturer	Caterpillar	Caterpillar	Caterpillar
Engine Model	Cat C4.4	Cat C4.4	C15
Gross Engine Power kW (hp)			
Standby 50Hz	80.7 (108.0)	103.0 (138.0)	400 (536.4)
Standby 60Hz	93.0 (125.0)	117.5 (158.0)	
Prime 50Hz	73.4 (98.0)	93.6 (126.0)	360 (482.76)
Prime 60Hz	84.5 (113.0)	106.8 (143.0)	
Tank Capacity: Liters (US gal)	219 (57.9)	250 (66.0)	839 (222)
Governing type	Mechanical	Electronic	Elec
Compression Ratio	17.25:1	18.3:1	16.1:1
Bore/Stroke: mm (in)	105.0 (4.1) / 127.0 (5.0)	105.0 (4.1) / 127.0 (5.0)	137 (5.4) /171 (6.8)
Speed (RPM) – 50 Hz	1500	1500	1500
Estimated Fuel Consumption @ 110% load: L/hr (US gal/hr)			
50 Hz	20.1 (5.3)	23.9 (6.3)	
60 Hz	23.2 (6.1)	29.0 (7.7)	
Estimated Fuel Consumption @ 100% load: L/hr (US gal/hr)			
50 Hz	18.2 (4.8)	21.7 (5.7)	94.5 (25)
60 Hz	21.0 (5.5)	26.1 (6.9)	
Estimated Fuel Consumption @75% load: L/hr (US gal/hr)			
50 Hz	13.6 (3.6)	16.5 (4.4)	71.8 (19)
60 Hz	16.0 (4.2)	19.7 (5.2)	
Estimated Fuel Consumption @50% load: L/hr (US gal/hr)			
50 Hz	9.5 (2.5)	11.6 (3.1)	51.5 (13.6)
60 Hz	11.4 (3.0)	14.1 (3.7)	

ANNEXURE - F: SPECIFICATIONS – HIGH SPEED DIESEL

Sr. No.	Test Description	Units	Test Method ASTM/IP	Specs	Max/Min
1	Specific gravity @ 15.6°C, 60°F	-	D-1298	0.8250 – 0.8350	-
2	Color	-	D1500	3	Max
3	Flash Point	°C	D-93	54	Min
4	Cloud Point a) Summer (March-Oct) b) Winter (Nov-Feb)	°C	D-2500	9 6	Max
5	Pour point a) Summer (March-Oct) b) Winter (Nov-Feb)	°C	D-97	6 3	Max
6	Cetane Index (calculated)	-	D-976	45	Min
7	Sulfur	wt %	IP-63	1.0	Max
8	Copper strip 3 hrs. corrosion at 100°C	-	D-130	1	Max
9	Conradson carbon % wt of 10% residue	wt %	D-189	0.20	Max
10	Sediments	% wt	D-473	0.01	Max
11	Water	% Vol	D-95	0.05	Max
12	Ash contents	% wt	D-482	0.01	Max
13	Neutralization Value a) Total Acid No. b) Strong Acid No.	mg KOH/g	D-974/664	0.5 NIL	Max
14	Kinematic viscosity @40°C	Cst	D-445	1.5 6.5	Min Max
15	Distillation a) 50% Vol. Rec. b) 90% Vol. Rec.	°C	D-86	290 365	Max Max