



REQUEST FOR PROPOSALS (RFP)

for

**Electrical, Mechanical and Civil Works Maintenance Services in Peshawar
BRT System (Drainage Services)**

Tender No. TPC/Operations/Services/PQ/DS/2022-23/002

Date: 22-08-2022

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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 prequalified legal entity which includes Individual, Firm, company, 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 invitation to prequalified service providers 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/joint venture 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/Joint Venture Member means any of the juridical persons comprising a Consortium/Joint Venture, 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/Joint Venture 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

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agreement should have been entered into at least one (1) year before the Proposal Submission Date, will not be applicable.

Winning Service provider means the responsive and technically qualified bidder having Lowest Evaluated bid price as declared by TransPeshawar Company.

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.

Contract Price shall mean the amount payable by TPC to the Service Provider under the Service Agreement for provision of services and including estimated sale tax.

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), KPUMA Building, Chamkani, GT 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.

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2.2 Disclaimer

2.2.1 No employees or consultants of TransPeshawar Company:

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 **Electrical, Mechanical and Civil Works Maintenance Services in Peshawar BRT System (Drainage Services)**; or

- (a) 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

- 3.1.1 The 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 System has currently 158 buses and 360 bicycles.
- 3.1.3 The Peshawar Sustainable BRT Corridor System involves among others the following roles:
 - (a) BRT Vehicle Service Providers (VSPs);
 - (b) System Control Service Provider (SCSP); and
 - (c) Generator, Elevator, Escalator and Allied Services Service Provider.

3.2 Infrastructure

- 3.2.1 The approximately 28.0-kilometre-long corridor for the Peshawar BRT is consist of:

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- (a) State of the art 30 BRT station;
- (b) State of the art 88 feeder bus stops;
- (c) Thirty Bicycle Stands; and
- (d) KPUMA Building.

3.3 Operations

3.3.1 BRT System operates between 6 AM to 10 PM and the corridor and stations remains busy for bus operation from 5 AM to 12 PM.

3.3.2 The peak day ridership of the system is 250,0000.

SECTION 4 – SERVICE PROVIDER REQUIREMENTS FOR Electrical, Mechanical and Civil Works Maintenance Services in Peshawar BRT System (Drainage Services)

4.1 Scope of Services/ Required Services

Detailed scope of Services is mentioned in Operational Specification Schedule and broadly involves maintenance activities in corridor and stations.

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	22-08-2022
Pre-Bid Meeting	TransPeshawar Company	25.08.2022 02:30 PM
Queries by the Bidder	Service providers	25.08.2022
Issuance of Pre-Bid Minutes along with clarifications through email.	TransPeshawar Company	29.08.2022

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Proposal Submission Date	Service providers	12.09.2022 11:30 AM
Notification of the Results of the Evaluation and Appointment of Winning Service provider	TransPeshawar Company	Tentatively in 3rd week of September, 2022
Signing Date of Service Agreement and Compliance with other Requirements	Winning Service provider and TransPeshawar Company	Tentatively in September, 2022

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 including Annexures (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. Furthermore, those who wants to join the pre-bid conference through video may send such request via email mentioned in Article 5.4.1.

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.

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Email: fayyazak@yahoo.co.uk, khalil.ahmed@transpeshawar.pk,
yousaf.bilal@transpeshawar.pk with cc to
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/Joint Venture**
- 5.6.1 Service providers cannot make Joint Venture / Consortium within Pre-Qualified firms/companies or outside pre-qualified firms to meet requirements of the Request for Proposal.
- 5.6.2 TransPeshawar Company will not accept any bid in which the composition of a Consortium / JV changed after notification of prequalified bidders.

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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.

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- 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 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 Proposals. Proposals for which a notice of withdrawal request has been submitted shall not be opened.
- 5.9.2 The opening of the Proposals shall be during a public session and bids will be announced loudly. After the conclusion of the public opening, TransPeshawar Company shall evaluate the Proposals.
- 5.9.3 TransPeshawar Company shall evaluate the Proposals in accordance with the provisions of SECTION 7.
- 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

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Winning Service provider shall, within **Seven days (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

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 Bidding procedure is "**Single Stage – One 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 **Electrical, Mechanical and Civil Works Maintenance Services in Peshawar BRT System (Drainage Services)**"
- 6.2.3 The master envelope must contain:
 - (a) One (1) complete original proposal comprising of documents/information as required under 6.4.1 of the RFP;
 - (b) One (1) copy of original proposal;

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- (c) One (1) readable flash drive containing an electronic copy of Proposal document, in either Microsoft Word (.doc) or Portable Document Format (.pdf) format.

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*), First Floor KPUMA Building Near Main BRT Depot, Chamkani, GT 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/maintain a Proposal receipt confirmation or any other credible record, which shall clearly indicate the date and time at which the Proposal was received. Late submission, for whatsoever reason, will not be acceptable and will be returned unopened.

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
Supporting Documentation	
Business Structure	Schedule 1 or Schedule 2
Proposal Submission Letter	Schedule 3
Authority to Bid and Designation of Authorized Representative	Schedule 4 or Schedule 5
Bid Bond	Schedule 6 or in shape of CDR as provided for under 6.5.4 of the RFP.
Affidavit of Integrity Pact	<u>Schedule 7</u>
Price Table	<u>Schedule 9</u>

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Other Documents	Other documents shall be submitted in accordance with clause 7.2.1 of the RFP.
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6.5 Supporting Documentation

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/Joint Venture, Schedule 2).

- (a) The Business Structure must be signed and dated by the Authorised Representative.
- (b) In the case of a Consortium/Joint venture, each Consortium/joint venture Member shall appoint one, and only one, of their number to be the lead member (**Lead Member**) who shall be authorised by each Consortium/Joint Venture Member to represent and irrevocably bind all members of that Consortium/Joint Venture 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/Joint Venture. All members shall be jointly and severally liable for the execution of the Service Agreement.

6.5.2 The Service provider must submit a **Proposal Submission Letter** in conformity with Schedule 3.

- (a) The 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/Joint Venture, each Consortium/Joint Venture 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 Sole Proprietor/Corporate Secretary or equivalent officer of the Service provider (or, in case the Service provider is a Consortium, of the Consortium/Joint Venture Member).

6.5.4 The Service provider must submit a **Bid Bond** of Pakistani Rupees (PKR 200,000) in conformity with Schedule 6 or in Shape of Call Deposit Receipt (CDR). Call Deposit Receipt (CDR) shall be in the name of Chief Executive Officer, TransPeshawar (The Urban Mobility Company). Submission of bid bond to the amount PKR.200,000 is one time whether the bidder is applying for single or multiple contracts mentioned under Letter of Invitation. However, the bidder shall ensure submission of bid bond in his very first bid in chronological order as provided for in Letter of Invitation

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otherwise his bid will be rejected summarily. The bid security shall be submitted from the account of the Service Provider who submits the bid.

- (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 in the name of all members of JV / Consortium. In case of Joint Venture / Consortium submitting Bid Bond in the Shape of 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 Winning 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 **Affidavit of Integrity Pact** in conformity with Schedule 7
- 6.5.6 The Service Provider must submit **"Price Table/ Financial Offer"** in conformity with Schedule 9.
- (a) The Financial Offer/price table must be signed and dated by the Authorised Representative.
- 6.5.7 The Service provider must submit a **Proposal** in conformity with paragraph 7.1.1. of the RFP.

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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;
 - (c) Provide all information mentioned in Clause 7.2.1 and
 - (d) 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 All Service providers meeting the following criteria will be considered as technically qualified for consideration of financial offer. The service providers shall submit the supporting documents accordingly:
- i. Registered with FBR for Income and Sales Tax and reflected on active tax payer list of FBR. In case of Consortium/JV, applicable to all members;
 - ii. Registration with KPRA for sales tax on services. In case of Consortium/JV, applicable to all members;
 - iii. Valid certificate of registration with PEC. In case of Consortium/JV, applicable to Lead member;
 - iv. Audited financial statements for year 2019, 2020, 2021 if the bidder is a company registered with SECP or AOP along with income tax returns for the same years. In case the bidder is an individual/sole proprietor bank statement along with income tax return for the year 2019, 2020, 2021 are mandatory;
 - v. Minimum average annual turn over of PKR.10,000,000.00 (Ten million Pak Rupees) verified through audited financial statements/bank statements and FBR returns as mentioned above. In case of Consortium/JV one member individually or all members collectively can fulfil the requirement;
 - vi. Initials on RFP, Service Provider agreements and all its attachments as token of acceptance of terms and conditions.

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

7.2.2 The responsive Service Providers qualified for consideration of their financial offers and offering the lowest price shall be appointed as the Winning Service provider.

7.2.3 In case of difference in Words and Figures, words will prevail. In case of difference in total and breakup, the addition from unit price will prevail in evaluation.

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

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- (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 unopened Proposals.

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.

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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.

**Electrical, Mechanical and Civil Works Maintenance Services in Peshawar
BRT System (Drainage Services)**

Schedule 1 Business Structure (Sole Proprietor/Company/corporation)

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

Name of Service provider:

Contact Information of Service provider:

Address	
Website	
Contact Person	
Telephone	
Fax	
Email	

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

(*Signature of Authorized Representative*)

(*Name, title and date*)

**Electrical, Mechanical and Civil Works Maintenance Services in Peshawar
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Schedule 2 Business Structure (consortium/Joint Venture)

To be submitted by a Service provider which is a Consortium/Joint Venture

Name of Consortium/Joint Venture:

Consortium/Joint Venture Members

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

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

Contact Information of Consortium/Joint Venture Members

Consortium/ Joint Venture Member	
Address	
Website	
Contact Person	
Telephone	
Fax	
Email	

Consortium/ Joint Venture Member	
Address	
Website	
Contact Person	

**Electrical, Mechanical and Civil Works Maintenance Services in Peshawar
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Telephone	
Fax	
Email	

Consortium/ Joint Venture Member	
Address	
Website	
Contact Person	
Telephone	
Fax	
Email	

(Insert tables as necessary)

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

(*Signature of Authorized Representative*)

(*Name, title and date*)

Electrical, Mechanical and Civil Works Maintenance Services in Peshawar BRT System (Drainage Services)

Schedule 3 Proposal Submission Letter

To be submitted by the Service provider on the letterhead of the bidder

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 **Electrical, Mechanical and Civil Works Maintenance Services in Peshawar BRT System (Drainage Services)**
2. and hereby submitting its Proposal, which shall remain valid and binding upon (name of Service provider) for a period of sixty (60) days from the Proposal Submission Date;
3. (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;
4. (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;
5. (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;
6. (Name of Service provider), including all Consortium/Joint Venture 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;
7. (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
8. (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

**Electrical, Mechanical and Civil Works Maintenance Services in Peshawar
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undertakings shall result in (name of Service provider)'s automatic disqualification from the Bidding Process.

9. (Name of Service provider) has examined the information provided in the Request for Proposals (including annexures) and the Service Agreement;
10. (Name of Service provider) has examined the specifications of Works/Services and made all due diligence in estimation of all costs of the Works and allied services under the Agreement;
11. (Name of Service provider) hereby submits its Financial Proposal, which includes cost of all services mentioned in RFP, Service Agreement, Operation Specification Schedule and its attachment (Annexures), which shall remain valid and binding upon (name of Service provider) for a period of sixty (60) days from the Proposal Submission Date; and
12. The total bid offered by (name of Service provider) is of an amount of (integer amount in words) Pakistani Rupees (PKR (integer amount in numbers)) with detail breakup attached in Schedule 9 - Price Table/Financial Offer.

For and on behalf of (name of Service provider)

(Signature of Authorized Representative)

(Name, title and date)

**Electrical, Mechanical and Civil Works Maintenance Services in Peshawar
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**Schedule 4 Authority to Bid and Designation of Authorized Representative
(Sole/Company/corporation)**

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

I, (Name of Owner/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 owner/ (duly elected Corporate Secretary or equivalent officer) of (name of Service provider), a (Sole Proprietor/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 Service Provider, held on (date) at (place), in which meeting a quorum was present and acting throughout, the following resolutions were unanimously passed and approved (in case the bidder is a company) or I hereby disposed of (in case the bidder is an individual/partnership):

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 Owner/Corporate Secretary or equivalent officer)

(Name, title and date)

**Electrical, Mechanical and Civil Works Maintenance Services in Peshawar
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**Schedule 5 Authority to Bid and Designation of Authorized
Representative (Consortium/Joint Venture)**

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

I, (Name of Owner/ 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 Company, held on (date) at (place), in which meeting a quorum was present and acting throughout, the following Resolutions were unanimously passed and approved (in case the bidder is a company) or I hereby disposed of (in case the bidder is an individual/sole proprietor):

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

Name of Consortium/Joint Venture Member	Nationality	% Interest

(Insert rows as necessary)

2. That (name of Authorized Representative) be and is hereby appointed as the authorized representative of (Name of consortium/joint venture member), authorized to execute, sign, and receive documents for, and otherwise act in the name of, the (Name of consortium/joint venture member);
3. That the (Name of consortium/joint venture member) in the exercise of its interest in the Consortium/joint venture hereby authorizes (name of Authorized Representative) as representative of the Consortium/Joint Venture during the Bidding Process for the provision of the Required Services, and for such purpose shall have the authority to execute, sign

**Electrical, Mechanical and Civil Works Maintenance Services in Peshawar
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and receive documents for, and otherwise act in the name of the Consortium/Joint Venture; and

4. That any and all acts done and/or performed by (name of Authorized Representative of Consortium/Joint Venture) 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 (Name of Consortium/Joint Venture member).

For and on behalf of (name of the consortium/joint venture member)

(Signature of Owner/Corporate Secretary or equivalent officer)

(Name, date and title)

**Electrical, Mechanical and Civil Works Maintenance Services in Peshawar
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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: **Electrical, Mechanical and Civil Works Maintenance Services in Peshawar BRT System (Drainage Services)** for TransPeshawar Company.

I, (name), (citizenship), of legal age, with office address at (address), hereby declare for and on behalf of (name of Bank) that (name of Bank) is bound to TransPeshawar Company in the sum of ----- 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 of bid validity.

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 of bank)

(Name, title and date)

**Electrical, Mechanical and Civil Works Maintenance Services in Peshawar
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Schedule 7 Affidavit of Integrity Pact

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

[Name of service provider] 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] 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] 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] 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] 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] 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 _____ 2022

**Electrical, Mechanical and Civil Works Maintenance Services in Peshawar
BRT System (Drainage Services)**

Schedule 8 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 Service Agreement (clause and page number)	
Original wording in Service 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*)

Electrical, Mechanical and Civil Works Maintenance Services in Peshawar BRT System (Drainage Services)

Schedule 9 Price Table/Financial Offer

1. All bidders must read items in conjunction with functional requirements mentioned in Operational Specification Schedule and fill the table carefully.
2. All bidders shall quote the unit rate against each item and fill the total amount column against each sub-item.
3. No cutting or over writing is allowed.

Item No	Work Description	Unit	Quantity	Rate per Unit (PKR)	Total Amount (PKR)
1	Core Cutting				
1.1	1' to 1.5' deep core cutting in steel reinforced concrete for 4" diameter drain pipe fixing at multiple location along the BRT corridor for the installation of drainage system. The details are provided in Operational specification schedule.	Job	20		
2	Drainage Services				
2.1	Supply and installation of UPVC Pipe for Drainage Supply 100mm (4"dia) class "B" manufactured as BS3505 along with fitting, cutting, jointing with UPVC Coupler/ socket, (Elbow / Bend) 90/45 Deg. complete with all respect or fixed to wall, floor and also use of Epoxy Grout for water Proofing or any other standard material for Proper Fixing of UPVC Pipe with Floor Surface as Per drawing and instruction of TPC and other detail given in Operational Specification.	meter	2200		
2.2	Supply and Installation of SS grade galvanized clamp 2mm thick and 40 to 50 mm width "O"-type clamp for 4' pipe diameter along with maximum 1 meter long 10 to 12 mm diameter threaded rod to be installed for drainage pipes as per the drawings or instruction of TPC. The details are provided in Operational specification schedule.	No	2200		
2.3	Supply and Installation of SS grade galvanized clamp 2mm thick and 40 to 50mm width; "U"-type clamp for 4' diameter pipe along with M10 nuts and bolts to be installed for	No	2200		

Electrical, Mechanical and Civil Works Maintenance Services in Peshawar BRT System (Drainage Services)

	drainage pipes as per the drawings or instruction of TPC. The details are provided in Operational specification schedule.				
3	Paint Services				
3.1	Removing dry or oil bound distemper, Preparation of the surface, supply and apply Exterior Wall paint with acrylic smooth/weather shield paint of exterior grade, having VOC (Volatile Organic Compound), of approved brand and manufacture, including applying additional coats wherever required to achieve even shade and colour complete in all respect. Approved Make: Asian, Nippon, Dulux, Berger or equivalent. The details are provided in Operational specification schedule.	Sq. meter	1500		
4	Removal of Debris/shuttering and Concrete				
4.1	Removal of Debris/shuttering, removal of extra steel, dismantling loose concrete etc at 50 different locations along the BRT corridor, collecting and disposing the waste material to dumping area out of the city. The pictorial details of all such locations are attached in Operational specification schedule.	LS	1		
Quoted Price (Exclusive of Sales Tax on goods and Services but including all other Taxes)					
Estimated sales tax on goods and services @ 17%					
Grand Total (Including estimated sales tax on Goods and Services)					

Notes to the Price Table:

- 1) No advance payments will be made. Contract Payment will be made as per works executed in actual.
- 2) The quoted price shall be inclusive of all applicable taxes as per Laws of the Government of Pakistan, but **exclusive of Sales Tax on goods and Services**; which shall be added by Service Provider Over and Above the Quoted Price in invoice as applicable/required under the relevant Tax Laws.
- 3) Estimated sales tax on goods and services @ of 17% is added to the quoted price to arrive at contract price/grand total for evaluation.

Electrical, Mechanical and Civil Works Maintenance Services in Peshawar BRT System (Drainage Services)

- 4) *The Contract Price shall be subject to adjustments for change in rate of Sales Tax on Services as and when applicable.*
- 5) *Lowest value of grand total among the bidder will determine the successful bidder, provided mandatory requirements are met.*

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

(*Signature of Authorized Representative*)

(Name, Title and Date)

**Service Agreement for Electrical, Mechanical and Civil Works Maintenance Services in
Peshawar BRT System (Drainage Services)**

between

TransPeshawar Company

and

[SERVICE PROVIDER]

Contract No.

Date: XX.XX. 2022

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THIS SERVICE AGREEMENT FOR ELECTRICAL, MECHANICAL AND CIVIL WORKS MAINTENANCE SERVICES IN PESHAWAR BRT SYSTEM (Drainage Services) hereinafter called (the “**Agreement**”) is made on [.....] 2022

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 KPUMA Building, Chamkani, GT Road, Peshawar, KPK, Pakistan (“**TPC**”); and
2. *<Insert name of the Sole Proprietor/Firm/Joint Venture>*, a firm/company incorporated in [.....], with firm/company registration no. [.....] and whose registered address is at [.....] (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/maintenance in the Peshawar BRT System.
- B. TPC intends to enter into agreements based on output based or performance-based parameter with suitable Service Provider (selected through a competitive bidding process) who will provide electrical, mechanical and civil works maintenance services in Peshawar BRT System.
- C. The Service Provider is a entering into and performing 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 the Agreement.

NOW THE AGREEMENT PROVIDES:

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 along with Technical Specifications];
 - (c) Annex C [Payment Calculation Schedule];
 - (d) Annex D [Performance Security];
 - (e) Annex E [Request for Proposal];
 - (f) Annex F [Integrity Pact];
 - (g) Annex G [Permission Request to work in Station];
 - (h) Annex H [Check Request];
 - (i) Annex-I [Financial Offer/Proposal Submission Letter and Price Table];
 - (j) Annex-J [Letter of Award];
 - (k) Annex-K [Implementation Plan] (as and when submitted).

1.2 Effect of this Agreement

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

- 1.3 Conditions Precedent
- 1.3.1 TPC shall issue a Service Notice to Service Provider indicating the date upon which the Services are to commence subject to conditions precedent are met.
- 2. Appointment of Service Provider**
- 2.1 Appointment
- 2.1.1 TPC's signing the 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 the Agreement.
- 2.2 Commencement of the Services and Term
- 2.2.1 The Service Provider shall provide the Services from the Commencement Date until the Termination Date.
- 2.2.2 Unless the Agreement is earlier terminated, the Service Provider shall continuously provide the Services contemplated under the Agreement (as may be amended pursuant to its terms) for a Term as mentioned in Operational Specification Schedule commencing from the Commencement Date.
- 3. Performance Security**
- 3.1 The Service Provider shall ensure that it maintains with TPC a valid and enforceable Performance Security until the Service Provider has fulfilled all its obligations under the Agreement. The Service Provider shall have delivered to TPC as a Condition Precedent the duly executed Performance Security in the form attached hereto as Annex D in the amount as mentioned in Operational Specification Schedule or in shape of CDR/DD in the name of CEO TransPeshawar, at the option of the successful Service Provider. The Performance Security shall have a term equivalent to duration of the Contract plus three months.
- 3.2 The Performance Security shall be issued by the Scheduled Bank of Pakistan.
- 3.3 If the Performance Security is partially liquidated, the Service Provider is obliged to replenish the Performance Security in full within seven (07) working days of the date of any liquidation thereof. If the Service Provider fails to replenish the Performance Security in accordance with this clause, this shall constitute a material breach of the Agreement and TPC shall be entitled to liquidate the remainder of the Performance Security and terminate the Agreement pursuant to clause 22.1.
- 3.4 Subject to the fulfilment by the Service Provider of all of its obligations under the Agreement, the Performance Security shall be released by TPC within thirty (30) days after the issuance of take over certificate.
- 3.5 All fees, taxes and expenses associated with preparing, providing, issuing, extending, replacing, replenishing or stamping (if applicable) of the Performance Security shall be borne by the Service Provider.
- 3.6 The Performance Security may be forfeited partially or fully in following cases, if the Service Provider;
- a) commits a material breach under the Agreement; or
 - b) fails to fulfil any of the obligations under the Agreement and TPC terminates Agreement due to material breach; or
 - c) delays the project without any valid and acceptable reason.
- 4. Payment for Services**
- 4.1 Payment to the Service Provider for the provision of the Services shall be made in accordance with the Payment Calculation Schedule and to the Lead Partner, in case of JV/consortium or other such party within JV agreed in written by JV partners.
- 4.2 TPC shall withheld amount from the invoice to be paid on Completion of Defect Liability Period. The withheld amount shall be as mentioned in Payment Calculation Schedule.

- 4.3 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.
- 4.4 Any payment to the Service Provider shall not constitute a waiver of any right held by TPC in respect of a breach of the Agreement by the Service Provider.

5. Tax

- 5.1 To the extent that the Services or any additional activities and/or services offered by the Service Provider pursuant to this Agreement are taxable, the Service Provider agrees to bear all Applicable taxes, charges, duties and/or tariffs by itself (Except Sales Tax on Services & Goods) and, upon request from TPC, provide proof that such obligations have been satisfied in full. Sales Tax on Services, if any, shall be paid by TPC.
- 5.2 Withholding of all taxes will be made as per applicable law. Services or goods exempt from withholding of taxes, the Service Provider shall at all times be in possession of a valid tax exemption certificate and shall provide the same to TPC along with each invoice / bill for payment. In case the services are exempt from sales tax, the service provider shall furnish a valid reference of exemption from the applicable tax law.
- 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 affect payment of all amounts that had been withheld pursuant to this clause.
- 5.4 TPC may require the service provider to provide sufficient evidence to ensure compliance with the applicable laws of services tax, provincial tax, income tax or any other laws pertaining to taxation.

6. The Defect Liability Period

- 6.1 The Service Provider shall maintain a defect liability for a period as mentioned in Operation Specification Schedule starting from the issuance of take over certificate by the TPC. TPC shall withheld certain amount from each invoice price and released after successful completion of the Works or defect liability period, whichever is later. Any non-compliance observed during the defect liability period / warranty period shall be addressed immediately in accordance with the timeline mentioned in the work order from the TPC. Failure to do so shall result in deduction of withheld amount according to the given penalty mechanism.
- 6.2 TPC shall verify the reason of any fault occurred in the Services and if established that any fault occurred due to poor workmanship or poor quality of material, the Service Provider shall repair the services on its own risk and cost within defect liability period.
- 6.3 Services/Works shall be maintained by the Contractor for the period of Defect Liability Period (if any). TPC shall issue a work order to the Service Provider following which the Service Provider must execute/ complete the services within time as specified in work order.
- 6.4 If the Service Provider failed to respond during defect liability period/maintenance period, then TPC reserve the right to execute work at risk & cost of the Service Provider.
- 6.5 The cost of works due to any defect occurred in Works due to any reason within maintenance period shall be borne by the Service Provider in defect liability period.

7. Service Provider Responsibilities

- 7.1 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.
- 7.2 The Service Provider shall employ and engage trained and skilled staff reasonably required to complete the duties under the Agreement to the satisfaction of TPC.
- 7.3 The Service Provider shall provide the list of Service provider's personnel working on maintenance of Works, along with their basic information, to TPC for issuance of permit to the BRT Corridor with sufficient details. 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 for maintenance of Works.

- 7.4 The Service provider shall maintain vigilant supervision over its staff at all times. Staff shall always with CNIC and Employee ID card. 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.
- 7.5 The Service Provider 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.
- 7.6 The Service Provider staff shall communicate with passengers and members of public or staff of other Service Provider in a customer friendly, professional and helpful manner.
- 7.7 The Service Provider shall 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.
- 7.8 The Service Provider shall be responsible for the medical and accidental insurance of its staff, payment of all dues as per Applicable laws of Pakistan. 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.
- 7.9 The Service Provider shall be responsible that it does not engage or continue to engage any person having a criminal record/ conviction or otherwise undesirable persons.
- 7.10 The Service Provider shall be liable to pay Liquidated 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 Works, or interruption in the smooth operations of BRT Bus Service for reasons directly and solely attributable to the Service provider.
- 7.11 The Service Provider shall 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 damage to TPC property and provide photographs of the incident.
- 7.12 The Service Provider shall ensure their personnel do not enter into the BRT territory without valid entry cards/permit issued by the TPC. No staff of Service Provider is allowed to travel free in BRT System.
- 7.13 The Service Provider shall ensure that the Works are executed as mentioned in Operational Specifications Schedule, the requirements of any applicable specifications and the Applicable Law.
- 7.14 Unless expressly specified in the 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 maintenance until the Termination Date.

8. Maintenance of Works

- 8.1 Skill and care in rendering uninterrupted Services
- 8.1.1 The Service Provider shall exercise the highest degree of skill, care and diligence in the provision of the Services to the reasonable satisfaction of TPC.
- 8.1.2 Without limiting the generality of the foregoing, the Service Provider shall provide the Services at a standard which would reasonably avoid the incurring of Liquidated Damages as contemplated in the Operational Specifications Schedule.
- 8.1.3 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.
- 8.2 Compliance with standard operating and control procedures and requirements

- 8.2.1 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.

9. Licenses

- 9.1 The Service Provider shall maintain the validity of all Licences/ permits/ approvals/ registrations, if required under Applicable Law, for the duration of this Agreement and shall ensure that the terms or conditions of such Licenses/approvals are not contravened.

10. Employment and Technical Staff

- 10.1 The Service Provider shall employ one or more Project Manager for coordination with TPC and dealing of day to day matters. They shall be fluent in the language for day to day communications. His name, duty, authority and any changes therein shall be communicated in writing to TPC.
- 10.2 The Service Provider shall hire Technical Staff who are suitably qualified and shall ensure that all Technical Staff for duration of the Services remain suitably qualified, trained and meet the requirements set out in the Operational Specifications Schedule and any Applicable Laws.
- 10.3 The Service Provider shall recruit and employ all Employees necessary to provide the Services, including technical, administrative and management staff.
- 10.4 The Service Provider shall, in recruiting staff to comply with its obligations in accordance with this Agreement, and shall where appropriate, provide any training required to render such persons suitable to provide the Services required under this Agreement.
- 10.5 Notwithstanding any Liquidated Damages that may be applied pursuant to this Agreement, in relation hereto, where the Staff execute Works in contravention of any Applicable Law and/or the requirements of the Operational Specifications Schedule, TPC shall be entitled to demand (and the Service Provider shall be obliged to promptly comply with such demand) that such Staff is immediately removed from the BRT System and replaced with another Technical Staff who is suitably qualified.

11. Co-operation with Other Contractors

- 11.1 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.
- 11.2 Should the Service Provider and Other Contractors fail to reach an agreement as contemplated in clause 11.1, 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.
- 11.3 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.
- 11.4 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 11.1 above.

12. Image and Marketing

- 12.1 The Service Provider shall not use any image, brand name, company name or his parent company name, markings, graphics and/or signage of TPC for any purpose except with the written approval of TPC.
- 12.2 The Service Provider shall comply with instructions from TPC from time to time regarding branding in terms of the use of graphics, brand name, company name, information, signage, information, advertising and Equipment livery and will co-operate with and participate in agreed marketing programmes as directed by TPC.

13. Monitoring of the Services

- 13.1 TPC shall be entitled to require regular written reports from 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.
- 13.2 An Authorised Representative of TPC shall at all reasonable times be given access to the Works, 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. TPC shall be entitled to conduct random or schedule inspections of any Work, its component or its subsystems.

14. Incident Reporting

- 14.1 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.
- 14.2 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 in which persons have been injured or killed.
- 14.3 The Service Provider shall report any acts of vandalism or damage to Works to TPC within one (1) days of becoming aware of their occurrence.

15. Tools and equipment and Utility Charges

- 15.1 The Service Provider is required to provide the required tools and equipment to execute and maintain the Works and/or otherwise to provide the Services in accordance with the Operational Specifications Schedule. Furthermore, the Service Provider shall be responsible for arrangement and payment of all electricity charges, gas charges, water etc. and any other costs associated with execution of Works, if not so allowed in Operational Specification Schedule.

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 In addition to TPC's Authorized Representative, TPC shall, by written notice to the Service Provider, be entitled to delegate from time to time certain of its obligations under this Agreement. TPC shall clearly specify the responsibility(ies) and/or authority(ies) of such delegate in the notice to the Service Provider. The Service Provider agrees to cooperate fully with any such delegate as a representative of TPC.
- 16.3 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.
- 16.4 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.
- 16.5 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 Protocols under this Agreement or for interaction with other Services Provider/Contractors or use of common facilities within BRT system or use of corridor etc.
- 17.2 In the event that TPC wishes to amend the items listed in clause 17.1 above, it shall do so by delivery of a Service Notice to the Service Provider.

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

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. Such audits may be conducted in relation to the Works, the Services, Service Provider's staff, Service Provider's offices (including service and performance records) and any other place where any element of the Service is being performed.
- 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.

19. Warranties, Undertakings and Indemnities

19.1 Service Provider Warranties

- 19.1.1 The Service Provider acknowledges that TPC has entered into the 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 the 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 thorough knowledge of the Works, performance and its quality and have did site inspection of all Works to be executed;
 - (c) It has examined the specification of Works and made all due diligence in estimation of all execution and maintenance costs of Works and services under the Agreement;
 - (d) Satisfied himself with all the economic, financial and legal variables including but not limited to foreign exchange rates, inflation rates, minimum wage rates, customs and tax rates and all related labor and legal obligations;
 - (e) Satisfied himself of all conditions and circumstances affecting Contract price;
 - (f) it has the power, authority and legal capacity to enter into and exercise its rights and perform its obligations under this Agreement;

- (g) it has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
- (h) 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;
- (i) it will on signing 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 execution and defect liability period;
- (j) it is and will be in compliance with all Applicable Laws;
- (k) 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;
- (l) 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;
- (m) 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;
- (n) 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;
- (o) 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; and
- (p) 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;
- 19.2.3 to agree to remove Service Provider names from approved Pre-Qualification list if the Works are delayed beyond the duration the Contract term a period as mentioned in Operation Specification Schedule;
- 19.2.4 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;
- 19.2.5 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 and all persons while they are being conveyed on the BRT System or while they are in, entering or leaving premises under the control of the Service Provider.
- 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.
- 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 Calculation Schedule.
- 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 or pursue its reimbursement of costs and expenses from withheld amount.
- 21.4 The Service Provider hereby agrees that TPC, in taking the Necessary Action, shall be entitled unrestricted access to the Works and any other places where the Services (or any part of it) are being performed and the Service Provider undertakes to co-operate and do all such things as may be necessary to provide such access to TPC 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 fail to complete Works in stipulated time; or
 - 22.2.3 in the opinion of TPC, commits a Prohibited Act; or
 - 22.2.4 sells, transfers or otherwise disposes of all or a substantial portion of its shares, assets or business, without the prior written consent of TPC; or
 - 22.2.5 has judgment of a material nature taken against it likely to affect the Service Provider's status as a going concern and fails to satisfy or apply to have the same set aside within seven (7) days of becoming aware thereof; or
 - 22.2.6 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
 - 22.2.7 contravenes the provisions of Operational Specifications Schedule; or
 - 22.2.8 fails to obtain or maintain as required any of the necessary Operating Licences/permits/ approvals/ registration to be used in the rendering of the Services or has such necessary Operating Licences/ permits/ approvals withdrawn, cancelled, suspended or revoked; or
 - 22.2.9 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
 - 22.2.10 violates or attempts to violate any Applicable Law or otherwise commits any criminal act; or
 - 22.2.11 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
 - 22.2.12 Abandons, suspend services or otherwise repudiates the Services or any of its obligations under this Agreement; or
 - 22.2.13 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; or

- 22.2.14 incurs Liquidated Damages equal to or exceeding the maximum amount of Liquidated Damages as indicated in the Operational Specifications Schedule consecutively for few months.
- 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 the Service Provider 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 Works.
- 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 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.

24. Hazardous Substances

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

25. Intellectual Property

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

26. Insurance

- 26.1 The Service Provider agree to, at their own costs, establish and maintain no less than the minimum types and levels of insurances that are required by Applicable Law.

27. Addresses and notices

- 27.1 The Parties choose for the purposes of this Agreement the following addresses:
- 27.1.1 TPC: TransPeshawar (The Urban Mobility Company), KPUMA Building, Chamkani GT Road, Peshawar, Pakistan.
 - 27.1.2 The Service Provider: [•].

- 27.2 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 27.1 and it chooses that address for all purposes under this Agreement.
- 27.3 Any notice required by this Agreement to be given in writing shall, if given by email or cell phone-based short message service ("sms"), be regarded as having been given in writing for purposes of this Agreement, provided that the Parties may only utilise sms notification for operational authorisations in circumstances where operational action is required immediately and other changes to operations contemplated in this Agreement due to an emergency or such similar urgent operational matters.
- 27.4 Where operational authorisations are required, TPC will issue and log an authorisation number and any relevant notice in accordance with this clause 27 shall quote such authorisation number.
- 27.5 A notice to any of the Parties which is sent by registered post in a correctly addressed envelope to the address specified for it in clause 27.1 shall be deemed to have been received (unless the contrary is proved) within fourteen (14) days from the date it was posted, or which is delivered to the Party by hand at the physical address specified for it in clause 27.1, shall be deemed to have been received on the day of delivery, provided it was delivered to a responsible person during ordinary business hours.
- 27.6 Any notice by email to a Party at the email addresses of its Authorised Representatives shall be deemed to have been received (unless the contrary is proved) within twenty (20) minutes of transmission if transmitted at any time during which the Services are ordinarily rendered and if transmitted outside such time, within ten (10) minutes of recommencement of the rendering of the Services.
- 27.7 Any notice by sms to a Party at the mobile numbers of its Authorised Representatives shall be deemed to have been received (unless the contrary is proved) within twenty (20) minutes of transmission if transmitted at any time during which the Services are ordinarily rendered and if transmitted outside such time, within twenty (20) minutes of recommencement of the rendering of the Services.
- 27.8 Any notice in accordance with this clause 27 given by sms shall be followed by email confirming the contents and date of transmission of such sms.
- 27.9 Notwithstanding anything to the contrary in this clause 27, a notice or other communication actually received by any of the Parties (and for which written receipt has been obtained) shall be adequate notice or communication to it notwithstanding that the notice was not sent to or delivered at its chosen address.
- 27.10 Any Party may by a notice to the other Parties change its physical or postal address, telefax number, email address or mobile number for the purposes of this clause 27 to any other physical or postal address, telefax number, email address or mobile number provided that the change shall become effective on the seventh (7th) day after the receipt of the notice.

28. Change in Law

- 28.1 The Service Provider acknowledges and agrees that it shall take full risk and responsibility for a Change in Law occurring.
- 28.2 The Service Provider acknowledges and agrees that any decision to change the financial accordance with the Agreement or vary the scope of Services shall be adjusted with mutual consent of the parties.

29. Remedies

- 29.1 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.

30. Confidentiality

- 30.1 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.
- 30.2 Notwithstanding clause 30.1, 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 30.2.
- 30.3 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.
- 30.4 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.

31. Severance

- 31.1 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.

32. No agency

- 32.1 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 30.1 shall not affect or otherwise derogate from the obligations and powers of the Service Provider in relation to handing over of the Works to other authorised parties as contemplated in this Agreement.
- 32.2 The Service Provider is an independent contractor performing the Agreement. The Service Provider is not an employee or agent of TPC.

33. Corruption and Fraud

- 33.1 The Service Provider warrants that in entering into the Agreement it has not committed any Prohibited Act.
- 33.2 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).
- 33.3 Without prejudice to clause 33.2, 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 33 and the Service Provider shall enforce such obligations.
- 33.4 In the event that the Service Provider fails to comply with the requirements of this clause 33 TPC shall be entitled to terminate the Agreement pursuant to clause 22.1.
- 33.5 The Service Provider shall sign affidavit of Integrity Pact attached as Schedule 8 in Request for Proposal.

34. Entire Agreement

- 34.1 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.

35. No stipulation for the benefit of a third person

- 35.1 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.

36. No representations

- 36.1 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.

37. Amendment

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

- 37.1.1 is made in writing; and
- 37.1.2 expressly sets out the modification, amendment, addendum or variation to the accordance with the Agreement; and
- 37.1.3 refers to the Agreement; and
- 37.1.4 is signed and dated by a representative of each Party.

38. Indulgences

- 38.1 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.

39. General co-operation

- 39.1 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.
- 39.2 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.
- 39.3 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 30 of this Agreement.

40. Governing law

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

41. Language

- 41.1 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.

42. Independent advice

- 42.1 Each of the Parties hereby respectively agrees and acknowledges that:
- 42.1.1 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
 - 42.1.2 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.

43. Good faith

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

44. Survival of rights, duties and obligations

44.1 The Surviving Provisions will survive termination or completion of the Agreement.

44.2 In the event that the Agreement is terminated or completed, neither Party shall be liable to the other Party except:

44.2.1 under the Surviving Provisions; or

44.2.2 in respect of any breach of the Agreement occurring before such termination or completion; or

44.2.3 any rights or liabilities between the Parties that were pre-existing as at the date of termination or completion.

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 client basis and taxes, incurred by a Party arising out of or in connection with a breach by another Party shall be borne by the Party in breach.

On behalf of TransPeshawar:

On behalf of Service Provider:

Name:

Name:

Designation:

Designation:

CNIC:

CNIC:

Witness # 1:

Witness # 2:

Name:

Name:

CNIC:

CNIC:

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 **“Agreement”** means this agreement as amended from time to time and including the Annexes;
- 1.1.2 **“Annexes”** means the annexes attached to this Agreement;
- 1.1.3 **“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;
- 1.1.4 **“Authorised Representatives”** means persons authorised in writing by TPC and the Service Provider respectively, as contemplated in accordance with clause 16;
- 1.1.5 **“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;
- 1.1.6 **“Business Day”** means any day other than weekend or public holiday in Pakistan as notified by Government of KPK;
- 1.1.7 **“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;
- 1.1.1 **“Completion Certificate”** means the written certification provided by the TPC to the Service Provider which certifies that the completion (and/or interim milestones as specified in the Operational Specification Schedule) has been achieved and defect liability period is completed.”
- 1.1.2 **“Commencement Date”** means the date on which the Services shall commence as notified by TPC by way of a Service Notice referred to in clause 1.3.1;
- 1.1.3 **“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;
- 1.1.4 **“Corridor”** means dedicated lane from Chamkani Station to Karkhano station which includes stations, roads turning points, terminals, feeder route ramp etc.;
- 1.1.5 **“Disclosing Party”** means the Party disclosing Confidential Information to the Receiving Party;
- 1.1.6 **“Technical Staff”** means those Employees who execute and maintain the Works;
- 1.1.7 **“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;
- 1.1.8 **“Employees”** means the employees of the Service Provider, or of any subcontractor contracted by the Service Provider to perform a part of the Service;
- 1.1.9 **“Entity”** means individual, association, business, close corporation, firm, company, concern, enterprise, joint venture, trust, undertaking, voluntary association, body corporate and any similar entity;
- 1.1.10 **“Event of Force Majeure”** means an act of God or public enemy, fire, explosion, earthquake, perils of the sea, flood, storm or other adverse weather conditions, war declared or undeclared, act of terrorism, civil war, revolution, civil commotion or other civil disorder, sabotage, riot, blockade, embargo, strikes (excluding strikes by Service Provider staff), lock-outs or other labour disputes, sanctions, epidemics, act of any Government, compliance with law, regulations or lawful demands of any Government or Governmental agency;

- 1.1.11 **“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;
- 1.1.12 **“Invoice”** means a valid tax invoice as contemplated in clause a);
- 1.1.13 **“KPI”** means the key performance indicator;
- 1.1.14 **“Liquidated Damages”** means the amounts to be deducted from the 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;
- 1.1.15 **“Milestone”** means each step envisaged for the roll-out of the Services during the term of this Agreement as described more fully in the Operational Specifications Schedule and execution of services with seven days of signing of Agreement;
- 1.1.16 **“Month”** or **“Monthly”** means a calendar month;
- 1.1.17 **“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;
- 1.1.18 **“Operating Licence”** means any licence, consent, approval, registration or permit required by the Service Provider to enable it to provide the Services under this Agreement;
- 1.1.19 **“Operational Specifications Schedule”** means the schedule annexed hereto as Annex B;
- 1.1.20 **“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/or Service Provider of Generator, Elevator, Escalator and Allied Services or appointed by TPC in connection with the BRT System;
- 1.1.21 **“Party”** means a party to this Agreement;
- 1.1.22 **“Payment Calculation Schedule”** means the payment calculation schedule attached hereto as Annex C;
- 1.1.23 **“Performance Security”** means the unconditional, irrevocable on-demand performance guarantee in the specimen form attached hereto as Annex D provided to TPC by the Service Provider pursuant to clause 3;
- 1.1.24 **“PKR”** means Pakistani rupee;
- 1.1.25 **“Prohibited Act”** means:
- (a) 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

- (b) 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
- (c) committing any offence under the Applicable Law creating offences in respect of fraudulent acts; or
- (d) defrauding, attempting to defraud or conspiring to defraud TPC;

- 1.1.26 **“Project”** means the Electrical, Civil and Mechanical Works in Peshawar BRT (Drainage Works)
- 1.1.27 **“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;
- 1.1.28 **“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;
- 1.1.29 **“Receiving Party”** means the Party receiving Confidential Information from the Disclosing Party;
- 1.1.30 **“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 anybody with a regulatory function under the Applicable Law;
- 1.1.31 **“Service Notice”** means a notice given to the Service Provider by TPC in accordance with this Agreement;
- 1.1.32 **“Stations”** means the stations described in the Operational Specifications Schedule; and which are intended as passenger embarkation and disembarkation points and Station means any one of them;
- 1.1.33 **“Surviving Provisions”** means clauses 1 (Preliminary Matters); 22 (*Breach and Termination*); 23 (*Dispute resolution*); 25 (*Intellectual Property*); and this Annex A;
- 1.1.34 **“Take over Certificate”** means the TPC’s written acceptance of the Work under the Contract, after notifying successful Operation/Execution of the Work by the Service Provider from which Defect Liability Period starts.
- 1.1.35 **“Term”** means the duration of the Agreement.
- 1.1.36 **“Termination Date”** means the duration on which Contract / Agreement period expires from the date of Commencement Date or the date on which an earlier termination pursuant to the terms of the Agreement takes effect;
- 1.1.37 **“Warranty”** means the warranties and undertakings given to TPC by the Service Provider, set out in clause 19;

- 1.1.38 **“Works”** means the design to the extent required and the procurement, delivery, installation and commissioning of the Products to be supplied and installed, sufficient for the Contractor to be entitled to receive the Completion Certificate under the Contract or the work to be completed as mentioned in Operational Specification Schedule to receive Completion Certificate.

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

DRINAGE SERVICES AT VARIOUS BRT FLYOVERS

This Operational Specification Schedules specify the functional responsibilities for maintenance obligations of Works as detailed below in this Operational Specification Schedule, BOQ, Agreement and annexures to the Agreement.

The jobs are lump sum and additional non-BOQ costs should be not be paid separately and should be made part of the bid. The Contract is Engineering, Procurement and Construction and the Service Provider is required to provide additional services / equipment/ items to meet the intended purposes of each item. The details of these Works are provided in following Annexures:

1. Particular Condition from Contract

- 1.1 The Service Provider should submit details plan within 30 days after contract signing for completion of all activities under the Agreement mentioning days in which each activity will be completed, along with nominated qualified focal person.
- 1.2 In accordance with Clause 2.2.2 of the Agreement, the Term of Contract is 06 months.
- 1.3 In accordance with Clause 3.1 of the Agreement, the amount of Performance Guarantee is PKR 800,000/-.
- 1.4 In accordance with Clause 6.1 of the Agreement, the Defect Liability Period is 01 years.
- 1.5 In accordance with Clause 15.1, TPC should be allow Service Provider to use only electricity (from pole lights or station lights or others) and use station water for Work. In such situation, Service Provider should get permission letter from TPC and TPC should be deduct 10,000/- per month per station as an electricity and water bill regardless the electricity/water is being used or not.
- 1.6 In accordance with Clause 18.6 of the Agreement, the top limit of Liquidated damages that can be imposed are 10 % as per milestone payment for specific activity or 10 % of the Agreement price in case of delay beyond the Term.
- 1.7 In accordance with Clause 19.2.3 of the Agreement, the Service Provider should be removed from the Prequalified list notified by TPC if the Service Provider fails to complete the Works within 3 Months after expiry of Contract and 10 % liquidated damages are exhausted.

2 SPECIAL CONSTRAINTS RELATED TO SERVICES

- 2.1 Corridor and Stations are utilised for bus operation during the day time. The Service Provider should execute all works during non-operation times i.e., from 11:00 PM to 5:00 AM except otherwise allowed by TPC. The resources of Service Provider and associated costs should be calculated based on availability of 6 hours per day for execution of Works.

- 2.2 Service Provider should get permission from TPC for entry to corridor and station one day before the execution of Works. Such permission should be got through Corridor Access Permission Form in office time.
- 2.3 Service Provider should be properly cordon off Work zone with traffic safety cones and warning tape with one entry/exit point and negotiated with required traffic signs where applicable. Contractor should deploy a flagman to assist the driver during operation hours, if required. Safety cones should also be placed where required for safety of bus operations and passengers.
- 2.4 Service Provider or its staff should not execute any work or take such actions which affect bus operation without prior TPC permission.
- 2.5 Service Provider shall be responsible for transportation of the material under the agreement to site and removal/transportation of waste from the site. Furthermore, the Service Provider shall be responsible for the safety and security of all Works/Equipment delivered to site till Completion of Works.
- 2.6 Where technical or functional specifications are not mentioned, the work shall be executed in accordance with Standard Practices or Professional Ethics/ Standards.
- 2.7 The pictures /drawings attached herewith the specifications are descriptive and not restrictive in nature. The service provider shall submit technical specifications/ brochures/ drawings of the job or item and obtain approval from TPC.
- 2.8 In case of any contradiction or conflict between functional requirement, operational specifications and attached drawings, the functional requirement shall prevail or as decided by TPC.
- 2.9 Where approval is required for items or equipment shall be in written and at sole discretion of TPC.

3 RAIN WATER DRINAGE SERVICES OF BRT BRIDGE

3.1 Core Cutting and Floor Gully Fitting

Item no.1.1 of BOQ

The Service Provider shall cut 1'to 1.5' deep core cutting in steel reinforced concrete for 4" diameter drain pipe at multiple location along the BRT corridor for the installation of drainage system. Location of the core cut shall be proposed by service provider and approved by TPC.

- a) Ensure making of core cut is in line of existing cut at the floor above or below to have vertical alignment.
- b) Centre of core cut to be drilled with drill machine to receive core bit of machine. This will avoid displacement of core machine bit.
- c) The Core cut Machine will be Fixed to Slab using Machine Clamp and anchor Fastener.
- d) Check that machine is firmed enough not to displaced from its location.

- e) Upon completion of the core cut, protect the Core cut hole using the ply piece
- f) Waste material and site clearance before operation shall be part of the bid.
- g) The service provider shall bring his own generator, water or any other item required for the intended work.
- h) Any scaffolding or any other equipment required for the activity will be part of the bid.
- i) Any damage other than core cutting area due to workmanship shall be responsibility of service provider and will be rectified by Service provider without any additional cost.
- j) The item is complete job. Any other accessories, equipment, component or material required shall not be paid additionally.



Item no.2.1

Supply and installation of UPVC Pipe for Drainage Supply 100mm (4"dia) class "B" fitting, cutting, jointing with UPVC Coupler/ socket, (Elbow / Bend) 90/45 Deg. complete with all respect or fixed to wall, floor and also use of Epoxy Grout for water Proofing or any other standard material for Proper Fixing of UPVC Pipe with Floor Surface as Per drawing and

instruction of TPC and other detail given in Operational Specification. Activity should consist of the installation and fixing of UPVC Pipe of well-known brand such as Alpha, Dadex, Plasco or Equivalent manufactured as per direction of TPC.

- a) Fixing of UPVC Pipe with the help of clamp 2mm thick and 40 to 50 mm width at spacing of not more than 500 mm in horizontal run and 1000mm in vertical run.
- b) Installation of Coupler/ Socket/T-joint etc. of 100mm (4" Dia) for UPVC Pipe, Class B as per site Requirement/ as directed by TPC.
- c) Supply and fixing of (Elbow / Bend) 90/45 Deg. Class B as Per site Requirement/ as directed by TPC.
- d) Fixing and installation of Floor Gully (Floor Trap) with Stainless steel Grid 150 mm * 150mm at Top of Deck Slab Floor.
- e) Epoxy Grout for water Proofing any other material for Proper Fixing of UPVC Pipe with Floor Surface or any other location as specified by TPC will be part of the bid.

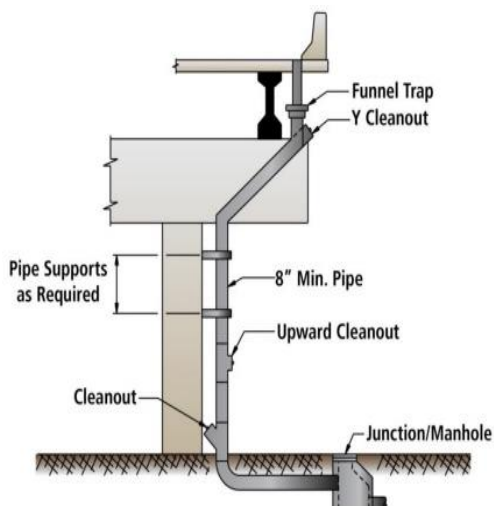
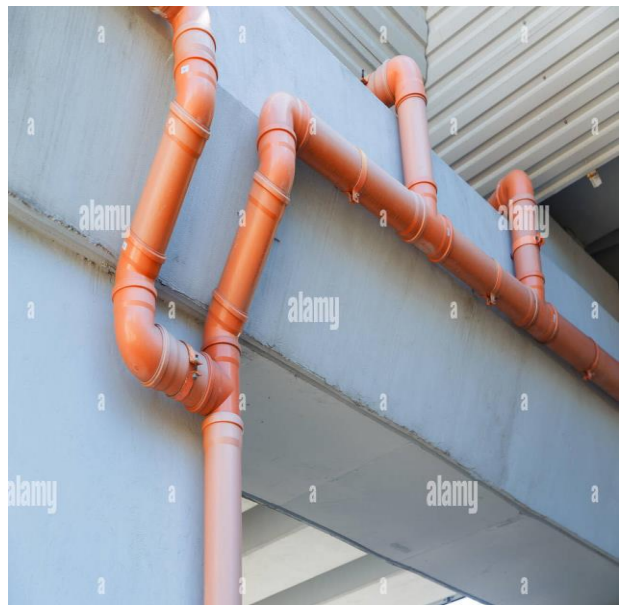


Figure 10.2 Schematic of a Closed Deck Drainage System



Item no.2.2

Supply and Installation of clamp 2 mm thick and 40 to 50 mm width "O"-type clamp for 4'pipe diameter along with maximum 1-meter long 10 to 12 mm diameter threaded rod to be installed for drainage pipes as per the drawings or instruction of TPC.

- a) The item cost includes all the accessories, nut bolts, washers and workmanship/equipment required for this job. No additional payment shall be payable to service provider for additional component if required for the functional objective of the item.
- b) The clamp should MS made stainless steel grade and pre-galvanized.
- c) The service provider must use steel fishers at least 100mm deep in the deck slab.
- d) The length of the threaded rod may vary to maximum 1-meter. Threaded rod cost must be incorporated in item cost.
- e) Below are the conceptual pictures for reference and understanding.



Item no.2.3

Supply and Installation of clamp 2 mm thick and 40 to 50 mm width "U"-type clamp for 4' diameter pipe along with M10 nuts and bolts to be installed for drainage pipes as per the drawings or instruction of TPC. The details are provided in Operational specification schedule.

- a) The item cost includes all the accessories, nut bolts, washers and workmanship/equipment required for this job. No additional payment shall be payable to service provider for additional component if required for the functional objective of the item.
- b) The clamp should MS made stainless steel grade and pre-galvanized.
- c) The service provider must use steel fishers at least 50mm deep in the deck slab/wall.
- d) Minimum M10 size bolts shall be required for fixation of the clamp.
- e) Below are the conceptual pictures for reference and understanding.



Item no.3.1

Removing dry or oil bound distemper, Preparation of the surface, supply and apply Exterior Wall paint with acrylic smooth/weather shield paint of exterior grade, having VOC (Volatile Organic Compound), of approved brand and manufacture, including applying additional coats wherever required to achieve even shade and colour complete in all respect. Approved Make: Asian, Nippon, Dulux, Berger or equivalent.

- a) Preparation of all types of surfaces to be painted by removing all loose material / paint, dust, stain etc.
- b) Supply & application of primer / putty wherever required for smooth surface preparation.
- c) Supply & application of approved brand / make as per approval of TPC.
- d) All the materials, to be used in the work for the purpose of contract shall be as per international standards / specifications.
- e) Paints without test certificates or expired paints shall not be accepted.
- f) All paints and paint constituents to be used for the work shall be delivered to the work area in original sealed containers, bearing manufacturer's labels, batch No., date of manufacture etc.
- g) This item is lump sum job. The service provider shall account for cost off all the tools like scaffoldings, ladders, etc. required for successful completion of the job; in item rate.
- h) Constituent adhesives such as thinner, driers etc. shall be those recommended by the paint manufacturer.
- i) The work involves painting of surfaces of height less than 5 feet. The design and colour will be approved by TPC. The most probable design is painting of surface with two lines in different colour. Furthermore, ZU logo will be placed in different theme.
- j) The workmanship shall be one of the best class achievable in the industry and acceptable to the Engineer.
- k) Rectification on account of poor workmanship shall be done by the contractor to the satisfaction of Engineer.

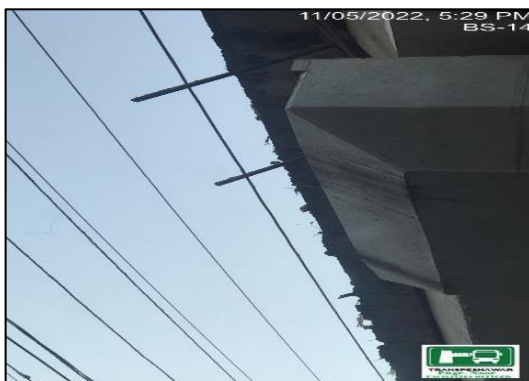


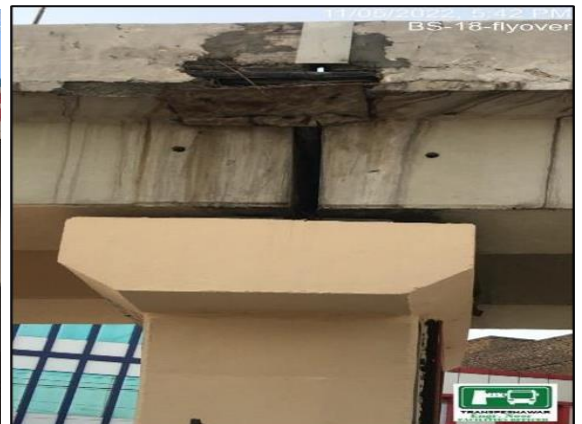


Item no. 4.1

Removal of Debris/shuttering, removal/cutting of extra steel, dismantling loose concrete etc. at 50 different locations along the BRT corridor, collecting and disposing the waste material to dumping area out of the city.

- a) The job may require cutting, lifting, welding tools, crane, trolley and etc. to work on height and under bridge. The service provider shall account for all the expense for the job to be done as highlighted and instructed by TPC.
- b) The Service Provider shall be responsible for Removal and clearance of debris laying at the top of transoms.
- c) The service provider shall also be responsible for placing the warning signs at work zone, depute a person with flag during day time and a warning light in night time to divert the traffic to ensure the safety of the public and workers.
- d) The service provider shall be responsible for removing all the waste from the site immediately after the work is done.
- e) Pictures of few such locations from where the debris are to be removed are given below: Remaining locations shall be provided by TPC during course of the contract:







4 KEY PERFORMANCE INDICATORS

- 4.1 The Service Provider's performance of maintenance services should be evaluated by means of key performance indicators ("KPIs"). Failure to comply with KPIs ("Failure Events") should lead to the application of liquidated damages as per the below table:
- 4.2 The Service Provider shall be liable to pay Liquidated Damages depending on its performance in achieving the agreed performance regime as measure during course of the Contract.
- 4.3 The Liquidated Damages for failure to achieve Key Performance Indicators (KPI) parameters shall be implemented in accordance with Key Performance Indicators.
- 4.4 Information available through the site inspection by TPC representative, surveillance system of TPC or any other mean shall be used by the TP to evaluate KPI's. The KPI's will be transferred to the Service Provide once a month on request. The Service Provide will have the right to justify through concrete evidence the outcome of the aforesaid systems, on as-and-when basis, that are subject to Liquidated Damages as per KPI, prior to settlement of invoice payments, but in any case, no later than one week from the submission of the Invoice.
- 4.5 The Liquidated Damages is the final and full remedy of the TPC for the Service Provider failure to achieve the KPI targets, and such Liquidated Damages should be deemed to have offset any breach whatsoever due to the lapses/deficiencies in performance.
- 4.6 Any breach of defined service levels will entail Liquidated Damages which should be not exceed 10% of the payments to be paid under the Agreement/Contract to Service Provider.
- 4.7 General Violations and Their Liquidated Damages applicable to the Agreement

Liquidated Damages Regarding the deficiencies in the procedure to do work at Stations and Corridor		
Sr. No.	Description	Liquidated Damages in Rupees
1	Failure to get permission letter from TPC to enter in corridor (Vehicle, machinery, labour and non-labour staff, material vehicle)	25,000/- + Not allowed to work
2	Vehicle or labour entry in corridor during operational hours	50,000/- per instance
3	Obstruction to Bus Operation due to workers, machinery or material or due to any reason caused by service provider.	25,000/- per instance
4	Failure to get permission letter from TPC in station for Civil, electrical or mechanical work e.g., electricity connection, water usage from station etc.	10,000/- + Not allowed to work

Liquidated Damages for deficiencies in Scope of work		
5	Delaying Completion of project or specific activity up to 10 days. Day count will start from the date mentioned in work order.	10,000/-
6	If delay to execute activity more than 10 days i.e. not according to the plan.	5000/- x No of days delayed beyond 10 days
7	No sign/guide boards or speed breakers or safety cones or cordon off the construction site.	5000/- per instance
8	Not curing of brickwork or concrete	5000/- per instance
9	Sand dumped at working zone without covering with polythene sheet to avoid pollution and wastage	5000/- per instance
10	Failure to clear site from construction debris or dump construction debris at specified landfills	5000/- per instance
11	Work execution is not as per Contract.	5000/- per instance
12	Concrete not as per specified ratio, if TPC decide to test	25000/- per instance
15	Brickwork sand/ concrete ratio not as per specification	5000/- per instance
16	Failure/declining to provide test results as required by TPC/Contract.	5000/- per instance
17	Failure to follow PPE's (Personal Protective Equipment) as per contract e.g., safety jackets, helmets, etc.	5000/- per person-per instance
18	Workers/visitors or any person entering or exiting in the work zone area other than specified entry/exit points	1000/- per instance
Liquidated Damages for deficiencies in defect liability period		
18	Response time to remove defect during defect liability period is more than 24 hours.	10,000/- x No of days delayed
19	Repair/ maintenance of minor defects not completed within 24 hours.	10,000/- x No of days delayed
	Repair/ maintenance of major defects not completed within 7 days.	10,000/- x No of days delayed
Liquidated Damages of Institutional or Administrative Nature		
20	Failure to deliver information required by TPC	5,000/- per instance
21	To refuse to accept TPC representative visit or to hide information or to provide partial or erroneous information	5,000/- per instance
22	To breach contractual provisions regarding financial mechanisms	5,000/- per instance
Liquidated against Workers/Contractor		

23	Under influence on duty due to drugs/alcohol	10,000/- + withdrawal from the system
24	Free travel or attempt to travel free	Challan + 1,000/-
25	Misbehaviour with any contractor/vendor representative or staff members or with passengers	10,000/- + withdrawal from the system
26	To cause an accident due to negligence.	10,000/- + withdrawal from the system
27	Injury caused to any person or passengers or workers or any staff members due to not following industry safety standards	100,000/- + withdrawal of person responsible from the system which may lead to the termination of contract
28	Damages to the TPC Property	5,000/- x No of days delayed to repair damaged property
29	Failure to follow or acknowledge instructions issued by TPC or the engineer which is non-conforming to TPC Rules/Regulations/Contract, not covered in other sections. Sensitivity shall be determined by TPC.	5,000/- x A where A = 1 to 100 (depending upon sensitivity of event)
30	Any act/instance that is non-conforming or a violation of Contract or violation of Operational Specification Schedule or their appendices, unless covered by another KPI	Rs. 10,000/- per instance.

ANNEXURE-C.
PAYMENT CALCULATION SCHEDULE (DRAINAGE SERVICES)

The TPC shall pay the Service Provider according to the manner specified below.

1. Reports to be submitted with Invoice

The Service Provider shall submit to TPC a report on the Performance of its obligations under the Agreement with invoice, covering at a minimum:

- 1.1 Tax invoice;
- 1.2 Report of Milestone execution duly signed by FO and/ or Assistant Manager;
- 1.3 Report of Completion Report duly signed by FO and Assistant Manager and Manager, if applicable;
- 1.4 Report of Assistant Manager and Manager Operation for release of withheld amount certifying no issues found in defect liability period, if any;
- 1.5 Performance on KPIs report by Assistant Manager; and
- 1.6 Other reports of test, if any or as asked by TPC under the Agreement.

2. Invoice Period

- 2.1 For each Month (m) following Services Commencement Notice, the Service Provider shall be entitled to a payment in accordance with Milestones;
- 2.2 Payments against milestone shall be made only once in a month for the Works executed; and
- 2.3 Milestones for Payments are as per below table.

Sr No.	Item No	Activity as detailed in Annex-B	Completion days from Work order issuance by TPC	Payments Milestones
1	1.1	Core Cutting	Terms of Contract	Pro-rata basis 90% on Installation 10 % Final Acceptance
2	2.1	Supply and installation of UPVC Pipe	Term of Contract	Pro-rata basis. 90% on Installation 10 % Final Acceptance
3	2.2	Supply and Installation of SS grade galvanized clamp 2mm thick and 40 to 50 mm width "O"-type clamp	Term of Contract	Pro-rata bases. 90% on Installation 10 % Final Acceptance
4	2.3	Supply and Installation of SS grade galvanized clamp 2mm thick and 40 to 50mm width; "U"-type clamp	Term of Contract	Pro-rata bases. 90% on Installation 10 % Final Acceptance
5	3.1	Supply and Apply Paint work	Term of Contract	Pro-rata bases. 90% on Installation 10 % Final Acceptance
6	4.1	Removal of Debris/shuttering and Concrete	45 days	90% on Installation 10 % Final Acceptance

Notes:

- 1- Where Payment Milestones is 90 %, TPC shall pay to Service Provider with minor defects or finishing work. Remaining 10 % shall be paid upon acceptance of the Activity.
- 2- TransPeshawar reserve the right to pay the item in running invoice in accordance with their estimation; in case any item price is found to be unbalanced or exaggerated; and as assessed by TransPeshawar. The access amount will be paid in final invoice.
- 3- No invoice shall be paid, if the amount of invoice is less than PKR.2 Million. Payment may be made on pro rata basis for running invoices subject to other conditions.

3. Withheld Amount and Time of Payment of Withheld Amount

- 3.1 TPC shall withheld an amount of 5 % from each running invoice / Payment Milestones as guarantee against for rectification works in Defect Liability Period;
- 3.2 Withheld amount shall be released within 30 days of issuance of Completion Certificate if no defect liability period.
- 3.3 If the Defect Liability Period specified, withheld amount shall be released within 30 days of certification by TPC that no issue found during liability period or rectified by Service Provider or such costs are recovered if rectified by TPC.

Annex D
PERFORMANCE SECURITY

**[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> 2022 (the “Guarantee”)

- 1. Ref:** Letter of Award for **ELECTRICAL, MECHANICAL AND CIVIL WORKS MAINTENANCE SERVICES IN PESHAWAR BRT SYSTEM (Drainage Services)** dated <Insert date> 2022 (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 TransPeshawar Building, Chamkani, GT Road, Peshawar, KPK. (“employer”)

1. GUARANTEE

- 2.** We <Insert name of Bank> Bank (the “Guarantor”) have been informed that <Insert name of the Company> (the “Service Provider”) has been awarded the Agreement relating to **ELECTRICAL, MECHANICAL AND CIVIL WORKS MAINTENANCE SERVICES IN PESHAWAR BRT SYSTEM (Drainage Services)** (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) 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>

Annexure-G: Electrical, Mechanical and Civil Works Maintenance Services in Peshawar BRT System (Feeder Routes Services)

<u>Service Provider Name</u>						
<u>PERMISSION REQUEST</u>						
Permission Request No. _____			Date: _____			
CONTRACT NAME: _____						
STATION NAME: _____						
DESCRIPTION OF NATURE OF WORK TO BE CARRIED OUT: _____						
LOCATION: _____						
MEASUREMENTS:						
Description of Work	Units	Measurements			Quantity	Remarks
		Length	Width	Height		
	Total Quantity:					

PREPARED BY SERVICE PROVIDER (NAME & SIGNATURE)		Notes for Action:
		<u>TPC</u>
APPROVED BY TPC		

Annexure-H: Check Request

<u>Service Provider Name</u>						
<u>CHECK REQUEST</u>						
Request No. _____			Date: _____			
We are forwarding a work request for your further necessary action. The details as stated under define the nature and location of the work request.						
CONTRACT						
NAME: _____						
STATION						
NAME/						
Corridor						
Location: _____						
DESCRIPTION OF NATURE OF WORK TO BE CARRIED OUT:						
LOCATION:						
MEASUREMENTS:						
Description of Work	Units	Measurements			Quantity	Remarks
		Length	Width	Height		
		Total Quantity:				
PREPARED BY SERVICE PROVIDER (NAME & SIGNATURE)		Notes for Action:				
		<u>TPC</u>				
CHECKED BY FACILITY OFFICER (NAME & SIGNATURE)						
COUNTER CHECKED BY ASSITANT MANAGER (NAME & SIGNATURE)						

APPROVED BY MANAGER BRT CONTROL CENTRE:

Name:

Signature:



TransPeshawar (The Urban Mobility Company)

A company set up under section 42 of the Companies Act, 2017

Ref. No: TPC/xxxxxxxxxxxx

Date: xxxxxxxxxxxx

Mr.xxxxxxxxxxx
XXXXXXXXXXXXXXXXXX
XXXXXXXXXX.

LETTER OF AWARD - Electrical, Mechanical and Civil Works Maintenance Services in Peshawar BRT System (Drainage Services)

1. Please refer to our invitation sent vide letter no. xxxxxxxxx dated xxxxxxxxx to prequalified contractors for the subject Contract and your bid submitted on xxxxxxxx in response to the invitation.
2. This is to intimate that after evaluation, the competent authority has accepted your bid against above procurement at the quoted bid price of PKR xxxxxxx/- (xxxxxxx Only).
3. As provided in the RFP the Performance Security xxxxxxxxxxxxxx is required to be deposited in form of Demand Draft / Bank Guarantee issued by a scheduled bank operating in Pakistan or other financial instrument acceptable to TPC; denominated in Pak Rupees; having a minimum validity period of xxxxxx Months from the date of Letter of Award before xxxxxxxx.
4. In case you fail / delay in performance of any of the obligations, under the Contract / violate any of the provisions of the Contract / commit breach of any of the terms and conditions of the Contract; TransPeshawar shall without prejudice to any other right or action / remedy it may have, forfeit bid security.
5. All terms and conditions would prevail as mentioned in RFP. This Letter of Award will form part of the agreement.

**Chief Executive Officer,
TransPeshawar (The Urban Mobility Company)**

**Office Address: TransPeshawar, 1st Floor, KPUMA Building, Main BRT Depot, Near NHA Complex,
Chamkani, Peshawar KP, Pakistan.**

Tel: +92 91 2621393-5

Web: www.transpeshawar.pk

Email: mail@transpeshawar.pk