



TransPeshawar

Request for Proposal

Office Maintenance and Janitorial Services for TransPeshawar (The Urban Mobility Company).

Ref No. TPC/Admin&HR/OCB/OMJS/2023-24/003

Dated: November 21, 2023



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Section 1 - Instructions to Service Providers

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Section 1 - Instructions to Service Providers

A. General

1. **Scope of Services**
 - 1.1 In connection with this Request for Proposal (RFP) as indicated in the **Data Sheet (DS)**, the Procuring Entity, as indicated in the **DS**, issues this Request for Proposal document for the scope of Services as specified in Section 5 (Schedule of Requirements) and indicated in **DS**. The name, identification, and number of contracts of the open competitive bidding (OCB) are provided in the **DS**.
 - 1.2 Throughout this Request for Proposal document,
 - (a) the term “in writing” means communicated in written form and delivered against receipt;
 - (b) except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular; and
 - (c) “day” means calendar day.
2. **Fraud and Corruption**
 - 2.1 It is required that Service Providers shall observe the highest standard of ethics during the procurement and execution of contract. Khyber Pakhtunkhwa Public Procurement of Goods, Works and Services Rules, 2014 defines corrupt and fraudulent practices as follows:
 - (i) “Corrupt practice” means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;
 - (ii) “Fraudulent practice” means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
 - (iii) “Coercive practice” means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
 - (iv) “Collusive practice” means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;
 - (v) “obstructive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in a procurement process, or affect the execution of a contract or deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements before investigators in order to materially impede an investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the

investigation, or acts intended to materially impede the exercise of inspection and audit rights provided for under these rules and

- (b) The Procuring Entity will reject a proposal for award if it determines that the Service Provider recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations in competing for the Contract apart from other remedies provided for under the relevant laws.

3. Eligible Service Providers

3.1 An eligible Service Provider shall be as indicated in **DS**. In the case of a Joint Venture, if so permitted,

- (a) all partners shall be jointly and severally liable; and
- (b) the Joint Venture shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the parties of the Joint Venture during the bidding process and, in the event the Joint Venture is awarded the Contract, during contract execution.

3.2 A Service Provider, and all parties constituting the Service Provider, shall have the nationality of Pakistan. A Service Provider shall be deemed to have the nationality of Pakistan if the Service Provider is a citizen or is constituted, incorporated, or registered, and operates in conformity with the provisions of the laws of Pakistan.

3.3 A Service Provider shall not have a conflict of interest. All Service Providers found to have a conflict of interest shall be disqualified. A Service Provider may be considered to be in a conflict of interest with one or more parties in this bidding process if any of, including but not limited to, the following apply:

- (a) they have controlling partners in common; or
- (b) they receive or have received any direct or indirect subsidy from any of them; or
- (c) they have the same legal representative for purposes of this proposal; or
- (d) they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to material information about or improperly influence the proposal of another Service Provider, or influence the decisions of the Procuring Entity regarding this bidding process; or
- (e) a Service Provider participates in more than one proposal in this bidding process, either individually or as a partner in a joint venture, except for alternative offers permitted under ITSP 12 of the Request for Proposal document. This will result in the disqualification of all Proposals in which it is involved; or
- (f) a Service Provider or any affiliated entity, participated as a consultant in the preparation of the design or technical specifications of the procurement that is the subject of the

Proposal.

- 3.4 Service Providers shall provide such evidence of their continued eligibility satisfactory to the Procuring Entity, as the Procuring Entity shall reasonably request.
- 3.5 Apart from above, the Service Providers shall provide their eligibility satisfactory to the Procuring Entity, as defined in **DS**.
- 4. Eligible Materials, Equipment, and Services**
- 4.1 The materials, equipment, and services to be supplied under the Contract shall have their origin in eligible source countries and all expenditures under the Contract will be limited to such materials, equipment, and services. At the Procuring Entity's request, Service Providers may be required to provide evidence of the origin of materials, equipment, and services.
- 4.2 For purposes of ITSP 4.1 above, "origin" means the place where the materials and equipment are mined, grown, produced, or manufactured, and from which the services are provided. Materials and equipment are produced when, through manufacturing, processing, or substantial or major assembling of components, a commercially recognized product results that differs substantially in its basic characteristics or in purpose or utility from its components.

B. Contents of Request for Proposal Document

- 5. Sections of Request for Proposal Document**
- 5.1 The Request for Proposal document consist of Parts I, II, and III, which include all the sections indicated below, and should be read in conjunction with any addenda issued in accordance with ITSP 7.
- PART I Bidding Procedures**
 Section 1 - Instructions to Service Providers (ITSP)
 Section 2 - Data Sheet (DS)
 Section 3 – Eligibility and Responsiveness Criteria (ERC)
 Section 4 - Standard Forms (SF)
- PART II Requirements**
 Section 5 – Schedule of Requirements (SoR)
- PART III Conditions of Contract and Contract Forms**
 Section 6 – Services Agreement
 Section 7 - Contract Forms (COF)
- 5.2 The Invitation for RFP issued by the Procuring Entity is not part of the Request for Proposal document.
- 5.3 The Procuring Entity is not responsible for the completeness of the Request for Proposal document and their addenda, if they were not obtained directly from the source stated by the Procuring Entity in the Invitation for RFP.
- 5.4 The Service Provider is expected to examine all instructions, forms, terms, and specifications in the Request for Proposal document. Failure to furnish all information or documentation required by the

Request for Proposal document may result in the rejection of the proposal.

6. Clarification of Request for Proposal, Site Visit, Pre-Bid Meeting

6.1 A prospective Service Provider requiring any clarification on the Request for Proposal document shall contact the Procuring Entity in writing at the Procuring Entity's address and before the date and time indicated in the **DS** or raise his inquiries during the pre-bid meeting if provided for in accordance with ITSP 6.4. The Procuring Entity will respond to any request for clarification in the manner as indicated in the **DS**. The response shall include a description of the inquiry but without identifying its source. Should the Procuring Entity deem it necessary to amend the Request for Proposal document as a result of a request for clarification, it shall do so following the procedure under ITSP 7 and ITSP 19.2.

6.2 The Service Provider is advised to visit and examine the Premises and its surroundings and obtain for itself, on its own risk and responsibility, all information that may be necessary for preparing the Proposal and entering into a contract. The costs of visiting the Premises shall be at the Service Provider's own expense.

6.3 The Service Provider and any of its personnel or agents will be granted permission by the Procuring Entity to enter its premises and lands for the purpose of such visit, but only upon the express condition that the Service Provider, its personnel, and agents will release and indemnify the Procuring Entity and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection.

6.4 The Service Providers are encouraged to attend a pre-bid meeting, if provided for in the **DS**. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.

6.5 Minutes of the pre-bid meeting, including the text of the questions raised, without identifying the source, and the responses given, together with any responses prepared after the meeting, will be disseminated as indicated in **DS**. Any modification to the Request for Proposal document that may become necessary as a result of the pre-bid meeting shall be made by the Procuring Entity exclusively through the issue of an addendum pursuant to ITSP 7 and not through the minutes of the pre-bid meeting.

6.6 Nonattendance at the pre-bid meeting will not be a cause for disqualification of a Service Provider.

7. Amendment of Request for Proposal Document

7.1 At any time prior to the deadline for submission of Proposals, the Procuring Entity may amend the Request for Proposal document by issuing addenda.

7.2 Any addendum issued shall be part of the Request for Proposal

document and shall be communicated in manner as indicated in **DS**.

- 7.3 To give prospective Service Providers reasonable time in which to take an addendum into account in preparing their Proposals, the Procuring Entity may, at its discretion, extend the deadline for the submission of Proposals, pursuant to ITSP 19.2.

C. Preparation of Proposals

- 8. Cost of Bidding** 8.1 The Service Provider shall bear all costs associated with the preparation and submission of its Proposal, and the Procuring Entity shall in no case be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.
- 9. Language of Proposal** 9.1 The Proposal, as well as all correspondence and documents relating to the proposal exchanged by the Service Provider and the Procuring Entity, shall be written in the language specified in the **DS**. Supporting documents and printed literature that are part of the Proposal may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified in the **DS**, in which case, for purposes of interpretation of the Proposal, such translation shall govern.
- 10. Documents Comprising the Proposal** 10.1 The Proposal shall comprise the following:
- (a) Proposal Submission Letter;
 - (b) Bid Security in accordance with ITSP 16;
 - (c) written confirmation authorizing the signatory of the Proposal to commit the Service Provider, in accordance with ITSP 17.2 (Schedule 8 or Schedule 9);
 - (d) Schedules as stipulated in **DS** and provided for in Section 4 (Standard Forms), in accordance with ITSP 11.1, along with documentary evidence as stipulated in relevant Schedules.
- 10.2 In addition to the requirements under ITSP 10.1, Proposals submitted by a Joint Venture shall include a copy of the Joint Venture Agreement entered into by all partners. Alternatively, a Letter of Intent to execute a Joint Venture Agreement in the event of a successful Service Provider shall be signed by all partners and submitted with the Proposal, together with a copy of the proposed agreement.
- 11. Proposal Submission Letter and Schedules** 11.1 The Proposal Submission Letter, Schedules, and all documents listed under Clause 10, shall be prepared using the relevant forms in Section 4 (Standard Forms), if so provided. The forms must be completed without any alterations to the text, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested and as required in the **DS**.
- 12. Alternative Proposals** 12.1 Unless otherwise indicated in the **DS**, alternative Proposals shall not be considered.
- 13. Proposal Prices** 13.1 The prices quoted by the Service Provider in the Proposal Submission Letter and in the relevant Schedule (s) shall conform to the

requirements specified below.

13.2 The Service Provider shall submit proposal for complete scope of services as indicated in Section 5 (Schedule of Requirements) on given forms as identified in Section 4 (Standard Forms). Proposals submitted for incomplete scope will be rejected.

13.3 The Price to be quoted in the Proposal Submission Letter shall be the total price of the services. Absence of the total price in the Proposal Submission Letter may result in the rejection of the Proposal.

13.4 The offered price shall be inclusive of taxes and Service Provider shall be liable for payment of all applicable taxes, duties, and other levies under the Contract including sales tax on services.

14. Currencies of Proposal and Payment

14.1 The rates shall be quoted by the Service Provider entirely in Pak Rupees.

14.2 The currency of payment of contract price shall entirely be in Pak Rupees.

15. Period of Validity of Proposals

15.1 Proposals shall remain valid for the period specified in the **DS** after the Proposal submission deadline prescribed by the Procuring Entity. A Proposal valid for a shorter period shall be rejected by the Procuring Entity as nonresponsive.

15.2 In exceptional circumstances, prior to the expiration of the proposals' validity period, the Procuring Entity may request Service Providers to extend the period of validity of their Proposals. The request and the responses shall be made in writing. If a bid security is requested in accordance with ITSP 16, it shall also be extended 28 days beyond the deadline of the extended validity period. A Service Provider may refuse the request without forfeiting its bid security. A Service Provider granting the request shall not be required or permitted to modify its Proposal.

16. Bid Security

16.1 Unless otherwise specified in the **DS**, the Service Provider shall furnish as part of its Proposal, in original form a bid security as specified in the **DS**. The amount and currency of bid security shall be as specified in the **DS**.

16.2 Unless otherwise specified in the **DS**, any Proposal not accompanied by a substantially compliant bid security it shall be rejected by the Procuring Entity as nonresponsive.

16.3 If a bid security is specified pursuant to ITSP 16.1, the bid security of unsuccessful Service Providers shall be returned promptly upon the successful Service Provider's furnishing of the performance security pursuant to ITSP 36.

16.4 If a bid security is specified pursuant to ITSP 16.1, the bid security of the successful Service Provider shall be returned as promptly as possible once the successful Service Provider has signed the Contract

and furnished the required performance security.

16.5 The bid security may be forfeited, if

- (a) notwithstanding ITSP 21.3, a Service Provider withdraws its proposal during the period of proposal validity specified by the Service Provider on the Proposal Submission Letter, except as provided in ITSP 15.2; or
- (b) the successful Service Provider fails to
 - (i) sign the Contract in accordance with ITSP 35;
 - (ii) furnish a performance security in accordance with ITSP 36;
 - (iii) accept the arithmetical correction of its Proposal in accordance with ITSP 29.

16.6 The bid security of a Joint Venture may be submitted as indicated in **DS**.

17. Format and Signing of Proposal

17.1 The Service Provider shall prepare one original set of the documents comprising the Proposal as described in ITSP 10 and clearly mark it "ORIGINAL." Alternative Proposals, if permitted in accordance with ITSP 12, shall be clearly marked "ALTERNATIVE." In addition, the Service Provider shall submit copies of the Proposal in the number specified in the **DS**, and clearly mark each of them "COPY." In the event of any discrepancy between the original and the copies, the original shall prevail.

17.2 The original and all copies of the Proposal shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Service Provider. This authorization shall consist of a written confirmation as specified in the **DS** and shall be attached to the Proposal. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Proposal, except for unamended printed literature, shall be signed or initialed by the person signing the Proposal. If a Service Provider submits a deficient authorization, the Proposal shall not be rejected in the first instance. The Procuring Entity shall request the Service Provider to submit an acceptable/valid authorization within the number of days as specified in the **DS**. Failure to provide an acceptable/valid authorization within the prescribed period of receiving such a request shall cause the rejection of the Proposal.

17.3 Any amendments such as interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Proposal.

D. Submission and Opening of Proposals

18. Sealing and Marking of Proposals

18.1 Service Providers may always submit their Proposals by mail or by hand. When so specified in the **DS**, Service Providers shall have the option of submitting their Proposals electronically. Procedures for submission, sealing, and marking are as follows:

- (a) Service Providers submitting Proposals by mail or by hand shall

enclose the original and each copy of the Proposal, including alternative Proposals, if permitted in accordance with ITSP 12, in separate sealed envelopes, duly marking the envelopes as "ORIGINAL," "ALTERNATIVE," and "COPY." These envelopes containing the original and the copies shall then be enclosed in one single envelope. The rest of the procedure shall be in accordance with ITSP 18.2 and ITSP 18.3.

- (b) Service Providers submitting Proposals electronically shall follow the electronic Proposal submission procedures specified in the **DS**.

18.2 The inner and outer envelopes shall

- (a) bear the name and address of the Service Provider;
- (b) be addressed to the Procuring Entity as provided in ITSP 19.1;
- (c) bear the specific identification of this bidding process indicated in ITSP 1.1; and
- (d) bear a warning not to open before the time and date for proposal opening.

18.3 If all envelopes are not sealed and marked as required, the Procuring Entity will assume no responsibility for the misplacement or premature opening of the Proposal.

19. Deadline for Submission of Proposals

19.1 Proposals must be received by the Procuring Entity at the address and no later than the date and time indicated in the **DS**.

19.2 The Procuring Entity may, at its discretion, extend the deadline for the submission of Proposals by amending the Request for Proposal documents in accordance with ITSP 7, in which case all rights and obligations of the Procuring Entity and Service Providers previously subject to the deadline shall thereafter be subject to the deadline as extended.

20. Late Proposals

20.1 The Procuring Entity shall not consider any Proposal that arrives after the deadline for submission of Proposals, in accordance with ITSP 19. Any Proposal received by the Procuring Entity after the deadline for submission of Proposals shall be declared late, rejected, and returned unopened to the Service Provider.

21. Withdrawal, Substitution, and Modification of Proposals

21.1 A Service Provider may withdraw, substitute, or modify its Proposal after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITSP 17.2, (except that withdrawal notices do not require copies). The corresponding substitution or modification or withdrawal of the Proposal must accompany the respective written notice. All notices must be

- (a) prepared and submitted in accordance with ITSP 17 and ITSP 18 (except that withdrawal notices do not require copies), and in

addition, the respective envelopes shall be clearly marked "WITHDRAWAL," "SUBSTITUTION," "MODIFICATION;" and

(b) received by the Procuring Entity prior to the deadline prescribed for submission of Proposals, in accordance with ITSP 19.

21.2 Proposals requested to be withdrawn in accordance with ITSP 21.1 shall be returned unopened to the Service Providers.

21.3 No Proposal may be withdrawn, substituted, or modified in the interval between the deadline for submission of Proposals and the expiration of the period of proposal validity specified by the Service Provider on the Proposal Submission Letter or any extension thereof.

22. Proposal Opening

22.1 The Procuring Entity shall open the Proposals in public at the address, on the date, and time specified in the **DS** in the presence of Service Providers' designated representatives and anyone who choose to attend. Any specific electronic proposal opening procedures required if electronic bidding is permitted in accordance with ITSP 18.1, shall be as specified in the **DS**.

22.2 First, envelopes marked "WITHDRAWAL" shall be opened and read out and the envelope with the corresponding Proposal shall not be opened, but returned to the Service Provider. No Proposal withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at proposal opening. Next, envelopes marked "SUBSTITUTION" shall be opened and read out and exchanged with the corresponding Proposal being substituted, and the substituted Proposal shall not be opened, but returned to the Service Provider. No proposal substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at proposal opening. Envelopes marked "MODIFICATION" shall be opened and read out with the corresponding Proposal. No Proposal modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Proposal opening. Only envelopes that are opened and read out at Proposal opening shall be considered further.

22.3 All other envelopes shall be opened one at a time, reading out the name of the Service Provider; the Offered Price; the presence of a bid security; and any other details as the Procuring Entity may consider appropriate. Unless otherwise specified in the **DS**, all pages of the Proposal Submission Letter and Schedules are to be initialed by at least three members of procuring entity attending the Proposal opening. No Proposal shall be rejected at Proposal opening except for late Proposals, in accordance with ITSP 20.1.

22.4 The Procuring Entity shall prepare a record of the Proposal opening that shall include, as a minimum, the name of the Service Provider and whether there is a withdrawal, substitution, or modification; the Offered Price; and the presence or absence of a bid security. The Service Providers' representatives who are present shall be requested to sign the record. The omission of a Service Provider's signature on the record shall not invalidate the contents and effect of the record.

E. Evaluation and Comparison of Proposals

- 23. Confidentiality**
- 23.1 Information relating to the examination, evaluation, comparison, and post-qualification of Proposals and recommendation of contract award, shall not be disclosed to Service Providers or any other persons not officially concerned with such process until announcement of Proposal evaluation report to all Service Providers in accordance with relevant rules.
- 23.2 Any attempt by a Service Provider to influence the Procuring Entity in the evaluation of the Proposals or Contract award decisions may result in the rejection of its Proposal.
- 23.3 Notwithstanding ITSP 23.2, from the time of Proposal opening to the time of Contract award, if any Service Provider wishes to contact the Procuring Entity on any matter related to the bidding process, it may do so in writing.
- 24. Clarification of Proposals**
- 24.1 To assist in the examination, evaluation, and comparison of the Proposals, the Procuring Entity may, at its discretion, ask any Service Provider for a clarification of its Proposal. Any clarification submitted by a Service Provider that is not in response to a request by the Procuring Entity shall not be considered. The Procuring Entity's request for clarification and the response shall be in writing. No change in the prices or substance of the Proposal shall be sought, offered, or permitted, except as provided for in the relevant rules or to confirm the correction of arithmetic errors discovered by the Procuring Entity in the evaluation of the Proposals, in accordance with ITSP 29.
- 24.2 If a Service Provider does not provide clarifications of its Proposal by the date and time set in the Procuring Entity's request for clarification, its Proposal may be rejected.
- 25. Deviations, Reservations, and Omissions**
- 25.1 During the evaluation of Proposals, the following definitions apply:
- (a) "Deviation" is a departure from the requirements specified in the Request for Proposal document;
 - (b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Request for Proposal document; and
 - (c) "Omission" is the failure to submit part or all of the information or documentation required in the Request for Proposal document.
- 26. Examination of Proposals**
- 26.1 The Procuring Entity shall examine the Proposal to confirm that all documents requested in ITSP 10 have been provided, and to determine the completeness of each document submitted.
- 26.2 The Procuring Entity shall confirm that the following documents and information have been provided in the Proposal. If any of these

documents or information is missing, the Proposal shall be rejected.

- (a) Proposal Submission Letter;
- (b) written confirmation of authorization to commit the Service Provider in accordance with Schedule 8 or Schedule 9;
- (c) Bid Security;
- (d) All schedules required in accordance with ITSP 10 (d) along with attachments.

27. Determination of Responsiveness

27.1 The Procuring Entity's determination of a proposal's responsiveness is to be based on the contents of the Proposal itself, as defined in ITSP 10.

27.2 A substantially responsive Proposal is one that meets all the requirements stipulated under Section 3 (Eligibility and Responsiveness Criteria) and other terms and conditions of RFP without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that,

- (a) if accepted, would:
 - (i) affect in any substantial way the scope, quality, or performance of the Contract; or
 - (ii) limit in any substantial way, inconsistent with the Request for Proposal document, the Procuring Entity's rights or the Service Provider's obligations under the proposed Contract; or
- (b) if rectified, would unfairly affect the competitive position of other Service Providers presenting substantially responsive Proposals.

27.3 If a Proposal is not substantially responsive to the requirements of the Request for Proposal document, it shall be rejected by the Procuring Entity and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.

28. Nonmaterial Nonconformities

28.1 Provided that a Proposal is substantially responsive, the Procuring Entity may waive any nonconformities in the Proposal that do not constitute a material deviation, reservation, or omission.

28.2 Provided that a Proposal is substantially responsive, the Procuring Entity may request that the Service Provider submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities in the Proposal related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the price of the Proposal. Failure of the Service Provider to comply with the request may result in the rejection of its Proposal.

29. Correction of Arithmetical Errors

29.1 Provided that the Proposal is substantially responsive, the Procuring Entity shall correct arithmetical errors on the following basis:

- (a) If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit

price shall prevail and the total price shall be corrected, unless in the opinion of the Procuring Entity there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected.

- (b) If there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected.
- (c) If there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a), and (b) above.

29.2 If the Service Provider that submitted the lowest evaluated price does not accept the correction of errors, its Proposal shall be disqualified and its bid security may be forfeited.

30. Consideration and Comparison of Financial Offers

- 30.1 Financial offers of substantially responsive Service Providers will be compared for determination of the lowest evaluated Proposal.
- 30.2 The Procuring Entity shall use the criteria and methodologies indicated in this clause. No other criteria or methodologies shall be permitted.
- 30.3 To evaluate a Proposal, the Procuring Entity shall consider the following:
 - (a) The Proposal price as quoted in accordance with ITSP 13;
 - (b) Price adjustment for correction of arithmetic errors in accordance with ITSP 29;
 - (c) Assessment whether the bid is abnormally low in accordance with ITSP 31.

31. Abnormally Low Proposals

- 31.1 An abnormally low Proposal is one where the proposal price appears to be low than aggregate price of prevailing minimum wage calculated for proposed personnel, ESSI, and EOBI contribution for the proposed personnel, and applicable taxes.
- 31.2 If the Proposal is determined to be abnormally low in accordance with ITSP 31.1, the Proposal will be rejected summarily and will not be considered for comparison of financial offers. The Procuring Entity may make a similar determination for the next substantially responsive financially lowest Proposal, and so on, if required.
- 31.3 If the Proposal price is at par with the aggregate price of prevailing minimum wage calculated for proposed personnel, ESSI, and EOBI contribution for the proposed personnel, and applicable taxes i.e., without margin of profit and overheads, the procuring entity will accept the proposal, but require that the amount of the performance security be increased at the expense of the service provider to twice the amount as stipulated under ITSP 36.

- 32. Procuring Entity's Right to Accept Any Proposal, and to Reject Any or All Proposals**
- 32.1 The Procuring Entity reserves the right to accept or reject any Proposal, and to annul the bidding process and reject all Proposals at any time prior to contract award, without thereby incurring any liability to Service Providers. In case of annulment the bid securities shall be promptly returned to the Service Providers.

F. Award of Contract

- 33. Award Criteria**
- 33.1 The Procuring Entity shall award the Contract to the Service Provider who is substantially responsive to the requirements of Request for Proposal documents/Eligibility and Responsiveness Criteria and whose financial offer has been determined to be the lowest evaluated financial offer and will be declared as successful Service Provider.
- 34. Letter of Award**
- 34.1 Prior to the expiration of the period of proposal validity, the Procuring Entity shall transmit the Letter of Award using the form including in Section 7 (Services Agreement Forms) to the successful Service Provider, in writing, that its Proposal has been accepted.
- 34.2 Until a formal contract is prepared and executed, the Letter of award shall constitute a binding Contract.
- 35. Signing of Contract**
- 35.1 Promptly after notification of Letter of Award, the Procuring Entity shall send the successful Service Provider the Contract Agreement.
- 35.2 Within 10 days of issuance of the Letter of Award or as indicated in **DS**, the successful Service Provider shall sign, date, and return it to the Procuring Entity.
- 36. Performance Security**
- 36.1 Within 10 days or as indicated in **DS**, of the issuance of Letter of award from the Procuring Entity, the successful Service Provider shall furnish the performance security in accordance with the Conditions of Contract, using for that purpose the Performance Security Form included in Section 7 (Services Agreement Forms), or another form acceptable to the Procuring Entity.
- 36.2 Failure of the successful Service Provider to submit the above-mentioned Performance Security or to sign the Contract Agreement shall constitute sufficient grounds for the annulment of the award and forfeiture of the bid security. In that event, the Procuring Entity may award the Contract to the next lowest evaluated Service Provider whose offer is substantially responsive.

Section 2 - Data Sheet

A. General

ITSP 1.1	The number of the Invitation for Request for Proposal (RFP) is: TPC/Admin&HR/OCB/OMJS/2023-24/003
ITSP 1.1	The Procuring Entity is: TransPeshawar (The Urban Mobility Company)
ITSP 1.1	The name of the bidding process is: Office Maintenance and Janitorial Services for TransPeshawar (The Urban Mobility Company) The identification number of the Request for Proposal Document is: TPC/Admin&HR/OCB/OMJS/2023-24/003
ITSP 3.1	A Service Provider shall be a single entity, a firm or a company, registered with Registrar of Firms or Security and Exchange Commission of Pakistan. The Joint Ventures of firms/companies are not allowed to participate.
ITSP 3.5	The Service Provider must be: <ul style="list-style-type: none"> i. Registered with FBR for income and reflected on active taxpayers list; ii. Registered with KPRA for sales tax on services; iii. Net worth for the last year calculated as the difference between total assets and total liabilities should be positive and minimum average annual turnover calculated within last three (03) years (2020, 2021, 2022) shall be of PKR. 7 million; iv. Executed or awarded two (02) similar contracts (Provision of Janitorial and/or Office Maintenance Services) by any public or private entity not less than to the amount of 5 million each in last three (03) years; v. Neither being under legal action for corrupt and fraudulent practices (blacklisted) from any federal or provincial public entity in Pakistan nor his contract (s) have been terminated for default on services.

B. Contents of Request for Proposal Document

ITSP 6.1	For <u>clarification purposes</u> only, the Procuring Entity's address is: Attention: Chief Executive Officer (CEO), TransPeshawar Address: TransPeshawar (The Urban Mobility Company), First Floor KPUMA Building Near Main BRT Depot, Chamkani, GT Road, Peshawar, KPK, Pakistan E-mail: To: khalil.ahmed@transpeshawar.pk ; sami.ullah@transpeshaar.pk Cc: abid.mansoor@transpeshawar.pk
ITSP 7.2	The addendum will be hoisted on website of the Procuring Entity or KPPRA or both and may be published in newspapers if the Procuring Entity deems necessary and if the amendments are of substantial nature.

C. Preparation of Bids

ITSP 9.1	The language of the Proposal is: English
ITSP 10.1 (d)	<p>The Service Providers are required to submit following schedules as provided for in Section 4 (Standard Forms) along with documentary evidence as stipulated under relevant Schedules,</p> <ol style="list-style-type: none"> 1. Schedule 1: Breakup of Proposal Prices; 2. Schedule 2: Service Provider's Information Sheet; 3. Schedule 3. Financial Soundness 4. Schedule 4: Contractual Experience 5. Schedule 5: Bid Security in shape of Bank guarantee; 6. Schedule 6. Authorization/Power of Attorney (Firm/Company).
ITSP 11.1	The units and rates in figures entered into the Schedule for Breakup of Proposal Price should be typewritten or if written by hand, must be in print form. Schedule not presented accordingly may be considered nonresponsive.
ITSP 12.1	Alternative Proposals are not permitted.
ITSP 15.1	The Proposal validity period shall be ninety (90) days.
ITSP 16.1	Bid security shall be submitted in PKR from any scheduled bank of Pakistan to the amount of 2% of proposal price as Bank Guarantee on format as prescribed in Section 4 (Standard Forms) or in shape of Call Deposit Receipt in the name of Chief Executive Officer (CEO) TransPeshawar. The bid security shall be submitted from the account of the Service Provider who submits the proposal.
ITSP 17.1	In addition to the original Proposal, the number of copies is: One number of copy
ITSP 17.2	<p>The written confirmation of authorization to sign on behalf of the Service Provider shall consist of:</p> <p>The authorization is required if the Service Provider is a firm or company. Individual if participating as a Service Provider is not supposed to submit authorization.</p> <p>An authorization shall be provided as given under Section 4 (Standard Forms) specifying the representative's authority to sign the Proposal on behalf of, and to legally bound, the Service Provider.</p>
ITSP 17.2	The Service Provider shall submit an acceptable authorization within three (03) working days.

D. Submission and Opening of Bids

ITSP 18.1	Service Providers not have the option of submitting their Proposals electronically.
ITSP 19.1	<p>For <u>Proposal submission purposes</u> only, the Procuring Entity's address is:</p> <p>Attention: Chief Executive Officer (CEO), TransPeshawar</p>

	<p>Address: TransPeshawar (The Urban Mobility Company), First Floor KPUMA Building Near Main BRT Depot, Chamkani, GT Road, Peshawar, KPK, Pakistan</p> <p>The deadline for Proposal submission is:</p> <p>Date: December 06, 2023</p> <p>Time: 11:30 AM</p>
ITSP 22.1	<p>The Proposal opening shall take place at:</p> <p>Main Board Room, TransPeshawar (The Urban Mobility Company), First Floor KPUMA Building Near Main BRT Depot, Chamkani, GT Road, Peshawar, KPK, Pakistan</p> <p>Date: December 06, 2023</p> <p>Time: 11:45 AM</p>

Section 3 – Eligibility and Responsiveness Criteria

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1. Eligibility and Responsiveness Criteria

Criteria	Compliance Requirements			Documents
Requirement	Single Entity	Joint Venture		Submission Requirements
		All Partners Combined	Each Partner	

1.1 County of Constitution

Firms/Company incorporated/registered in Pakistan with Registrar of Firms or Security and Exchange Commission of Pakistan.	must meet requirement	not applicable	not applicable	not applicable	Certificate of registration with Registrar of Firm or Security and Exchange Commission of Pakistan submitted with Schedule 2.
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1.2 Conflict of Interest

No conflicts of interest	must meet requirement	not applicable	not applicable	not applicable	Proposal Submission Letter
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1.3 Registration with FBR

Registered with FBR for income tax and reflected on active taxpayer list.	must meet requirement	not applicable	not applicable	not applicable	Certificate of Registration with FBR and active status on Active Taxpayer List (ATL) submitted with Schedule 2.
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1.4 Registration with KPRA

Registered with KPRA for sales tax on Services.	must meet requirement	not applicable	not applicable	not applicable	Certificate of Registration with KPRA for Sales Tax on Services submitted with Schedule 2.
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1.5 Not Blacklisted

Neither being under legal action for corrupt and fraudulent practices (blacklisted) from any federal or provincial public entity in Pakistan nor his contract (s) have been terminated for default on services.	must meet requirement	not applicable	not applicable	not applicable	Certificate on stamp paper of PKR. 150 or above, duly notarized by Notary Public, submitted with schedule 2.
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1.6 Financial Soundness (Historical Financial Performance)

Criteria	Compliance Requirements			Documents	
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
Submission of audited financial statements for the last three (03) years (2020-22) to demonstrate the current soundness of the Bidder's financial position. As a minimum, the Bidder's net worth for the last year calculated as the difference between total assets and total liabilities should be positive.	must meet requirement	not applicable	not applicable	not applicable	Schedule 3 with attachments

1.7 Financial Soundness (Average Annual Turnover)

Minimum average annual turnover of PKR. 7 million calculated within last three (03) years (2020, 2021, 2022) from submitted financial statements.	must meet requirement	not applicable	not applicable	not applicable	Schedule 3 with attachments
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1.8 Contractual Experience

Executed or awarded two (02) similar contracts (Provision of Janitorial and/or Office Maintenance Services) by any public or private entity not less than to the amount of 5 million each in last three (03) years.	must meet requirement	not applicable	not applicable	not applicable	Schedule 4 along with attachments.
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Section 4 - Standard Forms

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Proposal Submission Letter

Date:

Request for Proposal Document No.:

To:

Chief Executive Officer (CEO), TransPeshawar,
First Floor, KPUMA Building,
Main BRT Depot, Near NHA Complex,
Chamkani, Peshawar.

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Request for Proposal Document, including Addenda issued in accordance with Instructions to Bidders (ITB) Clause 8.
- (b) We offer to execute in conformity with the Request for Proposal Document the following Services: **[Office Maintenance and Janitorial Services for TransPeshawar (The Urban Mobility Company)]**
- (c) The total price of our Proposal is:

[amount in words], [amount in figures]

The total proposal price from the Schedule for Breakup of Prices should be entered by the service providers inside this box. Absence of the total proposal price in the Proposal Submission Letter may result in the rejection of the proposal.

- (d) Our proposal shall be valid for a period of 90 days from the date fixed for the proposal submission deadline in accordance with the Request for Proposal Document, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
- (e) If our proposal is accepted, I/we commit to obtain a performance security in accordance with the Request for Proposal Document.
- (f) We are having nationality of Pakistan.
- (g) We do not have any conflict of interest.

- (h) We are not participating, as a Bidder in more than one Proposal in this bidding process.
- (i) We are neither being under legal action for corrupt and fraudulent practices (blacklisted) from any federal or provincial public entity in Pakistan nor his contract (s) have been terminated for default on services.
- (j) We understand that this Proposal, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal contract is prepared and executed.
- (k) We understand that you are not bound to accept the lowest evaluated Proposal or any other Proposal that you may receive.

Name of Authorized Representative

Designation

Sign & Seal

Name of Service Provider

Date

Schedules

Schedule-1 Breakup of Proposal Prices

S#	Description	Quantity (A)	Monthly Service Price per unit in PKR inclusive of all applicable Taxes (B)	Total Monthly Price in PKR inclusive of all applicable taxes C=(AxB)	Total Annual Price in PKR inclusive of all applicable taxes (D=Cx12)
1.	Sweeper	07 (Including two female)			
2.	Gardner	01			
3.	Plumber	01			
4.	Peon/office boy	03			
Total Personnel		12	Total Annual Price in PKR inclusive of all taxes (Total Proposal Price)		

Note: TransPeshawar shall ensure observance of labor and other relevant laws related to minimum wage, ESSI, EOBI contribution etc., during implementation of the services agreement. The service providers are required to take into account the requirements of all applicable laws including requirement of ITSP 31 while quoting financial prices.

Name of Authorized Representative

Designation

Sign and Seal

Name of Service Provider

Date

Schedule-2

Service Provider's Information Sheet

Service Provider's Information	
Service Provider's legal name	
Service provider's country of constitution	
Service provider's year of constitution	
Service provider's Year of registration with FBR for income tax	
Service provider's Year of registration with KPRA for sales tax on service	
Service provider's legal address in country of constitution	
Service provider's authorized representative (Name, address, telephone number(s), fax number(s), e-mail address)	
<p>Attached are copies of the following documents.</p> <p><input type="checkbox"/> 1. certificate of registration wit Registrar of Firm or Security and Exchange Commission of Pakistan;</p> <p><input type="checkbox"/> 2. Certificate of Registration with FBR and and active status on Active Taxpayer List (ATL).</p> <p><input type="checkbox"/> 3. Certificate of Registration with KPRA for Sales Tax on Services.</p> <p><input type="checkbox"/> 4. non-blacklisting certificate on stamp paper of PKR. 150 or above, duly notarized by Notary Public, to the effect that Service Provider is neither being under legal action for corrupt and fraudulent practices (blacklisted) from any federal or provincial public entity in Pakistan nor his contract (s) have been terminated for default on services.</p>	

Schedule-3
Financial Soundness

Each Service Provider must fill out this form.

Financial Data for Previous 03 Years		
Year 1: 2020	Year 2: 2021	Year: 2022

Information from Balance Sheet

Total Assets (TA)			
Total Liabilities (TL)			
Net Worth = TA – TL			

Information from Income Statement

Total Revenues			
Profits Before Taxes			
Profits After Taxes			

- Attached are copies of financial statements (balance sheets including all related notes and income statements) for the last 03 years, as indicated above, complying with the following conditions:
- Unless otherwise required by Section 3 of the Request for Proposal Document, all such documents reflect the financial situation of the legal entity or entities comprising the Service Provider and not the Service Provider’s parent companies, subsidiaries, or affiliates.
 - Historical financial statements must be audited by a certified accountant.
 - Historical financial statements must be complete, including all notes to the financial statements.
 - Historical financial statements must correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).

Schedule-4

Contractual Experience

Each Service Provider must fill out this form.

Contract of Similar Size and Nature		
Contract No of	Contract Name	
Award Date	On Going/Completion Date:	
Total Contract Amount	PKR.	
If partner in a Joint Venture or subcontractor, specify participation of total contract amount	Percent of Total	Amount
Employer's name Address Telephone number Fax number E-mail		
Description of the Similarity in Accordance with Criterion 1.8 of Section 3 (Eligibility and Responsiveness Criteria)		
<input type="checkbox"/> Attached Letter of Award/Acceptance or contract agreement or any other credible record to substantiate information provided in Schedule 5.		

**Schedule 5
Bid Security
(Bank Guarantee)**

*[Bank's name, and address of issuing branch or office]*¹

Beneficiary: *[Name and address of the Procuring Entity]*

Date:

Bid Security No.:

We have been informed that *[name of the Service Provider]* (hereinafter called "the Service Provider") has submitted to you its proposal dated *[please specify]* (hereinafter called "the Proposal") for the execution of *[Name of Service]* under Request for Proposal No. *[please specify]* ("the RFP").

Furthermore, we understand that, according to your conditions, proposals must be supported by a bid guarantee.

At the request of the Service Provider, we *[name of bank]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[amount in words]* *[amount in figures]* upon receipt by us of your first demand in writing accompanied by a written statement stating that the Service Provider is in breach of its obligation(s) under the proposal conditions, because the Service Provider

- (a) has withdrawn its Proposal during the period of bid validity specified by the Service Provider in the Proposal Submission Letter; or
- (b) does not accept the correction of errors in accordance with the Instructions to Service Provider (hereinafter "the ITSP"); or
- (c) having been notified of the acceptance of its Proposal by the Procuring Entity during the period of bid validity, (i) fails or refuses to execute the Contract Agreement, or (ii) fails or refuses to furnish the performance security, in accordance with the ITSP, or (iii) fails or refuses to furnish a domestic preference security, if required.

This guarantee will expire (a) if the Service Provider is the successful Service Provider, upon our receipt of copies of the Contract Agreement signed by the Service Provider and the Performance Security issued to you upon the instruction of the Service Provider; or (b) if the Service Provider is not the successful Bidder, upon the earlier of (i) our receipt of a copy of your notification to the Service Provider of the name of the successful Bidder, or (ii) 28 days after the expiration of the Service Provider's proposal.

Consequently, any demand for payment under this guarantee must be received by us at the office on or before that date.

[Authorized signature(s) and bank's seal (where appropriate)]

¹ All italicized text is for use in preparing this form and shall be deleted from the final document.

**Schedule 6
Authorization/Power of Attorney (Firm/Company)**

I, [*Name of of person authorizing the signatory of proposal*], 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 [*Partner/ (duly elected Corporate Secretary or equivalent officer)*] of [*name of Service Provider*], a [*Partnership/ Corporation*] 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 Service Provider is a company*] or I hereby disposed of [*in case the Service Provider is a partnership*]:

1. That [*name of Service Provider*] be, and is, authorized to participate in the Bidding Process and to submit proposal for [*Name of procurement*];
2. That [*name of Representative*] be and is hereby appointed as the authorized representative of the [*Name of Service Provider*] during the Bidding Process, authorized to submit bid, execute, sign, and receive documents/contract for, and otherwise act for and on behalf of the bidder; and
3. That any and all acts done and/or performed by [*Name of Representative*] under and by virtue of this authorization be, as they are hereby, confirmed and ratified.

This authorization has 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.

Name of person authorizing the signatory

Position

Signature with Seal.....

Name of Service Provider

Date:

Section 5 – Schedule of Requirements (SoR)

1 Background:

TransPeshawar (The Urban Mobility Company) (hereinafter called “the Client”) is a public owned company established under Section 42 of the Companies Act 2017 and has been tasked for implementation of security services for Khyber Pakhtunkhwa Urban Mobility Authority (KPUMA) Building, in addition to other tasks in Peshawar BRT/Zu Peshawar.

The Government of Khyber Pakhtunkhwa (KPK) has taken an initiative to revamp the urban bus transport system in the provincial capital of the province. In this regard, the Government of KPK has started construction of Bus Rapid System (BRT) in 2017. The BRT corridor is 27-kilometer-long with 30 stations connected through Direct Feeder routes of about 55 kilometers. Because of the integration of Direct Feeder Routes into the main BRT corridor, thus known as the Third Generation BRT System. The BRT system will have 220 buses includes 18-meter (65 numbers) and 12-meter-long buses (155 numbers).

Construction work is implemented through Peshawar Development Authority (PDA) while procurement of buses, procurement of operating company for bus operation, procurement of BRT System Control Goods and Services, BIRP, and implementation of security services for KPUMA Building through the Client.

2 Scope of Services:

TransPeshawar (The Urban Mobility Company), (hereinafter called “the Client”) requires the services of a firm/company (hereinafter called “the Services Provider”) for provision of skilled and unskilled human resource for “Office Maintenance and Janitorial Services for KPUMA Building at Chamkani” (hereinafter called “the Services”), which is the subject of this contract.

The Services include Janitorial/House Keeping, Gardening/Landscaping, Electrical, Plumbing, Solid Waste disposal to nearest dumping site of Govt KP/WSSP.

3 Requirements:

3.1 General Requirements:

The Service Provider shall:

- a) Unless directed by the Client, continue the Services uninterrupted despite strikes, threats of strikes or walkouts, terrorist activities, emergencies, and adverse weather conditions or disasters (natural, deliberate, or accidental);
- b) Engage, supervise and manage the staff and provide all resources necessary to complete the Services;
- c) Be responsible for all acts done by the personnel engaged by it. The Service Provider shall at all-time use all reasonable efforts to maintain discipline and good order amongst its personnel and ensure that all its personnel follow the code of conduct and Standard Operating Procedures (SOP) prescribed by the Client;

- d) Ensure that it has proper permission, authorization, approval and consent including registrations, all applicable permits including all statutory and regulatory approvals from the concerned authorities, wherever applicable, in order to perform the Services;
- e) Ensure compliance with all the Applicable Laws, Rules and Regulations (including the one prescribed by the Client), which are applicable to the Service Provider or personnel, deputed by him and shall be solely responsible for liabilities arising out of such compliance, non-compliance or implementation or non-implementation;
- f) Be responsible for the confidentiality of the information. The Service Provider shall take and must have mechanisms and means to ensure adequate precautions to protect the privacy and confidentiality of all data and confidential Information. Neither the Service Provider nor any of his employees/agents shall discuss nor disclose verbally or in writing any information regarding the internal operations of the Client with any uninvolved persons or agencies without prior written approval from the Client;
- g) Be liable to liquidated damages/replacement cost for any loss incurred or suffered/any damage caused to movable or immovable property of the Client, because of negligence, delayed, deficient or inadequate Services;
- h) Carry out the work in a professional manner and to the satisfaction of the Client and will perform all services employing skillful and qualified staff.

3.2 Specific Requirements:

The Service Provider shall:

- a) Ensure that it does not engage or continue to engage any person with criminal record/conviction or otherwise undesirable persons for the provision of the Services.
- b) Provide a complete biodata of staff engaged for the Services;
- c) Immediately inform the Client, in case of hiring and firing of its deputed staff during the contract period;
- d) Be responsible for providing the benefits as per applicable labor laws.
- e) Ensure that his employed personnel at all times present a neat and clean appearance, paying particular attention to their personal hygiene;
- f) Ensure that all the personnel assigned must be punctual, physically fit, in good health, without physical/mental abnormalities which could interfere with the performance of his/her duties;
- g) Agree to remove from the site, whenever required to do so by the Client, any employee considered by the Client to be unsatisfactory or undesirable, within the limits of any applicable scope;
- h) Ensure payment to the deputed staff of the performed month not later than 7th day of proceeding month irrespective of whether the Client has cleared monthly invoice or otherwise;
- i) Not at any time do, cause or permit any nuisance at the site/perform any act, which shall cause unnecessary disturbances or inconvenience to the Client's staff and visitors in the building.

- j) Ensure that his personnel have appropriate identification. The identification shall include display of valid company ID, containing a picture of the staff, at all times while in the facility.
- k) Maintain all records in connection with the duties and responsibilities of its Personnel.

4 **Personnel Requirement:**

The below table specifies the total number of personnel required for the Services. However the number of staff as mentioned below may be increased/decreased during performance of the contract as per actual on pro-rata basis on a same terms and conditions. The staff engaged shall have required technical/professional capabilities to dispense of with his/her responsibilities under the contract.

S#	Resource	Requirement
1.	Sweeper	7 (Five males and two females)
2.	Gardner	1
3.	Plumber	1
4.	Peon/office boy	3
Total		12

5. Liquidated Damages:

Performance of the Service Provider shall be assessed from time to time and failure to perform (violations) shall result in imposing of liquidated damages in accordance with the following table.

S#	Violations	Liquidated damages in PKR
1.	Misbehavior with staff or Visitors	PKR 1000 per instance
2.	Unskilled/untrained person found deputed for the services	PKR 1000 per day per person
3.	Incident of misbehavior/quarrel among themselves	PKR 500 per instance per person
4.	Late arrival to duty	PKR 500 per hour per person
5.	Absence from duty	Wage per day per person
6.	Non payment of personnel's salaries till 7 th of each month	PKR. 5,000 per day of delay
7.	Violation of labor laws including non registration with EOBI and ESSI and non-submission of relevant contribution.	PKR 2000 per person per month
8.	Laziness during duty	PKR 500 per instance per person
9.	Damage or loss to the Property	Equal to the loss
10.	Smoking in office.	PKR 1000 per instance per person
11.	Violation of SOP issued by TransPeshawar	PKR 1000 per instance
12.	Not following instructions of TransPeshawar authorized representative	PKR 1000 per instance
13.	Misuse of TransPeshawar assets and installations	PKR 1000 per instance
14.	Sleeping during duty	PKR 1000 per instance per person
15.	Any other violation of the Contract	PKR 1000 per instance

Liquidated Damages shall be deducted from monthly invoice of respective month as per the rate described above. The total amount of liquidated damages shall not exceed ten (10) % of the monthly charges in each monthly invoice else this will be considered as material breach. The Client shall be the sole decision-maker for the description of the violation and imposing liquidated damages.

**Services Agreement for
Office Maintenance and Janitorial Services for TransPeshawar (The Urban Mobility Company)**

Between

TransPeshawar (The Urban Mobility Company)

AND

[Service Provider]

Dated of, 2023

SERVICES AGREEMENT

THIS SERVICES AGREEMENT is made at Peshawar on this..... day of, 2023 (hereinafter called “this Agreement” or the “Agreement” or the “Contract”)

BY & BETWEEN

TransPeshawar (The Urban Mobility Company), a company existing under the laws of Pakistan, has its registered office TransPeshawar Building, Second Floor, Near Chamkani BRT Depot Peshawar, KPK, Pakistan (hereinafter referred to as “**the Company or TPC**”, which expression shall, where the context so admits, be deemed to include its authorised representatives, successors in interest, executors and permitted assigns) of the **First Part**;

AND

<Insert name of Firm/Company>, incorporated in [.....], with company/firm registration no. [.....] and whose registered address is at [.....] (hereinafter referred to as the “**Service Provider**”, which expression, where the context so admits, shall include its successors in title and permitted assigns of the Other Part.

(All capitalized terms used herein shall have the same meaning ascribed to them in Article 1.1, unless otherwise specified.)

RECITALS

WHEREAS:

- A.** TPC is a corporate entity established by the Government of Khyber Pakhtunkhwa, Pakistan responsible for the design, procurement, implementation, and executing of ongoing BRT operations in the Peshawar BRT System. TPC intends to hire a Service Provider for the “**Office Maintenance and Janitorial Services for TransPeshawar (The Urban Mobility Company)**” and other related activities (hereinafter the “Services”). TPC intends to enter into the Agreement with the Service Provider, selected through a competitive bidding process, who will provide the Services as part of the Agreement.
- B.** The Service Provider has submitted a proposal with the TPC and has represented that it is possessed of the necessary skills, knowledge, equipment, experiences, capabilities, and qualified personnel requisite for performing the Services and matters ancillary and incidental to the provision of the Services, and that it is in a position to provide the Services in a more effective and efficient manner whereby the Services and other related activities can be achieved in a more timely and efficient manner (hereinafter referred to as the “Service Provider’s Representation”).
- C.** Based on the Proposal and Service Provider’s Representation, the Service Provider has offered to TPC for the provision of the Services and TPC, with a view to achieving the Services in a timely and efficient manner and relying upon the Service Provider’s Representation, is keen to accept the offer of the Service Provider on the following terms and conditions.

NOW, THEREFORE, in consideration of the mutual promises and agreements of the Parties expressed herein, the Parties agree as follows:

ARTICLE – I

DEFINITIONS & RULES OF INTERPRETATION

1.1. DEFINITIONS:

In this Agreement, the capitalised terms shall, unless otherwise specified, have the meaning ascribed to them as under:

- 1) “**Additional Service Notice**” shall have the same meaning ascribed to it in Clause 3.5 of this Agreement.
- 2) “**Agreement**” shall mean this agreement between TPC and the Service Provider, as amended from time to time.
- 3) “**Breach**” shall have the same meaning ascribed to it in Clause 10.1.
- 4) “**Charges**” shall have the same meaning ascribed to it in Article 4.1.
- 5) “**Commencement Date**” the date on which both the parties to the Contract affix their signatures to the Contract.
- 6) “**Contract Price**” means Charges to be received under the Agreement for the Term in return for the Services inclusive of all applicable taxes.
- 7) “**TPC’s Representative**” shall mean the person or persons appointed by TPC from time to time as its representatives by virtue of the Instructions.
- 8) “**Consents**” shall mean all approvals, consents, authorisations, notifications, concessions, acknowledgments, licenses, permits, decisions, or similar items required to be obtained under the Laws of Pakistan.
- 9) “**Service Provider’s Representation**” shall have the same meaning ascribed to it in Recital B of this Agreement.
- 10) “**Service Provider’s Representative**” shall mean the person or persons appointed by the Service Provider from time to time as its representative to receive the Instructions and other correspondence from TPC.
- 11) “**Day**” shall mean Calendar Day.
- 12) “**Instructions**” shall mean the instructions and directions given by TPC from time to time to the Service Provider for the purposes of this Agreement and which shall become an integral part of this Agreement.
- 13) “**Licence**” means any license, consent, or permit required by the Service Provider from the Government of Pakistan or Government of Khyber Pakhtunkhwa or as the case may be to enable it to provide the Services under the Agreement.
- 14) “**Liquidated Damages**” means the amounts to be deducted from the monthly invoice of Service Provider pursuant to particular service level failures as set out in Schedule of Requirements.
- 15) “**Laws of Pakistan or Applicable Laws**” shall mean the Constitution of the Islamic Republic of Pakistan, 1973, the federal, provincial and local laws of Pakistan, including all orders, rules, regulations, statutory rules and regulatory orders “S.R.O.’s”, executive orders, decrees, policies, judicial decisions, notifications, guidelines, or other similar directives issued pursuant thereto, as any of the foregoing may be in effect or amended from time to time, including, without limitation, the labour laws of Pakistan.
- 16) “**Monthly Invoice**” shall mean an invoice on letterhead of the Service Provider to be raised in a month against provision of the Services.

Section 6 – Services Agreement

- 17) **“Parties”** shall mean collectively TPC and the Service Provider and the term “Party” shall mean any one of them, as the context so requires.
- 18) **“Personnel”** shall mean the personnel employed or otherwise engaged by the Service Provider to perform the Services hereunder.
- 19) **“PKR”** shall mean the official currency of Pakistan and the term “Rupees” shall mean accordingly.
- 20) **“Quality & Delivery Requirements”** shall have the meaning ascribed to it in Clause 3.4 of this Agreement.
- 21) **“Services”** shall mean the services (including the additional services where applicable) which are set out in Appendix – A of this Agreement and shall have the same meaning ascribed to it in Recital A of this Agreement.
- 22) **“Term”** shall have the same meaning ascribed to it in Clause 2.4.

1.2. **RULES OF INTERPRETATION:**

Save to the extent that the context or the express provisions of this Agreement otherwise requires:

- (i) Words importing the singular include the plural and vice versa.
- (ii) Headings and sub-headings shall not be deemed parts of this Agreement and shall not be taken into consideration in the interpretation or construction hereof.
- (iii) References to Articles, Clauses, Sub-Clauses, Schedules, and Annexes shall be construed as references to articles, clauses, sub-clauses, schedules, and annexes of this Agreement unless otherwise stated.
- (iv) References to: (a) natural persons include reference to corporate bodies; (b) persons include their successors and any permitted transferees, assigns, and legal heirs; (c) dates and periods relate to the Gregorian calendar; and (d) one gender including neuter shall include reference to all genders.
- (v) Where the words “include” or “including” appear they are to be construed without limitation.
- (vi) All references to any statute or statutory provision shall include references to any statute or statutory provision which amends, extends, consolidates, or replaces the same and shall include any orders, regulations, instruments, or other subordinate legislation made under the relevant statute.
- (vii) The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of the remaining provisions.
- (viii) a reference to a gender includes the other genders;
- (ix) This Agreement shall be read as a whole for the purposes of interpretation. However, in the event of any inconsistency among different provisions of this Agreement and its Annexes, or other documents which form an integral part of this Agreement, the terms of the Agreement shall prevail.

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ARTICLE – II

TERM OF THE AGREEMENT

- 2.1 The defined words and expressions set out in Clause 1.1 [Definitions] hereof and the provisions relating to the construction and interpretation of the Agreement set out in Clause 1.2 [Rules of Interpretation] hereof shall apply to the Agreement.
- 2.2 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 Article-I
 - b) Letter of Award;
 - c) Breakup of Proposal Prices;
 - d) Appendix-A Proposal Submission Letter along with Schedule 1 filled and submitted by service provider;
 - e) Appendix-B [Charges]; and
 - f) Appendix-C [Performance Security]

2.3 Effect of this Agreement

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

2.4 Commencement of the Services and Term

2.4.1. The Service Provider shall continuously provide the Services contemplated under this Agreement for a period of one (01) year (hereinafter called the “Term”) which may be extended for additional two Terms, on year-to-year basis based on performance, with sole discretion of the TPC and on same terms and conditions or otherwise, commencing from the Commencement Date, unless the Agreement is terminated earlier as per terms and conditions of the Agreement.

2.4.2. This Agreement shall come into full force and effect from the Commencement Date and shall remain in full force and effect up to the Term of the Contract, or as may be extended by the TPC, unless terminated earlier in accordance with the terms and conditions of the Agreement.

ARTICLE – III

THE SERVICES

- 3.1 The Service Provider shall perform the Services in strict compliance with the terms of this Agreement; with the utmost diligence and efficiency; to the highest professional standards of workmanship; and, in strict accordance with the Instructions. The Service Provider shall observe sound and good practices prevalent in the Service Provider’s industry and shall employ the Personnel who are suitably qualified and experienced, commensurate with the tasks assigned to them by the Service Provider (in respect of the Services), all in accordance with the Laws of Pakistan.
- 3.2 The Service Provider understands and agrees that TPC has relied upon the Service Provider’s Representation and that the Service Provider shall be principally responsible for provision of the Services to successfully ensure the delivery of the Services in a timely and efficient manner.

Section 6 – Services Agreement

3.3 Without prejudice to the generality of the above, the Service Provider shall provide the Services to TPC, as per the description set out in Schedule of Requirements- **Appendix A** of this Agreement. The Services being provided by the Service Provider shall, in addition to the requirements and description set out in **Appendix A**, comply with the professional standards in the Service Provider's industry, the TPC's express and implied Instructions, regarding the quality of the Services and the timelines in which Services are to be completed (hereinafter the "**Quality & Delivery Requirements**") and the Service Provider's Representation.

3.4 SPECIFIC OBLIGATIONS RELATING TO QUALITY & DELIVERY REQUIREMENTS

3.4.1 The Service Provider, in order to specifically comply with the Quality & Delivery Requirements and **Appendix A**, shall, in addition to and without prejudice to its other obligations under this Agreement, comply with the following:

- i) Without prejudice to the TPC's rights set out in Clause 3.4.1 above, the Service Provider acknowledges and agrees that TPC has the right to evaluate the performance of the Service Provider in accordance with the evaluation procedure set out in **Article-VI**.

3.5 ADDITIONAL SERVICES

3.5.1 During the Term of the Agreement, TPC may require the Service Provider to provide additional services. For the purposes of obtaining the additional services from the Service Provider, TPC's Representative shall, from time to time, in the form of a letter on TPC's official letterhead addressed to the Service Provider's Representative, specify the information in respect of a particular additional Service required by TPC (hereinafter, "the **Additional Service Notice**").

3.5.2 Within Fifteen (15) Days from the date of each of the additional Services Notices, the Service Provider shall ensure the provision of the additional services in an efficient manner and within the timelines and quality requirements as set out in the Instructions.

3.5.3 In respect of the additional services, TPC shall issue separate Instructions in respect of the quality and specifications of the additional services and the timelines in which the additional services are to be completed. The Parties shall amend Appendix A of this Agreement as and when TPC requires the additional services and such amendment shall reflect the complete description and the specifications of the additional services. Without prejudice to the provisions of this Clause 3.5 the requirements, in respect of the submission of monthly performance report, TPC's right to penalise the Service Provider and TPC's right of evaluation shall apply equally in respect of the additional services.

3.5.4 In the case of Additional Services, the Charges of Additional Services shall be in accordance with the procedure defined in **Appendix-B**.

3.6 GENERAL OBLIGATIONS

Without prejudice to the above-stated provision of **Article III** of this Agreement, the Service Provider shall:

3.6.1 provide the Services and/or additional services in a professional and efficient manner and to the highest standard and with all due care, speed and diligence and using all reasonable skill and care in the performance thereof and in accordance with the terms and conditions of this Agreement.

3.6.2 ensure that the Services and/or additional services are performed in accordance with any agreed timetable as may be set out in the Instructions and in accordance with Clause 3.4 of this Agreement. If no such timetable is set out, then the Services shall be performed within a reasonable time, consistent with good practice in the Service Provider's industry standards internationally.

Section 6 – Services Agreement

- 3.6.3 at all times act in the best interest of TPC and will in all aspects diligently and faithfully observe all directions of TPC.
- 3.6.4 ensure that sufficient time is devoted to providing the Services to meet its obligations under this Agreement.
- 3.6.5 ensure that each member of the Personnel shall perform the Services diligently and use due skill and care in the exercise thereof.
- 3.6.6 be solely responsible to ensure that the Services rendered in terms of this Agreement are of objectively acceptable quality.
- 3.6.7 comply with the Instructions of TPC given from time to time.

3.7 COMPLIANCE WITH COMPANY POLICIES

- 3.7.1 The Service Provider hereby represents and warrants that it has obtained updated copies of all relevant TPC policies and procedures, included but not limited to the Environmental Health & Safety Policy, the Standards of Business Conduct, Security Policy etc., notified or to be notified from time to time. The Service Provider further represents that he fully understands the relevant TPC policies and procedures and shall ensure complete compliance with such policies and procedures in the provision of the Services and/or additional services.
- 3.7.2 The Service Provider shall after each calendar year during Term of this Agreement, provide a written certificate evidencing the Service Provider's compliance with the relevant TPC policies and procedures. In the event TPC is of the view that the Service Provider has failed to comply with the relevant policies and procedures, then such non-compliance shall be considered a material breach of the Agreement and shall entitle TPC to claim any and all damages suffered by TPC, due to the Service Provider's non-compliance, and/or to terminate this Agreement with immediate effect.
- 3.7.3 All actions, activities, consents, approvals, and other undertakings of the Service Provider in this Agreement shall be performed in a reasonable and timely manner, it is expressly acknowledged and understood that time is of the essence in the performance of obligations required to be performed by a date expressly specified herein. Except as specifically set forth herein, for the purpose of this Clause 3.7 the normal standards of performance within the service industry in the relevant market shall be the measure.

ARTICLE – IV

PAYMENT OF CHARGES & TAXES

- 4.1 **CHARGES:** The price for the purposes of this Agreement for Services and/or the additional services shall be in accordance with the charges set out in **Appendix-B** (hereinafter, "the **Charges**").
 - 4.1.1 All amounts to be claimed by the Service Provider and to be paid by TPC for the Services performed by the Service Provider in terms of this Agreement shall be made against invoices to be raised by the Service Provider each month (hereinafter, "the **Monthly Invoices**").
 - 4.1.2 The Charges shall remain unchanged for the entire Term of this Agreement except with an increase in the minimum wage, provided that any changes in the Charges shall only be made after the mutual agreement, in writing, between the Parties in respect of such change in Charge and procedure as defined in **Appendix-B**.
- 4.2 All payments of Charges to be made by TPC to the Service Provider shall be subject to the deduction of all applicable taxes in accordance with Tax Law of Pakistan unless the Service Provider produces the original certificate of exemption granted to it under the Laws of Pakistan.

Section 6 – Services Agreement

- 4.3 TPC shall not be obliged to pay in respect of any invoice (or any proportion of such invoice) which is disputed by TPC, pending resolution of such dispute in accordance with this Agreement.
- 4.4 TPC shall be entitled to deduct any amounts payable by Service Provider to TPC including Liquidated Damages.
- 4.5 To the extent that the Services or any additional activities and/or services offered by the Service Provider pursuant to this Agreement are taxable, the Service Provider agrees to bear all Applicable taxes, charges, duties, and/or tariffs by itself (Except Sales Tax on Services) and, upon request from TPC, provide proof that such obligations have been satisfied in full.
- 4.6 The Sale Tax on Services shall be paid by TPC. However, the Applicable Sale Tax Invoice shall be submitted by Service Provider in accordance with Law of Pakistan. The notified Sales Tax rates may be amended from time to time by the Government. Any changes in the rate of notified Sales Tax will be incorporated in the invoice based on the already agreed amount of services.
- 4.7 The payment by TPC of any Charges against invoices shall not be deemed to be approval and/or acceptance by TPC of any work/Services or matters in respect of which such invoice is issued and will be without prejudice to the TPC's rights and remedies under this Agreement or at law or in equity in respect of any failure or delay on the part of the Service Provider to perform its obligations.

ARTICLE – V

PERSONNEL

- 5.1 The Service Provider shall ensure that during the entire currency of this Agreement, it has a proper structure in place for the proper and timely performance of the Services in terms of this Agreement. The Service Provider shall ensure that the Services are carried out by the Personnel on a day-to-day basis as per the timetable communicated by TPC to the Service Provider from time to time.
- 5.2 The Service Provider shall be responsible and accountable to TPC, in terms of this Agreement, for all actions of the Personnel including, inter alia, ensuring that the Personnel perform the Services and/or additional services in a manner as to avoid disputes, infractions, infringement, lapses, interference, and delays. The Service Provider shall at all times take all reasonable precautions to prevent any unlawful riotous or disorderly conduct by or amongst the Personnel.
- 5.3 The Service Provider is an independent entity and the Personnel shall be the Service Provider's employees and not those of TPC. The Service Provider agrees to and does hereby accept full and exclusive liability, as between the Service Provider and TPC, for the payment of all amounts including, but not limited to, the payments of all wages, commissions, insurances, site allowances, or other remuneration whatsoever to the Personnel and for the payment of any and all taxes, contributions for unemployment insurance, old-age pensions, workmen's compensation, gratuities or any other benefits or taxes under the applicable Laws of Pakistan which may be granted or imposed on such persons by any of the Federal, Provincial, municipal or other authorities. The Service Provider hereby indemnifies and agrees to hold harmless TPC, its director, officer, and its respective employees, agents, and representatives to the fullest extent from and against any loss, cost, damage, claim (including, without limitation, court costs and legal fees and expenses) and consequential losses in respect of any of the foregoing.

ARTICLE – VI

AUDIT & EVALUATION

- 6.1 The Service Provider acknowledges the fact that TPC has relied on the Service Provider's Representation to enter into this Agreement. Therefore, a high standard of quality in the supply of the Services is of the essence of this Agreement. The Parties agree that throughout the currency of this Agreement, TPC shall have an absolute right to carry out audits and evaluations (including external independent audits by TPC's

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recognised audit advisors) as set out in this **Article VI**.

6.2 **AUDITS:**

6.2.1 TPC or its representatives shall on giving reasonable notice have the right to inspect and audit, at a frequency determined at the sole discretion of TPC including for up to two (2) years post expiry or termination of this Agreement, any and all documents, records, books or accounts in the possession of control of the Service Provider relating in any way whatsoever in the performance of this Agreement.

6.2.2 Without prejudice to any other rights or remedies of TPC under this Agreement, if any inspection or audit reveals that the Service Provider has not complied with any of its obligations under this Agreement, the Service Provider shall, at its own expense, immediately comply and take all necessary steps and actions to ensure that it has complied with all obligations as and when they accrued, all to the reasonable satisfaction of TPC. The Service Provider shall provide all such information and documents as TPC may request to demonstrate its compliance.

6.3 **EVALUATION:** Without prejudice to the generality of the above Clause, and after six (6) Months from the Commencement Date, in order to ensure that the Service Provider is performing and ensuring that the Personnel are performing the Services and/or additional services strictly in accordance with the terms of this Agreement and, especially, the Instructions, **Appendix A** and the Quality and Delivery Requirements, TPC may, in its sole discretion, carry out the evaluations. The evaluations shall be carried out in respect of the Services and/or the additional services. In the event that TPC's evaluations reveal that the Services and/or additional services are not being performed in accordance with the terms of this Agreement, then in such event, TPC shall be entitled to have the Service Provider re-perform the Services and/or additional services at no cost to TPC and/or have another party perform the Services and/or additional services at the complete cost and expense of the Service Provider and/or terminate this Agreement immediately and claim any and all damages, in accordance with the terms of this Agreement and the Laws of Pakistan, which TPC has suffered due to the Service Provider's failure to perform the Services and/or additional services in accordance with the terms of this Agreement.

ARTICLE – VII

REPRESENTATION AND WARRANTIES

7.1 The Service Provider represents, warrants, and undertakes that:

7.1.1 it shall discharge its obligations in the provision of the Services with all reasonable skill and care in accordance with good industry practice;

7.1.2 the Services shall conform in all respects with any specifications and other requirements or descriptions as stated;

7.1.3 any non-conformity of the Services notified to it shall be rectified within a time-scale acceptable to TPC, which shall not exceed seven (07) Days or any other time as agreed to between the Parties in writing or specified in Appendix-B;

7.1.4 it will neither do nor omit to do anything which results or in the reasonable opinion of TPC may result, in damage to the reputation, good name, and market perception of TPC;

7.1.5 it is properly constituted and incorporated in accordance with the Applicable Law;

7.1.6 it has the power, authority, and legal capacity to enter into and exercise its rights and perform its obligations under this Agreement;

7.1.7 it has taken all necessary action to authorise the execution, delivery, and performance of this Agreement;

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- 7.1.8 the obligations expressed to be assumed by the Service Provider under this Agreement are legal, valid, binding, and enforceable to the extent permitted by Laws of Pakistan;
- 7.1.9 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;
- 7.1.10 it is and will be in compliance with all Applicable Laws;
- 7.1.11 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;
- 7.1.12 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.
- 7.1.13 if during the Term of this Agreement, the Service Provider gains the knowledge of any special method by which the business of TPC can benefit, it shall neither divulge it to any other company or business concern nor shall it make use of the same for its own business purposes directly or indirectly; and,
- 7.1.14 it is an independent entity, engaged in the business of, inter alia, providing end-to-end solutions to organisations and that the Service Provider is not an employee of TPC or any of its subsidiaries or affiliates. Similarly, the Personnel are not employees of TPC or any of its subsidiaries or affiliates.
- 7.2** Each of the warranties given by the Service Provider under this **Article VII** shall be deemed to be given on a continuing basis throughout the duration of this Agreement and any breach shall entitle TPC to terminate this Agreement pursuant to **Article-X**.

ARTICLE – VIII

INDEMNITY

- 8.1** The Service Provider agrees and acknowledges that by entering into this Agreement, TPC is relying upon the skill, expertise, knowledge, and experience of the Service Provider and the Personnel in the provision of the Services (more specifically the Service Provider's Representation) and, accordingly, the Service Provider hereby indemnifies and keep TPC, its directors, officers, employees, agents and representatives fully and effectively indemnified against any and all losses, damages, liabilities, penalties, fines, and expenses resulting from or arising out of proceedings, claims, actions or demands, brought or made against TPC as a result of any breach of this Agreement or negligence including any negligent act or omission in connection with the performance of the Services on the part of the Service Provider and the Personnel.
- 8.2** **DEFENCE OF CLAIMS:**
- 8.2.1 The Service Provider shall be entitled, at its option and expense and with counsel of its selection, to assume and control the defence of such claim, action, suit or proceedings in respect of, resulting from, relating to or arising out of any matter for which it is obligated to indemnify TPC hereunder, subject to the prior approval of such counsel by TPC.
- 8.2.2 Notwithstanding the provisions of Clause 8.2.1, unless and until the Service Provider acknowledges in writing its obligation to indemnify TPC and assumes control of the defence of a claim, suit, action, or proceeding in accordance with Clause 8.2.1, TPC shall have the right, but not the obligation, to contest, defend and litigate, with counsel of its own selection, any claim, action, suit or proceeding by any third party alleged or asserted against TPC in respect of, resulting from, related to or arising out of any matter for which it is indemnified hereunder, and the

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reasonable costs and expense thereof shall be subject to the indemnification obligations of the Service Provider hereunder.

- 8.2.3 Upon assumption by the Service Provider of the control of the defence of a claim, suit, action, or proceeding, the Service Provider shall reimburse TPC for the reasonable costs and expenses of TPC incurred in the defence of the claim, suit, action, or proceeding prior to the Service Provider's acknowledgement of the indemnification and assumption of the defence.
- 8.2.4 The Service Provider shall not be entitled to settle or compromise any claim, action, suit, or proceeding without the prior written consent of TPC.
- 8.2.5 Following the acknowledgement of the indemnification and the assumption of the defence by the Service Provider, TPC shall have the right to employ its own counsel and such counsel may participate in such activities, but the fees and expenses of such counsel shall be at the expense of the Service Provider, when and as incurred, unless
- i. TPC shall have reasonably concluded that there may be a conflict of interest between the Service Provider and TPC in the conduct of the defence of such action;
 - ii. the Service Provider shall not in fact have employed independent counsel reasonably satisfactory to TPC to assume the defence of such action and shall have been so notified by TPC; or
 - iii. TPC shall have reasonably concluded and specifically notified the Service Provider either that there may be specific defences available to it which are different from or additional to those available to the Service Provider or that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement. If Clauses (i) and/or (ii) shall be applicable, then counsel for TPC shall have the right to direct the defence of such claim, action, suit, or proceeding on behalf of TPC and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.
- 8.3 Service Provider hereby indemnifies and keep the TPC, its directors, officers, employees, agents, and representatives fully and effectively indemnified against any and all direct losses, damages, liabilities, penalties, fines, and expenses resulting from or arising out of proceedings, claims, actions or demands, brought or made against the TPC as a result of any wilful breach of this Agreement or negligence including any negligent act or omission in connection with the obligations set out in this Agreement.

ARTICLE – IX

FORCE MAJEURE

- 9.1 **Definition:** A "Force Majeure Event" shall mean any event or circumstance or combination of events or circumstances that is beyond the reasonable control of a Party and that on or after the Commencement Date materially and adversely affects the performance by such affected Party of its obligations or the enjoyment by that Party of its rights under or pursuant to this Agreement; provided, however, that such event or circumstance or combination of events or circumstances shall not constitute a "Force Majeure Event" hereunder to the extent that it or such material and adverse effect could have been prevented, overcome or remedied in whole or in part by the affected Party through the exercise of diligence and reasonable care, it being understood and agreed that reasonable care includes acts and activities which are within the affected Party's power and resources to protect the Project from a casualty or other reasonably foreseeable event which are reasonable in light of the likelihood of such event, the probable effect of such event if it should occur and the likely efficacy of such protection measures. Without limiting the generality of the foregoing, "Force Majeure Events" hereunder shall include each of the following events and circumstances, but only to the extent that each satisfies the above requirements:

Section 6 – Services Agreement

- 9.1.1 political events that occur inside or directly involve Pakistan (each, a “Pakistan Political Force Majeure Event”),
- 9.1.2 any act of war (whether declared or undeclared), invasion, armed conflict or act of a foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, act or campaign of terrorism, or sabotage;
- 9.1.3 any Lapse of Consent that (a) shall itself have existed for twenty-six (26) Days or more, (b) together with any and all other Lapses of Consents that have occurred in the same Year, shall have existed in the aggregate for thirty (30) Days or more in such Year, or (c) together with any and all other Lapses of Consents that have occurred in the same and in the two immediately preceding Agreement Years, shall have existed, in the aggregate, for thirty-five (35) Days or more;
- 9.1.4 radioactive contamination or ionizing radiation originating from a source in Pakistan or resulting from another Pakistan Political Force Majeure Event; or
- 9.1.5 other events beyond the reasonable control of the affected Party (each an “Other Force Majeure Event”), including, but not limited to:
- i. lightning, earthquake, tsunami, drought, flood, torrential rain, storm, cyclone, typhoon, or tornado;
 - ii. fire, explosion, or chemical contamination (other than resulting from an act referred to in Clause 9.1.4, in which case it shall be a Pakistan Political Force Majeure Event);
 - iii. epidemic or plague;
 - iv. a Lapse of Consent unless such Lapse of Consent is a Pakistan Political Force Majeure Event;

9.2 **Notification Obligations:**

- 9.2.1 If by reason of a Force Majeure Event a Party is wholly or partially unable to carry out its obligations under this Agreement, the affected Party shall:
- i. give the other Party notice of the Force Majeure Event as soon as practicable, but in any event, no later than the later of three (3) Days after the affected Party becomes aware of the occurrence of the Force Majeure Event or one (1) Day after the resumption of any means of providing notice between the Parties, and
 - ii. give the other Party a second notice, describing the Force Majeure Event(s) in reasonable detail and, to the extent that can be reasonably determined at the time of the second notice, providing a preliminary evaluation of the obligations affected, a preliminary estimate of the period of time that the affected Party will be unable to perform such obligations and other relevant matters as soon as practicable, but in any event not later than seven (7) Days after the initial notice of the occurrence of the Force Majeure Event(s) is given by the affected Party. When appropriate or when reasonably requested to do so by the other Party, the affected Party shall provide further notices to the other Party more fully describing the Force Majeure Event(s) and its cause(s) and providing or updating information relating to the efforts of the affected Party to avoid and/or to mitigate the effect(s) thereof and estimates, to the extent practicable, of the time that the affected Party reasonably expects it will be unable to carry out any of its affected obligations due to the Force Majeure Event(s).
- 9.2.2 The affected Party shall provide notice to the other Party of:

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- i. the cessation of the Force Majeure Event, and
- ii. its ability to recommence performance of its obligations under this Agreement,

in each case as soon as possible and in any event not later than seven (7) Days after the occurrence of (i) and (ii) above.

9.2.3 Failure by the affected Party to give written notice of a Force Majeure Event to the other Party within the three (3) Day period or the one (1) Day period required by Clause 9.2 shall not prevent the affected Party from giving such notice at a later time; provided, however, that in such case the affected Party shall not be excused pursuant to Clause 9.5 for any failure or delay in complying with its obligations under or pursuant to this Agreement until the notice required by Clause 9.2.2 has been given. If said notice is given within the three (3) Day period or one (1) Day period required by Clause 9.2.1, the affected Party shall be excused for such failure or delay pursuant to Clause 9.4 from the date of commencement of the relevant Force Majeure Event.

9.3 Duty To Mitigate: The affected Party shall use all reasonable efforts to mitigate the effects of a Force Majeure Event, including but not limited to the payment of all reasonable sums of money by or on behalf of the affected Party in light of the likely efficacy of the mitigation measures.

9.4 Delay Caused By Force Majeure:

9.4.1 So long as the affected Party has, at all times since the occurrence of the Force Majeure Event, complied with the obligations of Clauses 9.2 and 9.3 and continues to so comply, then:

- i. the affected Party shall not be liable for any failure or delay in performing its affected obligations under or pursuant to this Agreement during the existence of a Force Majeure Event and;
- ii. any affected performance deadline that the affected Party is obligated to meet under this Agreement shall be extended; and
- iii. the Expiry Date is extended provided, however, that no relief, including the extension of performance deadlines, shall be granted to the affected Party pursuant to this Clause 9.4 to the extent that such failure or delay would have nevertheless been experienced by the affected Party had the Force Majeure Event not occurred.

9.4.2 Without limiting either Party's:

- i. liability for breaches of this Agreement, or
- ii. right to indemnification pursuant to **Article VIII**;

the other Party shall not bear any liability for any loss suffered by the affected Party as a result of a Force Majeure Event.

9.5 Termination For Force Majeure Event: Should a Force Majeure Event or the direct consequence thereof persist for a continuous period of sixty (60) Days or should a Force Majeure Event, together with other Force Majeure Events (or the direct consequences thereof) originating from the same or related circumstances and which have occurred in the preceding two (2) Years, have persisted for an aggregate of ninety (90) Days, then either Party may, upon giving the other a thirty (30) Day notice to terminate, Terminate this Agreement and the Parties shall consequently be excused from performing their obligations in terms of this Agreement, unless the Force Majeure Event (and the direct consequence thereof) has at the expiry of the said thirty (30) Day period ceased to exist.

ARTICLE – X
TERMINATION

- 10.1 Notwithstanding anything contained elsewhere in this Agreement, this Agreement may be terminated forthwith by TPC if the Service Provider commits a material breach. For the purposes of this Clause 10.1, the term “material breach” shall mean to include:
- 10.1.1 fails to provide or maintain the Performance Guarantee; and/or
 - 10.1.2 delegates, cedes, or sub-contracts this Agreement or part thereof in contravention of the provision hereof without having obtained TPC’s prior written consent; and/or
 - 10.1.3 fails to obtain or maintain as required any of necessary operating licenses to be used in the rendering of the Services or has such necessary licenses withdrawn, cancelled, suspended or revoked; and/or
 - 10.1.4 violates or attempts to violate any Applicable Law or otherwise commits any criminal act; and/or
 - 10.1.5 Abandons, suspend services, or otherwise repudiates the Services or any of its obligations under this Agreement; and/or
 - 10.1.6 consistently fails to observe any provision of this Agreement or the Schedule of Requirements (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; and/ or
 - 10.1.7 if the Service Provider has failed to perform the Services and/or additional services in accordance with the terms of this Agreement for a period of three (03) Days; and/or
 - 10.1.8 if the ownership and/or control of the Service Provider is transferred or changed; and/or
 - 10.1.9 Liquidated Damages imposed by Service Provider are continuously 10% of the monthly invoice consecutively for a few months.
- 10.2 In the event of termination of this Agreement, all correctly rendered invoices shall be honoured up to the point of termination subject to any reductions to reflect any payments made in advance in accordance with **Article IV** (Charges) or owing to any delays in the performance of the Services in accordance with the Quality & Delivery Requirements for Services and/or additional services. Where such advance payments exceed any Charges owed to the Service Provider, the Service Provider shall immediately refund such an amount by way of a cheque in favour of TPC.
- 10.3 Any expiry of or termination of this Agreement (howsoever arising) shall not affect any accrued rights or liabilities of either Party nor shall it affect the coming into force or the continuance in force of any provision of this Agreement.

ARTICLE – XI
CONFIDENTIALITY

- 11.1 For the purposes of this **Article XI “Confidential Information”** means in respect of TPC (the “**Disclosing Party**”) any information that relates to the Disclosing Party’s business, products, financial and management affairs, price lists, customers, suppliers, employees, or authorised agents, plans, proposals, strategies, technical processes, computer software, and systems or trade secrets, Target Consumers, and the Data, which comes into the possession of the Service Provider (the “**Receiving Party**”) by virtue of this Agreement and which the Disclosing Party regards, or could reasonably be expected to regard, as confidential, in each case whether written or oral and in whatever medium and whether or not marked in writing as “confidential”, and any and all information which has been or may be derived or obtained from or which otherwise reflects such information.

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- 11.2 The Receiving Party shall at all times, both while this Agreement remains in force and thereafter:
- 11.2.1 keep the Confidential Information of the Disclosing Party confidential;
 - 11.2.2 use the Confidential Information of the Disclosing Party solely in the performance of its obligations or the exercise of its rights under this Agreement; and
 - 11.2.3 not disclose it to any third party without the prior written consent of the Disclosing Party.
- 11.3 The obligations of confidentiality contained in Clause 11.2 shall not apply to:
- 11.3.1 any Confidential Information which is now or hereafter becomes available to the public otherwise than by a breach of this Agreement; or
 - 11.3.2 any Confidential Information which the Receiving Party can show (by evidence in writing) was in its possession free from obligations of confidentiality prior to such receipt; or
 - 11.3.3 any Confidential Information which the Receiving Party has received from a third party who has lawfully obtained the Confidential Information free of any restriction which would prohibit the disclosure of such Confidential Information; or
 - 11.3.4 disclosures which the Receiving Party is required to make by law or pursuant to an order of a competent court provided that (where practicable) the Receiving Party notifies the other Party sufficiently in advance of such a requirement so that it may seek a protective order (or equivalent) with respect to such disclosure with which the Receiving Party shall fully comply.

ARTICLE – XII

INTELLECTUAL PROPERTY

- 12.1 All and any works of authorship and materials developed, written, produced and prepared by the Service Provider, in whatever media, in relation to or arising from the performance of the Services under this Agreement, and the intellectual property rights capable of subsisting therein and in any Deliverables, shall be and shall remain the exclusive property of TPC. Once TPC has fulfilled its payment obligations to the Service Provider, the Service Provider hereby irrevocably assigns them to TPC with effect from the date full payment for the Services is received by the Service Provider. On full payment of the Charges against each Service, intellectual property rights will be assigned to TPC.
- 12.2 Title and ownership to any pre-existing materials supplied by the Service Provider for the performance of the Services shall remain the property of the Service Provider or the lawful owner. To the extent, the Service Provider is not able to grant TPC such a licence and where TPC requests, the Service Provider shall use its best endeavours to procure the grant of such a licence to TPC from the relevant owner of such materials on terms acceptable to TPC.
- 12.3 Any artwork, plans, documents, specifications, drawings, samples, plans, and similar materials including specifically but without limitation, the Database supplied by TPC for the purpose of this Agreement shall at all times remain the property of TPC. The Service Provider shall return all such documents, including all copies, upon completion of the work requiring their use on termination by way of expiry of the Term or earlier termination in terms of **Article VI** above of this Agreement, whichever is the sooner.
- 12.4 The Service Provider hereby indemnifies TPC and keeps it fully and effectively indemnified against all losses, damages, costs, claims, demands, or proceedings of whatever nature, arising from any claim by any third party that any of the materials, documentation, or software (pre-existing or otherwise) used in connection with the Services, or comprised in any Deliverables, infringe the intellectual property rights of any third party.
- 12.5 In the event of any claim being made or proceeding brought against TPC, arising out of matters referred to in Clauses 12.1, 12.2, and 12.3 above, TPC shall promptly notify the Service Provider

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and at TPC's sole discretion may require the Service Provider to conduct at the Service Provider's own expense all negotiations for the settlement of the same, and any litigation that may arise from any such claim. The conduct by the Service Provider of any such negotiations or litigation shall be conditional upon the Service Provider:

- 12.5.1 taking over such conduct promptly after being notified by TPC of such claim;
- 12.5.2 keeping TPC informed regularly of all developments in relation to such negotiation and litigation; and
- 12.5.3 allowing TPC to be represented and/or to take part in any settlement negotiations or litigation.

12.6 It is understood and agreed to between the Parties that the Service Provider shall not, save with prior written consent of TPC, in any manner use the name of TPC or any of its Brands or trademarks in any kind of promotional activity or use as a reference.

ARTICLE – XIII

DISPUTE RESOLUTION MECHANISM

13.1 Disputes

13.1.1 For the purposes of this clause, 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.

13.1.2 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.

13.2 Resolution by Chief Executives

13.2.1 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 Officer of the TPC (or such other senior executives as the relevant Parties may determine) who shall attempt to resolve the matter within ten (10) Days of the dispute being so referred to them or within such other time as may be agreed between the Parties.

13.3 Arbitration

13.3.1 If the Parties are unable to resolve the dispute pursuant to clause 13.2.1, either Party shall be entitled to refer a dispute to arbitration in accordance with this clause by notifying the other Party in writing of its intention to do so.

13.3.2 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 by reference. Any such arbitration shall be subject to the Applicable Law.

13.3.3 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.

13.3.4 Unless otherwise required by the 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

Section 6 – Services Agreement

determination, shall be written in the English language.

- 13.3.5 Unless otherwise required by the 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.
- 13.3.6 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.
- 13.3.7 The obligations of the Parties shall not be altered by reason of the arbitration being conducted during the Term of the Agreement.
- 13.3.8 Any monetary award in any arbitration shall be denominated and payable in PKR.
- 13.3.9 The Parties agree that all interim or final decisions and/or awards of the arbitrator or arbitral panel shall: be binding on the Parties and shall be given effect and implemented forthwith by them; and be subject to the confidentiality restrictions in this Agreement and except as provided by agreement between the Parties, may not be publicized 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.
- 13.3.10 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.
- 13.3.11 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 the 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.
- 13.4 **Injunction:** Notwithstanding any contained to the contrary in this Agreement, the Service Provider acknowledges that:
- 13.4.1 in the event of a breach of this Agreement by the Service Provider:
- i. TPC would suffer irreparable loss and injury and monetary damages alone would not be adequate compensation to TPC; and
 - ii. the balance of inconvenience for the purposes of an injunction against the Service Provider would be in TPC's favour; and
- 13.4.2 TPC may seek an injunction from a court of competent jurisdiction if:
- i. the Service Provider fails to comply or threatens to fail to comply with this Agreement; or
 - ii. TPC has reason to believe that the Service Provider will not comply with this Agreement.

ARTICLE – XIV

NOTICES

14.1 The addresses, telex, and facsimile numbers of the Parties hereto are as follows:

IF TO TPC:

Name:

Designation:

Telephone:

Email:

IF TO THE SERVICE PROVIDER:

Name:

Designation:

Telephone:

Email:

14.2 All notices, consents, confirmations, requests, approvals, and other communications under this Agreement by TPC to Service Provider or by the Service Provider to TPC shall be in writing addressed to TPC or the Service Provider as the case may be, at the address as given above, and shall be given by registered mail, postage prepaid, courier service or by telegraph, telex or telecopier with confirmatory copies by registered mail. Either Party may, by notice to the other Party in writing, change its contact details.

ARTICLE – XV

COMPLIANCE WITH THE LAWS OF PAKISTAN

15.1 The Service Provider hereby represents, warrants and agrees that in the performance of the Services and its other obligations under this Agreement it has complied with and will comply with any and all applicable Laws of Pakistan including, without limitation, Governmental regulations, rules, bye-laws, rulings, decrees and orders and that if it should be determined that the Service Provider has violated any of the foregoing, the Service Provider shall save TPC harmless from all expenses, damages or penalties resulting from any violation thereof committed by the Service Provider or the Personnel in the performance of their obligations under this Agreement.

15.2 The Service Provider shall, at its cost, acquire, obtain and maintain in full force and affect all permits, approvals, sanctions, and licences from all local, municipal, Provincial, or Federal Government authorities or public service undertakings or professional bodies or other relevant authorities which are necessary or desirable for the performance of this Agreement by the Service Provider.

16. ASSIGNMENT

Neither Party shall assign this Agreement without the written consent of the other Party.

17. GOVERNING LAW

This Agreement shall be governed by the Laws of Pakistan and the courts in Peshawar shall have exclusive jurisdiction.

ARTICLE – XVI

PERFORMANCE SECURITY

- 18.1 The Service Provider shall ensure that it maintains with the TPC a valid and enforceable Performance Security, in one of the following forms, until the Service Provider has fulfilled all its obligations under the Agreement. The Service Provider shall have delivered to the TPC, duly executed Performance Security to the amount of ten (10)% of contract price on a prescribed form any scheduled bank in Pakistan or insurance bond from an insurance company having at least AA rating under Pakistan Credit rating Agency (PACRA)/ Japan Credit Rating (JCR-VIS) with provision of indemnity bond on stamp paper of worth Rs 500/- or above, duly attested by the concerned authority, in the name of CEO, TransPeshawar or in shape of CDR/DD in the name of CEO TransPeshawar at the option of the successful Service Provider. The Performance Security shall be valid for Term of the Contract or extension thereof.
- 18.2 If the Performance Security is partially liquidated, the Service Provider is obliged to replenish the Performance Security in full within seven (7) 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 the TPC shall be entitled to liquidate the remainder of the Performance Security and terminate the Agreement pursuant to relevant provision.
- 18.3 Subject to the fulfilment by the Service Provider of all of its obligations under the Agreement, the Performance Security shall be released by the TPC within thirty (30) days after the issuance of completion certificate by the TPC.
- 18.4 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.
- 18.5 The Performance Security may be forfeited partially or fully in following cases, if the Service Provider;
- a) Termination of Agreement;
 - b) Liquidated Damages are consecutively 10% of the monthly invoice for a few months; and
 - c) Any amount payable by the Service Provider.

ARTICLE – XVII

LIQUIDATED DAMAGES

- 19.1 TPC shall be entitled to impose Liquidated Damages on the Service Provider in accordance with the provisions of this Article and the Schedule of Requirements for the Service Provider's failure to achieve certain Key Performance Indicators (KPIs) as indicated in the Schedule of Requirements.
- 19.2 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 Schedule of Requirements. TPC may at its discretion specify the period and type of certain failure which should be cured/rectified in a specific period.
- 19.3 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.
- 19.4 The maximum number of Liquidated Damages that may be imposed on the Service Provider in any given month is as indicated in the Schedule of Requirements.

ARTICLE – XVIII

MISCELLANEOUS

20. Severance

20.1 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.

21. Entire Agreement

21.1 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 Commencement 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.

22. Amendment

22.1 Except as set out elsewhere in the Service Agreement, no modification, amendment, addendum or variation to the Service Agreement shall be effective or binding, unless it is (i) made in writing; and (ii) expressly sets out the modification, amendment, addendum or variation to the agreement; and (iii) refer to the Service Agreement; (iv) not detrimental to the rights and interests of the TPC; and (v) signed and dated by an authorized representative of each Party.

23. Indulgences

23.1 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.

24. Language

24.1 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.

25. Independent advice

25.1 Each of the Parties hereby respectively agrees and acknowledges that:

- a) 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
- b) 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.

26. Good faith

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

Section 6 – Services Agreement

IN WITNESS WHEREOF the Parties above named have executed this Agreement on the day, month, and year first above written.

For and on behalf of
TransPeshawar
(The Urban Mobility Company)
(Company)

For and on behalf of:
XXXXXXXXXXXXXXXXXX
(Service Provider)

Signatures: _____

Signatures: _____

Name: _____

Name: _____

Designation: _____

Designation: _____

CNIC: _____

CNIC: _____

WITNESS 1

WITNESS 2

Signatures: _____

Signatures: _____

Name: _____

Name: _____

CNIC: _____

CNIC: _____

APPENDIX-B – CHARGES

1. For each Month (m), the Service Provider shall be entitled to a payment (Monthly Invoice) / Charges. The Monthly Charges are PKR
2. All correctly rendered Monthly Invoices shall be paid within fifteen (15) Days from the date of the Monthly Invoice by TransPeshawar.
3. The Charges / Monthly Invoice shall be increased with an increase in the minimum wage rate from the date of increase as notified by the government of Khyber Pakhtunkhwa. In case of an increase in the minimum wage rate, the Monthly Invoice will be adjusted as follows: -

New Monthly Price/ Charges = Original Monthly Price/ Charges + [Original Monthly Price x (Percentage increase in minimum wage rate)]

- i) The parameters established for calculating the cost of Services due to an increase in the minimum wage are estimates and therefore, failure to actually meet the same will not entitle any party to request adjustments in the calculation procedure of Charges/ Monthly Invoices nor the economic compensation of any kind.
 - ii) The base rate for minimum wage rate shall be as prevailing on Bid submission date. In case of increase in minimum wage between bid submission date and signing of contract, charges will be adjusted in accordance with this clause 3.
4. The monthly invoice shall be submitted along with following supporting documents;
 - (i) ESSI payment slip along with list of employees
 - (ii) EOBI payment slip along with list of employees
 - (iii) Minimum wage compliance through payment details
 - (iv) Attendance through biometric system
 - (v) Attendance hours and leave compliance
5. In case of Additional Services, the Charges of Additional Services shall be paid on pro-rata basis.

Performance Guarantee

[Bank's name, and address of issuing branch or office]

Beneficiary: Chief Executive Officer, TransPeshawar (The Urban Mobility Company)

Date:

Performance Guarantee No.:

We have been informed that [name of Service Provider] (hereinafter called "the Service Provider") has entered into Contract No. [reference number of the contract] dated [date] with you, for the execution of [name of contract] (hereinafter called "the Service Agreement").

Furthermore, we understand that, according to the conditions of the Service Agreement, a performance guarantee is required.

At the request of the Service Provider, we [name of the bank] hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of in PKR [amount in words and figures], upon receipt by us of your first demand in writing accompanied by a written statement stating that the Service Provider is in breach of its obligation(s) under the Service Agreement, without your needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire, no later than the [date] day of [month], [year], and any demand for payment under it must be received by us at this office on or before that date.

.....
[Signature(s) and seal of bank (where appropriate)]

Letter of Award

[on letterhead paper of the Procuring Entity]

[date

To: [Name and address of Service Provider]

Subject: [Letter of Award Contract No.]

This is to notify you that your proposal dated ----- for [name of the contract and identification number, as given in the Bid Data Sheet] for a proposal price of [amount in words and figures and name of currency] is hereby accepted by TransPeshawar (The Urban Mobility Company) as per breakup provided in the proposal on terms and conditions mentioned in the Agreement.

2. Further, as per Clause --- of the Agreement, the Service Provider shall maintain with TransPeshawar a valid and enforceable Performance Security to the amount of -----% of contract price in shape of Bank Guarantee issued by a Schedule Bank of Pakistan in prescribe form as per terms and conditions of the Agreement.

3. You are therefore, required to deliver to TransPeshawar, within ___ days of issuance of this letter of Award, the duly executed Performance Security to the amount of -----% of the total contract price i.e., PKR -----. In case of Bank Guarantee, it shall have for a term of one (01) year and shall be renewed or replaced not later than thirty (30) days before its expiry.

Authorized Signature:

Name and Title of Signatory:

Name of Procuring Entity: