

Request for Proposal Document

for

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

Issued on.: August 20, 2024

Request for Proposal No.: TPC/OPS/OCB/PaintServ/2023-24/005

Procuring Entity.: TransPeshawar (The Urban Mobility Company)

Preface

This Request for Proposal document is prepared by TransPeshawar (The Urban Mobility Company) and will be used for hiring Service Provider for Electrical, Mechanical and Civil Works Maintenance Services in Peshawar BRT System (Paint Services). The procedure of bidding is Single Stage- One Envelope.

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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 A Service Provider may be a natural person or private entity, or any combination thereof with a formal intent to enter into an agreement or under an existing agreement in the form of a Joint Venture as indicated in **DS**. In the case of a Joint Venture,

- (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/Evaluation Criteria (ERC/EEC)
 Section 4 - Standard Forms (SF)
- PART II Requirements**
 Section 5 – Schedule of Requirements (SoR)
- PART III Conditions of Contract and Contract Forms**
 Section 6 - General Conditions of Contract (GCC)
 Section 7 - Particular Conditions of Contract (PCC)
 Section 8 - 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.
 - (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.

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 35.

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 34;
 - (ii) furnish a performance security in accordance with ITSP 35;
 - (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 relevant Schedule;
- (c) Bid Security;
- (d) Copy of Joint Venture agreement or letter of intent to execute Joint Venture along with proposed agreement if submission of Proposal by Joint Venture is allowed (if applicable); and

- (e) 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/Evaluation Criteria) 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.

31. Procuring Entity's Right to Accept Any Proposal, and to Reject Any or All Proposals

31.1 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

32. Award Criteria

32.1 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/Evaluation Criteria and whose financial offer has been determined to be the lowest evaluated financial offer and will be declared as successful Service Provider.

33. Notification of Award

33.1 Prior to the expiration of the period of proposal validity, the Procuring Entity shall transmit the Notification of Award using the form included in Section 8 (Contract Forms) to the successful Service Provider, in writing, that its Proposal has been accepted.

33.2 Until a formal contract is prepared and executed, the notification of award shall constitute a binding Contract.

34. Signing of Contract

34.1 Promptly after notification, the Procuring Entity shall send the successful Service Provider the Contract Agreement.

34.2 Within 28 days of issuance of the Contract Agreement or as indicated in **DS**, the successful Service Provider shall sign, date, and return it to the Procuring Entity.

34.3 The original proposals submitted by the service providers shall be retained by the Procuring Entity.

35. Performance Security

35.1 Within 28 days, or as indicated in **DS**, of the issuance of notification 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 8 (Contract Forms), or another form acceptable to the Procuring Entity.

35.2 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/OPS/OCB/PaintServ/2023-24/005
ITSP 1.1	The Procuring Entity is: TransPeshawar (The Urban Mobility Company)
ITSP 1.1	The name of the bidding process is: Electrical, Mechanical and Civil Works Maintenance Services in Peshawar BRT System (Paint Services)
ITSP 3.1	A Service Provider must be a firm/company incorporated in/registered with Registrar of firms or Security and Exchange Commission of Pakistan (SECP) respectively. (Joint Venture are not allowed)
ITSP 3.5	The Service Provider must be: <ul style="list-style-type: none"> i. Registered with Registrar of firms or SECP ii. Registered with FBR for income and sales tax & reflected on active taxpayers list; iii. Registered with KPRA for sales tax on services; iv. Registered with PEC for Civil, and/or Electrical and/or Mechanical work; v. Financial statements for year 2020-21, 2021-22, 2022-23 audited by a member / (firm) of a recognized body of professional accountants; vi. Minimum average annual construction turnover of Twenty million Pak Rupees (PKR.20,000,000) verified through audited financial statements. vii. The net worth for the last year (2022-23) calculated as the difference between total assets and total liabilities should be positive verified through audited financial statements. viii. The bidder shall have at least one civil, electrical or mechanical contract (executed/ongoing) to the worth of PKR 7 million in last past 5 years (2019 onward). ix. Not being under legal action for corrupt and fraudulent practices (blacklisted or suspended) from any federal or provincial public entity in Pakistan.

B. Contents of Request for Proposal Document

ITSP 6.1	<p>For <u>clarification 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>E-mail: To: charbagh@hotmail.com khalil.ahmed@transpeshawar.pk</p> <p>cc: ashfaq.rauf@gmail.com noor.rehman@transpeshawar.pk</p> <p>Requests for clarification should be received by the Procuring Entity before the date fix for holding Pre-bid meeting.</p> <p>Request for Clarification (s) will respond via minutes of pre-bid meeting issued by the Procuring Entity.</p>
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ITSP 6.4	<p>A Pre-Bid meeting shall take place.</p> <p>Date: August 27, 2024</p> <p>Time: 11:30 AM</p> <p>Place: Main Board Room TransPeshawar Office, 1st Floor KPUMA Building, Main BRT Depot, Chamkani Peshawar, Pakistan.</p> <p>A site visit conducted by the Procuring entity will be organized on demand basis.</p>
ITSP 6.5	<p>Minutes of pre-bid meeting will hoist on website of the Procuring Entity and sent to all Service Providers who attended pre-bid meeting.</p>
ITSP 7.2	<p>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. The addendum may also be sent to the service provider attended pre-bid if it is conducted.</p>

C. Preparation of Bids

ITSP 9.1	<p>The language of the Proposal is: English</p>
ITSP 11.1	<p>The rates and prices entered into the Schedule for Breakup of Proposal Price/BOQ should be type written or if written by hand, must be in print form. Schedule not presented accordingly may be considered nonresponsive.</p>
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/BOQ; 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 12.1	<p>Alternative Proposals are not permitted.</p>
ITSP 15.1	<p>The Proposal validity period shall be ninety (90) days.</p>
ITSP 16.1	<p>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.</p>
ITSP 16.2	<p>Subject to the succeeding sentences, any bid not accompanied by an irrevocable and callable bid security shall be rejected by the Procuring Entity as nonresponsive. If a Bidder submits a bid security that (i) deviates in form, amount, and/or period of validity, or (ii) does not provide sufficient identification of the Bidder, the Procuring Entity shall request the Bidder to submit a compliant bid security within 03 days of issuing such a request. Failure to provide a compliant bid security within the prescribed period of such issuing a request shall cause the</p>

	rejection of the Bid
ITSP 16.6	Joint Venture are not allowed.
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 by the Service Provider 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 bind, the Service Provider. If the Service Provider is an intended or an existing Joint Venture, the power of attorney shall be signed by all partners individually and specify the authority of the named representative of the Joint Venture to sign on behalf of, and legally bind, the intended or existing Joint Venture. If the Joint Venture has not yet been formed, also include evidence from all proposed Joint Venture partners of their intent to enter into a Joint Venture in the event of a contract award.</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: September 04, 2024</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: September 04, 2024</p> <p>Time: 11:45 AM</p>
ITSP 34.2	Within seven (07) working days of issuance of Letter of Award/contract agreement the Service Provider shall sign the contract.
ITSP 35.1	Performance Security shall be provided within seven (07) working days of issuance of Lette of Award.

Section 3 – Eligibility and Responsiveness/Evaluation 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 Service Provider Status

A Service Provider must be a firm/company incorporated in/registered with Registrar of firms or Security and Exchange Commission of Pakistan (SECP) respectively. (Joint Venture are not allowed)	must meet requirement	Not Applicable	Not applicable	Not Applicable	Schedule 2 along with attachments
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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 sales tax and reflected on active taxpayer list.	must meet requirement	Not Applicable	Not applicable	Not Applicable	Schedule 2 along with attachments
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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	Schedule 2 along with attachments
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1.5 Registration with PEC

Valid Registration with PEC for Civil, and/or Electrical and/or Mechanical work.	must meet requirement	Not Applicable	Not applicable	Not Applicable	Schedule 2 along with attachments
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1.6 Not Blacklisted

Not being under legal action for corrupt and fraudulent practices (blacklisted or suspended) from any federal or provincial public entity in Pakistan.	must meet requirement	Not Applicable	Not applicable	Not Applicable	Schedule 2 along with attachments
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1.7 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 (2021-2023) to demonstrate the current soundness of the Bidder's financial position. As a minimum, the Bidder's net worth for the last year (2022-23) 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

1.8 Financial Soundness (Average Annual Turnover)

Minimum average annual construction turnover of PKR. 20 million calculated within last financial three (03) years from submitted financial statements.	must meet requirement	Not Applicable	Not applicable	Not Applicable	Schedule 3 with attachments
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1.9 Contractual Experience

The bidder shall have at least one civil, electrical or mechanical contract (executed/ongoing) to the worth of PKR 7 million in last past 5 years (2019 onward).	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 for Electrical, Mechanical and Civil Works Maintenance Services in Peshawar BRT System (Paint Services)
- (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) Our proposal is accepted, I/we commit to obtain a performance security in accordance with the Request for Proposal Document.
- (f) We are incorporated/registered in 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 have never been blacklisted from any provincial or federal public entity.
- (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

1. All bidders must read items in conjunction with requirements stipulated under Operational Specification Schedule and fill the table carefully.
2. All bidders shall quote the unit rate against each item and fill the total amount column against each item.
3. No cutting or over writing is allowed unless otherwise initialed by the authorized person.

Item No	Work Description	Unit	Quantity	Rate per Unit (PKR)	Total Amount (PKR)
1	Paint Services				
1.1	Removing dry or oil bound Paint/distemper, Preparation of the surface, supply and apply Enamel/Gloss and Weather Shield Paint (Two coats) for the steel structure, which includes Platforms (Beams and Columns), Stairs (Handrails and all vertical members/Grill), Ramps, Pedestrian Bridges (Deck from below side) and Electric sub-stations (ESS), of bus stations of any color as approved by TPC. Furthermore, the works should be completed in all respects which includes but not limited to prior cleaning/surface preparation and scaffolding, and complete finishing of paint work. The service provider shall be responsible for maintenance of these works in agreement period. Exterior Wall paint with acrylic smooth/weather shield paint of exterior grade, having VOC (Volatile Organic Compound), of approved brand and manufacture, including applying additional coats wherever required to achieve even shade and color complete in all aspect. Approved Make: Asian, Nippon, Dulux, Berger.	Sq. meter	18,000		
Quoted Price Inclusive of all applicable Taxes Including Sales tax on services					

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

(*Signature of Authorized Representative*)

(Name, Title and 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 and sales tax	
Service provider's Year of registration with KPRA for sales tax on service	
Service provider's year of registration with PEC for Civil, and/or Electrical and/or Mechanical work.	
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> <ul style="list-style-type: none"> <input type="checkbox"/> 1. Articles of incorporation or constitution or certificate of registration of the legal entity with Registrar of Firms/SECP <input type="checkbox"/> 2. Certificate of Registration with FBR for income and sales tax and reflected on Active Taxpayer List (ATL); <input type="checkbox"/> 3. Certificate of valid Registration with PEC for Civil, and/or Electrical and/or Mechanical work; <input type="checkbox"/> 4. Certificate of Registration with KPRA for Sales Tax on Services; <input type="checkbox"/> 5. non-blacklisting certificate on notarized stamp paper to the effect that Service Provider is not being under legal action for corrupt and fraudulent practices (blacklisted or suspended) from any federal or provincial public entity in Pakistan. <input type="checkbox"/> 6. Affidavit of Integrity Pact on notarize stamp paper on format provided under section 4. 	

Schedule-3
Financial Soundness

Each Service Provider must fill out this form.

Financial Data for last 3 Years		
Year 1: 2020-21	Year 2: 2021-22	Year: 2022-23

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 1.9 of Section 3 (Eligibility and Responsiveness Criteria)		
<input type="checkbox"/> Attached Letter of Award/Acceptance or contract agreement or any other credible documents		

**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 and unconditionally 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 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 person authorizing the signatory of proposa*], 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 (in case of partnership all the parties shall sign)

.....

Position.....

Signature with Seal

Name of Service Provider

Date:

Schedule 7

Affidavit of Integrity Pact

_____ [Name of Service Provider] hereby declares its intention not to obtain or induce the procurement of any contract, right, interest, privilege or other obligation or benefit from Government of Pakistan or any administrative subdivision or agency thereof or any other entity owned or controlled by it (Government of Pakistan) through any corrupt and fraudulent business practice.

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

_____ [Name of Service Provider] certifies that it has made and will make full disclosure of all agreements and arrangements with all persons in respect of or related to the transaction with Government of Pakistan and has not taken any action or will not take any action to circumvent the above declaration, representation or warranty.

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

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

Name of Authorized Representative

Designation

Signed

Name of Service Provider

Date:

Section: 5
Schedule of Requirement
OPERATIONAL SPECIFICATIONS SCHEDULE

Paint services at BRT Stations.

1. This Operational Specification Schedules specify the Scope of Services as detailed below in this Operational Specification Schedule, BOQ, Agreement and annexures to the Agreement. The jobs are lump sum and additional non-BOQ costs should not be paid separately and should be made part of the bid.

2 SPECIAL CONSTRAINTS RELATED TO SERVICES

- 2.1 Corridor and Stations are utilized for bus operation during the day time. The Service Provider should execute all Services during non-operation times i.e., from 11:00 PM to 5:00 AM except otherwise allowed by TPC. The resources of Service Provider and associated costs should be calculated based on availability of 6 hours per day for execution of Services.
- 2.2 Service Provider should get permission from TPC for entry to corridor and station one day before the execution of Services by getting a Corridor Access Permission Form in office time.
- 2.3 Service Provider should properly cordon off Work zone with traffic safety cones and warning tape with one entry/exit point and negotiated with required traffic signs where applicable. Contractor should deploy a flagman to assist the driver during operation hours, if required. Safety cones should also be placed where required for safety of bus operations and passengers.
- 2.4 Service Provider or its staff should not execute any work or take such actions which affect bus operation without prior permission of TPC.
- 2.5 Service Provider shall be responsible for transportation of the material under the agreement to the site and removal/transportation of waste from the site. Furthermore, the Service Provider shall be responsible for the safety and security of all Services/Equipment delivered to site till Completion of Services.
- 2.6 Where technical or functional specifications are not mentioned, the work shall be executed in accordance with Standard Practices or Professional Ethics/ Standards.
- 2.7 The pictures /drawings attached herewith the specifications are descriptive and not restrictive in nature. The service provider shall submit technical specifications/ brochures /drawings of the job or item and obtain approval from TPC.
- 2.8 Where approval is required for items or equipment shall be in written and at sole discretion of TPC.

3 Paint Services

3.1 Item no.1.1- PAINT WORK IN BRT STATIONS

Removing dry or oil bound Paint/distemper, preparation of the surface, supply and apply Enamel/Gloss and Weather Shield Paint (Two coats) for the steel structure, which includes Platforms (Beams and Columns), Stairs (Handrails and all vertical members /Grill), Ramps, Pedestrian Bridges (Deck from below side) and Electric sub-stations (ESS), of bus stations of any color as approved by TPC. Furthermore, the Services should be completed in all aspects which includes but not limited to prior cleaning /surface preparation and scaffolding, and complete finishing of paint work. The service provider shall be responsible for maintenance of these Services in agreement period. Exterior Wall paint with acrylic smooth/weather shield paint of exterior grade, having VOC (Volatile Organic Compound), of approved brand and manufacture, including applying additional coats wherever required to achieve even shade and colour complete in all aspect. Approved Make: Asian, Nippon, Dulux, Berger.

- a) Preparation of all types of surfaces to be painted by removing all loose material / paint, dust, stain etc.
- b) At some location height of the painting area is 9 meters or more, no extra cost will be paid for any scaffolding /crane /ladder or any other arrangement.
- b) Supply & application of primer / putty wherever required for smooth surface preparation.
- c) Supply & application of approved brand / make as per approval of TPC.
- d) All the materials, to be used in the work for the purpose of contract shall be as per specifications.
- e) Expired paints shall not be accepted.
- f) All paints and paint constituents to be used for the work shall be delivered to the work area in original sealed containers, bearing manufacturer's labels, batch No., date of manufacture etc.
- g) This item is lump sum job. The service provider shall account for cost of all the tools like scaffoldings, ladders, etc. required for successful completion of the job; in item rate.
- h) Constituent adhesives such as thinner, driers etc. shall be those recommended by the paint manufacturer.
- i) The workmanship shall be one of the best class achievable in the industry and acceptable to the TPC.
- j) Rectification on account of poor workmanship shall be done by the contractor to the satisfaction of TPC.



4 KEY PERFORMANCE INDICATORS

- 4.1 The Service Provider's performance of maintenance services should be evaluated by means of key performance indicators ("KPIs"). Failure to comply with KPIs ("Failure Events") should lead to the application of liquidated damages as per the below table:
- 4.2 Information available through the site inspection by TPC representative, surveillance system of TPC or any other mean shall be used by the TP to evaluate KPI's. The Service Provider have the right to justify through concrete evidence. The service provider shall justify against failure to achieve KPI's not later than one week after submission of the invoice.
- 4.3 The Liquidated Damages is the remedy of the TPC, apart from other remedies provided for under the agreement, for the Service Provider ~~file~~to achieve the KPI targets.
- 4.4 Any failure of KPI's which entail Liquidated Damages exceeding 10% of the contract price will be considered as breach of contract agreement.
- 4.5 General Violations and Liquidated Damages applicable to the Agreement

Liquidated Damages Regarding the deficiencies in the procedure to do work at Stations and Corridor		
Sr. No.	Description	Liquidated Damages in Rupees
1.	Failure to get permission letter from TPC to enter in corridor (Vehicle, machinery, labour and non-labour staff, material vehicle)	25,000/- + Not allowed to Work until fulfillment of requirement
2.	Vehicle or labour entry in corridor during bus operations hours	50,000/- per instance
3.	Obstruction to Bus Operation due to workers, machinery or material or due to any reason caused by service provider.	25,000/- per instance

Liquidated Damages for deficiencies in Scope of work		
4.	Delaying Completion of project or specific activity up to 10 days. Day count will start from the date mentioned in work order.	10,000/- x Once
5.	If delay to execute activity more than 10 days i.e. not according to the plan.	5000/- x No of days delayed beyond 10 days
6.	No sign/guide boards or speed breakers or safety cones or cordon off the work zone.	5000/- per instance
7.	Work execution is not as per Contract.	5000/- per instance
8.	Failure/declining to provide test results as required by TPC/Contract.	5000/- per instance
9.	Failure to follow PPE's (Personal Protective Equipment) as per contract e.g., safety jackets, helmets, etc.	5000/- per person-per Instance
10.	Workers/visitors or any person entering or exiting in the work zone other than specified entry/exit points	1000/- per instance
Liquidated Damages for deficiencies in defect liability period		
11.	Response time to remove defect during defect liability period is more than 24 hours.	10,000/- x No of days Delayed
12.	Repair/ maintenance of minor defects not completed within 24 hours. Repair/ maintenance of major defects not completed within 7 days.	10,000/- x No of days delayed 10,000/- x No of days delayed
Liquidated Damages of Institutional or Administrative Nature		
13.	Failure to deliver information required by TPC	5,000/- per instance
14.	To refuse to accept TPC representative visit or to hide information or to provide partial or erroneous information	5,000/- per instance
Liquidated for Workers /Contractor		

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

Service Agreement for

[Name of Service]

between

TransPeshawar Company

and

[SERVICE PROVIDER]

Contract No.

Date: XX.XX. XX

THIS SERVICE AGREEMENT FOR [Name of Services] hereinafter called (the "Agreement") is made on [.....] [Date]

BETWEEN

1. **TRANSPESHAWAR (THE URBAN MOBILITY COMPANY)**, a company incorporated with Security Exchange Commission of Pakistan on February 09, 2017 with company registration no.0105691 and whose registered address is at KPUMA Building, Chamkani, GT Road, Peshawar, KPK, Pakistan ("TPC"); and
2. *<Insert name of the Firm/Joint Venture>*, a firm/company incorporated in [.....], with firm/company registration no. [.....] and whose registered address is at [.....] (the "Service Provider").

TPC and the Service Provider are individually referred to herein as a "Party" and collectively as the "Parties".

WHEREAS:

- A. TPC is a corporate entity established by the Government of Khyber Pakhtunkhwa, Pakistan responsible for design, procurement, implementation and ongoing BRT operations/maintenance in the Peshawar BRT System.
- B. TPC intends to enter into agreements based on output based or performance-based parameter with suitable Service Provider (selected through a competitive bidding process) who will provide electrical, mechanical and civil works maintenance services in Peshawar BRT System.
- C. The Service Provider is a entering into and performing this Agreement.
- D. TPC wishes to appoint the Service Provider on a non-exclusive basis to provide the Services and the Service Provider wishes to accept such appointment and carry out the Services, in accordance with the terms and conditions of the Agreement.

NOW THE AGREEMENT PROVIDES:

1. Preliminary Matters

1.1 Definitions and Interpretation

1.1.1 The defined words and expressions set out in Clause 1 of Annex A [*Definitions and Interpretation*] hereof and the provisions relating to the construction and interpretation of the Agreement set out in Clause 2 of Annex A [*Definitions and Interpretation*] hereof shall apply to the Agreement.

1.1.2 In the event of any inconsistency between the provisions of the body of this Agreement and the Annexes, or between any of the Annexes, the conflict shall be resolved according to the following descending order of priority:

- (a) The body of this Agreement, including Annex A
- (b) Annex B [Operational Specifications Schedule along with Technical Specifications];
- (c) Annex C [Payment Calculation Schedule];
- (d) Annex D [Performance Security];
- (e) Annex E [Request for Proposal];
- (f) Annex F [Integrity Pact];
- (g) Annex G [Permission Request to work in Station];
- (h) Annex H [Check Request];
- (i) Annex-I [Financial Offer/Proposal Submission Letter and Price Table];

- (j) Annex-J [Letter of Award];
- (k) Annex-K [Implementation Plan] (to be submitted in accordance with **PCC**).

1.2 Effect of this Agreement

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

1.3 Conditions Precedent

- 1.3.1 TPC shall issue a Service Notice to Service Provider indicating the date upon which the Services are to commence subject to conditions precedent are met.

2. Appointment of Service Provider

2.1 Appointment

- 2.1.1 TPC's signing the Agreement shall indicate its appointment of the Service Provider to provide the Services. Such appointment shall only be effective as of the Effective Date.
- 2.1.2 The Service Provider hereby accepts the appointment by TPC and agrees to provide the Services in accordance with the terms and conditions of the Agreement.

2.2 Commencement of the Services and Term

- 2.2.1 The Service Provider shall provide the Services from the Commencement Date until the Termination Date.
- 2.2.2 Unless the Agreement is earlier terminated, the Service Provider shall continuously provide the Services contemplated under the Agreement (as may be amended pursuant to its terms) for a Term as mentioned in **PCC** commencing from the Commencement Date.

3. Performance Security

- 3.1 The Service Provider shall ensure that it maintains with TPC a valid and enforceable Performance Security, in the type, amount and form as provided in **PCC** until the Service Provider has fulfilled all its obligations under the Agreement.

- 3.2 The Performance Security shall be issued by the Scheduled Bank of Pakistan.

- 3.3 If the Performance Security is partially liquidated, the Service Provider is obliged to replenish the Performance Security in full within seven (07) working days of the date of any liquidation thereof. If the Service Provider fails to replenish the Performance Security in accordance with this clause, this shall constitute a material breach of the Agreement and TPC shall be entitled to liquidate the remainder of the Performance Security and terminate the Agreement pursuant to clause 22.1.

- 3.4 Subject to the fulfilment by the Service Provider of all of its obligations under the Agreement, the Performance Security shall be released by TPC within thirty (30) days after the issuance of Take Over Certificate.

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

- 3.6 The Performance Security may be forfeited, partially or fully, in following cases, including but not limited to, if the Service Provider;

- a) commits a material breach under the Agreement; or
- b) fails to fulfil any of the obligations under the Agreement and TPC terminates Agreement due to material breach; or

c) delays the project without any valid and acceptable reason.

4. Payment for Services

- 4.1 Payment to the Service Provider for the provision of the Services shall be made in accordance with the **PCC** and to the Lead Partner, in case of JV/consortium or other such party within JV agreed in written by JV partners.
- 4.2 TPC shall withheld Retention Money from each invoice to be paid on Completion of Defect Liability Period in accordance with **PCC**.
- 4.3 TPC shall be entitled to set off against any amounts payable to the Service Provider, any amount which may be due by the Service Provider to TPC.
- 4.4 Any payment to the Service Provider shall not constitute a waiver of any right held by TPC in respect of a breach of the Agreement by the Service Provider.

5. Tax

- 5.1 To the extent that the Services or any additional activities and/or services offered by the Service Provider pursuant to this Agreement are taxable, the Service Provider agrees to bear all Applicable taxes, charges, duties and/or tariffs by itself and, upon request from TPC, provide proof that such obligations have been satisfied in full.
- 5.2 Withholding of all taxes will be made as per applicable law. Services or goods exempt from withholding of taxes, the Service Provider shall at all times be in possession of a valid tax exemption certificate and shall provide the same to TPC along with each invoice / bill for payment. In case the services are exempt from sales tax, the service provider shall furnish a valid reference of exemption from the applicable tax law.
- 5.3 TPC may cease all payments to the Service Provider in respect of any period during which the Service Provider is not in compliance with the provisions of clauses 5.1 and 5.2 above. Upon such compliance by the Service Provider, TPC shall affect payment of all amounts that had been withheld pursuant to this clause.
- 5.4 TPC may require the service provider to provide sufficient evidence to ensure compliance with the applicable laws of services tax, provincial tax, income tax or any other laws pertaining to taxation.

6. The Defect Liability Period

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

7. Service Provider Responsibilities

- 7.1 The Service Provider shall abide by all the terms, rules and regulations in accordance with this Agreement (including the Operational Specifications Schedule) and the Applicable Law.

- 7.2 The Service Provider shall employ and engage trained and skilled staff reasonably required to complete the duties under the Agreement to the satisfaction of TPC.
- 7.3 The Service Provider shall provide the list of Service provider's personnel working on maintenance of Works, along with their basic information, to TPC for issuance of permit to the BRT Corridor with sufficient details. Furthermore, the Service provider shall provide registration details of vehicles, used for delivery and otherwise essential for the execution of services, requiring access to BRT corridor for maintenance of Works.
- 7.4 The Service provider shall maintain vigilant supervision over its staff at all times. Staff shall always with CNIC and Employee ID card. Apart from generally applied moral code the personnel of the service provide shall avoid to use any kind of toxic and narcotics, even BRT premises is a smoke free zone.
- 7.5 The Service Provider be responsible, at all times, for the conduct of its personnel and take prompt and strict disciplinary action against any conduct not in compliance with TPC's rules, regulations and instructions issued from time to time.
- 7.6 The Service Provider staff shall communicate with passengers and members of public or staff of other Service Provider in a customer friendly, professional and helpful manner.
- 7.7 The Service Provider shall ensure presence of its authorized representative(s) at any BRT site or TPC office at short but reasonable notice when so required by TPC and respond to queries of TPC in a timely manner.
- 7.8 The Service Provider shall be responsible for the medical and accidental insurance of its staff, payment of all dues as per Applicable laws of Pakistan. TPC shall not accept any responsibility of the designated personnel in the event of death, injury, disability or illness that may take place while performing/executing services required under the scope of this contract. Any compensation or expenditure towards the treatment of such injury/disability or loss of life shall be the sole responsibility of the Service provider.
- 7.9 The Service Provider shall be responsible that it does not engage or continue to engage any person having a criminal record/ conviction or otherwise undesirable persons.
- 7.10 The Service Provider shall be liable to pay Liquidated Damages for any loss incurred or suffered/any damage caused to movable or immovable property of TPC, on account of delayed, deficient or inadequate Services, or any actions adversely affecting warranty of the Works, or interruption in the smooth operations of BRT Bus Service for reasons directly and solely attributable to the Service provider.
- 7.11 The Service Provider shall report immediately to TPC any kind of material incident (to the extent of scope of Service Provider required as per this Contract) including but not limited to damage to TPC property and provide photographs of the incident.
- 7.12 The Service Provider shall ensure their personnel do not enter into the BRT territory without valid entry cards/permit issued by the TPC. No staff of Service Provider is allowed to travel free in BRT System.
- 7.13 The Service Provider shall ensure that the Works are executed as mentioned in Operational Specifications Schedule, the requirements of any applicable specifications and the Applicable Law.
- 7.14 Unless expressly specified in the Agreement, the Service Provider shall solely be responsible for all cost and/or expenses associated with the fit-out, furnishing, administration, office space and/or any and all operational costs associated with its maintenance until the Termination Date.
- 8. Maintenance of Works**
- 8.1 Skill and care in rendering uninterrupted Services

- 8.1.1 The Service Provider shall exercise the highest degree of skill, care and diligence in the provision of the Services to the reasonable satisfaction of TPC.
 - 8.1.2 Without limiting the generality of the foregoing, the Service Provider shall provide the Services at a standard which would reasonably avoid the incurring of Liquidated Damages as contemplated in the Operational Specifications Schedule.
 - 8.1.3 The Service Provider acknowledges and accepts that it is imperative for the success of the BRT System that the Services are rendered without interruption or delay and undertakes to do all things reasonably necessary to ensure such uninterrupted, prompt and efficient service.
- 8.2 Compliance with standard operating and control procedures and requirements
- 8.2.1 The Service Provider shall at all times comply with any standard operating and control procedures and requirements for the day to day administration, monitoring, control and performance of this Agreement as may be reasonably determined by TPC from time to time and the specific circumstances under which the BRT System operates from time to time, which shall include the Operational Specifications Schedule.

9. Licenses

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

10. Employment and Technical Staff

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

11. Co-operation with Other Contractors

- 11.1 Where interaction between the Service Provider and any Other Contractors/Service Providers is required in accordance with this Agreement, in practice or in accordance with a Service Notice or Protocol, for the efficient and effective operation of the BRT system, the Service Provider shall cooperate with Other Contractors/Service Providers and shall take such reasonable steps as may be required to formulate the necessary operating procedures and practices by agreement with Other Contractors, in accordance with the Service Notice or Protocol, as the case may be.

- 11.2 Should the Service Provider and Other Contractors fail to reach an agreement as contemplated in clause 11.1, TPC shall be entitled to issue a Protocol to regulate their interaction or make a final determination in the event of a dispute between them, as the case may be.
- 11.3 In any event, notwithstanding the provisions above, TPC shall at all times be entitled to issue Protocols regulating the interaction between the Service Provider and Other Contractors/Service Providers.
- 11.4 The Service Provider shall be obliged to follow such Protocols, which, in the event of a conflict, shall supersede any agreement between the Service Provider and Other Contractors in accordance with clause 11.1 above.

12. Image and Marketing

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

13. Monitoring of the Services

- 13.1 TPC shall be entitled to require regular written reports from the Service Provider in such reasonable form, detail and frequency as may be determined by TPC or to call meetings with the Authorised Representative of the Service Provider on reasonable notice, for any purposes regarding the performance of the Services and/or the implementation of this Agreement.
- 13.2 An Authorised Representative of TPC shall at all reasonable times be given access to the Works, Employees and any place where the Services (or any portion thereof) are being performed to satisfy itself as to the Service Provider's compliance with its obligations under this Agreement and for purposes of assessing the Service Provider's performance against agreed KPIs. TPC shall be entitled to conduct random or schedule inspections of any Work, its component or its subsystems.

14. Incident Reporting

- 14.1 Should the Service Provider become aware of events or circumstances which have prevented, are preventing or will prevent the Service Provider from providing the Services, the Service Provider shall immediately after becoming so aware, advise TPC of such events or circumstances and also indicate the manner in which the provision of the Services were, are or are going to be impacted.
- 14.2 In addition to any obligations under Applicable Law, the Service Provider shall immediately after its occurrence notify TPC or its Authorised Representative of any accident relating to the Services in which persons have been injured or killed.
- 14.3 The Service Provider shall report any acts of vandalism or damage to Works to TPC within one (1) days of becoming aware of their occurrence.

15. Tools and equipment and Utility Charges

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

16. Authorised Representative

- 16.1 TPC and the Service Provider shall notify each other, by no later than five (5) days after the Effective Date, of the identity and contact details of their Authorised Representatives. Each Party shall be entitled to replace such Authorized Representative by notice to the other Party.
- 16.2 In addition to TPC's Authorized Representative, TPC shall, by written notice to the Service Provider, be entitled to delegate from time to time certain of its obligations under this Agreement. TPC shall clearly specify the responsibility(ies) and/or authority(ies) of such delegate in the notice to the Service Provider. The Service Provider agrees to cooperate fully with any such delegate as a representative of TPC.
- 16.3 Unless it is stated otherwise in the notice of a Party, a Party's Authorized Representative shall be entitled to bind such Party for any and all purposes connected with this Agreement.
- 16.4 All Service Notices and other notices required under or pursuant to this Agreement, unless expressly stated otherwise in this Agreement (or instructed in writing by the Party to whom notice is to be given) shall be directed to the Authorised Representative of such Party.
- 16.5 Without derogating from the generality of this clause 16, TPC and the Service Provider, as the case may be, shall be entitled to appoint further Authorised Representatives for specific matters as detailed in its notification of such Authorized Representative.

17. Service Notices, Protocols and Amendments

- 17.1 TPC shall be entitled to issue Protocols under this Agreement or for interaction with other Services Provider/Contractors or use of common facilities within BRT system or use of corridor etc.
- 17.2 In the event that TPC wishes to amend the items listed in clause 17.1 above, it shall do so by delivery of a Service Notice to the Service Provider.
- 17.3 TPC shall be entitled to issue reasonable Protocols or amend previously issued Protocols on twenty-four (24) hours' notice to the Service Provider in the case of urgent matters and on seven (7) days' notice in respect of all other matters.

18. Liquidated Damages

- 18.1 TPC shall be entitled to impose Liquidated Damages on the Service Provider in accordance with the provisions of this clause 18 and the Operational Specifications Schedule for the Service Provider's failure to achieve certain KPIs as indicated in the Operational Specifications Schedule.
- 18.2 The Parties agree that the amounts specified in this clause 18.2 and the Operational Specifications Schedule for the Service Provider's failure to achieve certain KPIs represent the likely loss to TPC as a result of any failure of the Service Provider to meet the KPIs and are reasonable and constitute liquidated damages and not a penalty. The Service Provider further waives, to the extent permitted by Applicable Law, any defence as to the validity and quantum of Liquidated Damages set out in this Agreement on the grounds that such Liquidated Damages are void as liquidated damages or otherwise.
- 18.3 TPC shall be entitled to conduct audits of the Service Provider's operations at any time without notice in order to ensure the continued compliance with this Agreement and that the Service Provider continues to achieve the various indicated KPIs. Such audits may be conducted in relation to the Works, the Services, Service Provider's staff, Service Provider's offices (including service and performance records) and any other place where any element of the Service is being performed.
- 18.4 To the extent that TPC discovered an instance of the Service Provider's failure to achieve a particular KPI, TPC shall notify the Service Provider with details of the particular KPI, the details of the failure and the applicable Liquidated Damages as indicated in the Operational Specification Schedule. TPC may at its discretion specify period and type of certain failure which should be cured/rectified in specific period.

18.5 If Liquidated Damages are imposed, then TPC shall be entitled to withhold and/or deduct the imposed amounts from the Service Provider's next payable invoice, any subsequent invoice or in increments from several subsequent invoices.

18.6 The maximum amount of Liquidated Damages that may be imposed on the Service Provider in any given month is as indicated in **PCC**.

19. Warranties, Undertakings and Indemnities

19.1 Service Provider Warranties

19.1.1 The Service Provider acknowledges that TPC has entered into the Agreement relying on the strength of the warranties given to TPC by the Service Provider and that the warranties are given with the intention of inducing TPC (which has been so induced) to enter into this Agreement on the basis that such warranties are and shall be correct for the duration of this Agreement.

19.1.2 Each Service Provider Warranty shall be a separate Warranty and in no way limited or restricted by any reference to, or inference from, the terms of any other Warranty or by any other provision in the Agreement.

19.1.3 The Service Provider accordingly warrants and undertakes that:

- (a) it is properly constituted and incorporated in accordance with the Applicable Law;
- (b) it has thorough knowledge of the Works, performance and its quality and have did site inspection of all Works to be executed;
- (c) It has examined the specification of Works and made all due diligence in estimation of all execution and maintenance costs of Works and services under the Agreement;
- (d) Satisfied himself with all the economic, financial and legal variables including but not limited to foreign exchange rates, inflation rates, minimum wage rates, customs and tax rates and all related labour and legal obligations;
- (e) Satisfied himself of all conditions and circumstances affecting Contract price;
- (f) it has the power, authority and legal capacity to enter into and exercise its rights and perform its obligations under this Agreement;
- (g) it has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
- (h) the obligations expressed to be assumed by the Service Provider under this Agreement are legal, valid, binding and enforceable to the extent permitted by Applicable Law;
- (i) it will on signing date hold, in cash, an amount equivalent to the acquisition cost of all required tools, equipment, furniture and other basic business materials required for the operating of its business, plus the necessary working capital required during the execution and defect liability period;
- (j) it is and will be in compliance with all Applicable Laws;
- (k) the Service Provider and its shareholders, are not subject to any obligation, non-compliance with which is likely to cause a material breach of this Agreement;

- (l) no claim is presently being assessed and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of the knowledge of the Service Provider, pending or threatened against it (including its shareholders) or any of its assets which will or might have a material adverse effect on the ability of the Service Provider to perform its obligations under this Agreement;
- (m) it is not the subject of any other obligation, compliance with which will or is likely to have a material adverse effect on the ability of the Service Provider to perform its obligations under this Agreement;
- (n) no proceedings or other steps have been taken and not discharged (nor threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues;
- (o) all information disclosed by or on behalf of the Service Provider to TPC is true, complete and accurate in all material respects and the Service Provider is not aware of any material facts or circumstances not disclosed to TPC which would, if disclosed, be likely to have an adverse effect on TPC's decision (acting reasonably) to award this Agreement to the Service Provider; and
- (p) all insurance premiums in respect of insurance obligations placed on the Service Provider in accordance with this Agreement have been timely paid and none are in arrears.

19.2 Service Provider Undertakings

The Service Provider undertakes with TPC that:

- 19.2.1 it will give TPC immediate notice upon becoming aware that any judicial or court proceedings, mediation, litigation, arbitration, administrative or adjudication by or against the Service Provider before any court or Regulatory Authority may be threatened or pending;
- 19.2.2 it will not without the prior written consent of TPC (and whether by a single transaction or by a series of transactions whether related or not) sell, transfer, lend, encumber or otherwise dispose of the whole or any part of its business;
- 19.2.3 it will not cease to be lawfully registered in Islamic Republic of Pakistan or transfer in whole or in part its undertaking, business or trade outside the country;
- 19.2.4 it shall immediately notify TPC of any discussions and/or negotiations that may result in a change in the ownership structure of the Service Provider or its ultimate parent company (if applicable).

19.3 TPC and Service Provider Indemnities

- 19.3.1 The Service Provider shall take steps to ensure the safety of property and all persons while they are being conveyed on the BRT System or while they are in, entering or leaving premises under the control of the Service Provider.
- 19.3.2 The Service Provider shall be liable for any loss or damages resulting from damage to property including TPC property, or the death of or injury to any person which is caused directly or indirectly by an intentional or negligent act or omission of the Service Provider, its agents, Employees or sub-contractors.

- 19.3.3 The Service Provider indemnifies and agrees to hold TPC harmless against all claims, demands, suits, proceedings, judgments, damages, loss, costs, charges, fines, penalties, taxes and expenses, of whatsoever nature incurred by either of the Parties, or by any third party, in consequence of a failure by the Service Provider to comply with the terms of this Agreement or any Applicable Law.
- 19.3.4 Nothing contained in this clause 19.3 shall be deemed to render the Service Provider liable for, or require it to indemnify TPC against, any compensation or damages with respect to injuries or damage to persons or property resulting from any negligent act or omission of TPC or its agents or employees in respect of any claims, demands, lawsuits, damages, costs, charges and expenses in respect thereof or pertaining thereto and each Party hereby indemnifies the other against any claims, demands, lawsuits, damages, costs, charges and expenses incurred by such other Party in consequence of the negligent acts or omissions of the other Party's agents or employees.
- 19.4 All warranties, representations, undertakings, indemnities and other obligations made, given or undertaken by the Service Provider in this Agreement are cumulative and none shall be given a limited construction by reference to any other.
- 20. Force Majeure**
- 20.1 If either Party is prevented in whole or in part from discharging its obligations pursuant to this Agreement as a result of an Event of Force Majeure, such Party shall, as soon as reasonably practicable, notify the other Party accordingly. The aforementioned notice shall contain the following information:
- 20.1.1 the obligations which are affected and the extent to which the relevant Party cannot perform those obligations;
- 20.1.2 a detailed description of the Event of Force Majeure;
- 20.1.3 an estimate of the time period which the Event of Force Majeure is envisaged to continue; and
- 20.1.4 the measures proposed to be adopted to remedy or minimise the effects of and costs arising from the Event of Force Majeure. If the Service Provider is the Party prevented from discharging its obligations as a result of the Event of Force Majeure and TPC is of the opinion that the measures proposed are not adequate, it shall advise the Service Provider by Service Notice. Such Service Notice may propose alternate or additional measures which in the opinion of TPC may curtail the Event of Force Majeure and/or the costs arising therefrom. Notwithstanding the provisions of this clause 20.1.4, the Service Provider shall be obliged to take all proactive steps as may be reasonably possible in anticipation of Events of Force Majeure so as to enable the Service Provider to mitigate the financial effects thereof, including but not limited to, the entering into of appropriate contractual arrangements with its Employees.
- 20.2 The Party prevented from discharging its obligations pursuant to this Agreement as a result of an Event of Force Majeure shall:
- 20.2.1 use all reasonable endeavours to remedy or minimise the effects of the Event of Force Majeure; and
- 20.2.2 take all reasonable and necessary steps available to it as contemplated in clause 20.1.4 to mitigate any loss suffered by such Party or the other Party or any passengers as a result of that Party's failure to discharge its obligations pursuant to this Agreement.

- 20.3 In the event that an Event of Force Majeure affects the Service Provider's ability to perform any of its obligations under this Agreement and to the extent that the Services, or any part thereof, are suspended, the Service Provider shall not be entitled to claim payment from TPC for such suspended Services, or any additional costs incurred by the Service Provider as a result of the Event of Force Majeure or in relation to any steps taken by the Service Provider in mitigating the effects of the Event of Force Majeure.
- 20.4 In the event that the Service Provider is the Party affected by an Event of Force Majeure, TPC may, in response to the notice issued by the Service Provider in accordance with clause 20.1, issue a Service Notice to the Service Provider indicating any part of the Services which should nonetheless be performed by the Service Provider for the period during which the Event of Force Majeure subsists. TPC shall in such event make payment to the Service Provider for such Services in accordance with the Payment Calculation Schedule.
- 20.5 If an Event of Force Majeure no longer prevents the Service Provider from performing its obligations under this Agreement, the Service Provider shall be entitled to a reasonable period, taking into account the extent to which it has wound down its operations during the period of Force Majeure, to re-establish the Services in compliance with its obligations under this Agreement.
- 20.6 If an Event of Force Majeure continues uninterrupted for more than one hundred eighty (180) days and continues to prevent a Party from performing all of its obligations under this Agreement, either Party shall be entitled to terminate this Agreement upon fourteen (14) days' notice to the other Party, provided that before doing so the Parties shall first have met to find a mutually satisfactory solution for remedying such Event of Force Majeure and no Party shall terminate this Agreement unless the Parties are unable to agree on a solution.
- 20.7 Neither Party shall have any liability to the other in respect of the termination of this Agreement as a consequence of an Event of Force Majeure or as a result of any failure to carry out any of its obligations hereunder resulting from an Event of Force Majeure.

21. Step-in and Necessary Action

- 21.1 If the Service Provider commits a material breach of this Agreement to such an extent that TPC is compelled to step in in order to ensure that the Services or any part thereof are continued seamlessly or if TPC reasonably believes that the Service Provider is unable to perform the Services or a substantial part thereof in the manner contemplated in this Agreement, TPC shall be entitled to give the Service Provider a notice.
- 21.2 The notice pursuant to clause 21.1 shall set out:
- 21.2.1 details of the material breach or reasons for TPC's belief (and shall refer to previous relevant notifications, if any) that the Service Provider is or will be unable to provide the Services or any part thereof;
 - 21.2.2 the remedial action which the Service Provider should take within the period specified by TPC; and
 - 21.2.3 the date upon which TPC intends to commence the Necessary Action in the event that the Service Provider fails to take remedial action.
- 21.3 In the event that the Service Provider fails to take such remedial action within the period specified in TPC's notice, TPC shall be entitled to proceed to take the Necessary Action at the Service Provider's cost and expense, and may, in its discretion, liquidate partially or fully the Performance Guarantee or pursue its reimbursement of costs and expenses from withheld amount.
- 21.4 The Service Provider hereby agrees that TPC, in taking the Necessary Action, shall be entitled unrestricted access to the Works and any other places where the Services (or any part of it) are being performed and the Service Provider undertakes to co-operate and do all such things as may be necessary to provide such access to TPC or any third party appointed by TPC and to ensure the seamless operation of the Services or any part thereof.

- 21.5 If TPC takes the Necessary Action, then without prejudice to any of TPC's remedies under the Agreement or the Applicable Law, for so long as and to the extent that such Necessary Action is taken and prevents the Service Provider from performing any of its obligations under this Agreement:
- 21.5.1 the Service Provider shall be relieved from such obligations for the duration of the period in which TPC is taking the Necessary Action; and
 - 21.5.2 without prejudice to TPC's rights to claim damages, the payments due and payable by TPC to the Service Provider shall equal the amount the Service Provider would have received if it were performing the obligations affected by the Necessary Action in full over such period, less:
 - (a) any outstanding Liquidated Damages imposed, but not yet deducted as calculated in accordance with the provisions of this Agreement; and
 - (b) an amount equal to TPC's unrecovered costs and/or expenses incurred pursuant to taking such Necessary Action.

22. Breach and Termination

- 22.1 If the Service Provider commits a material breach of this Agreement and fails to remedy the breach within ten (10) Business Days after receipt from TPC of a notice calling upon it to do so or such other time as specified by TPC then TPC shall be entitled, in addition to and without prejudice to any other right it may have under Applicable Law or in accordance with this Agreement, to seek specific performance of this Agreement or to terminate this Agreement forthwith on notice to the Service Provider and in either event, to recover such damages as it may have sustained.
- 22.2 For purposes of this Agreement, a material breach shall include but not be limited to the foregoing if the Service Provider:
- 22.2.1 fails to provide or maintain the Performance Guarantee; or
 - 22.2.2 fail to complete Works in stipulated time; or
 - 22.2.3 in the opinion of TPC, commits a Prohibited Act; or
 - 22.2.4 sells, transfers or otherwise disposes of all or a substantial portion of its shares, assets or business, without the prior written consent of TPC; or
 - 22.2.5 has judgment of a material nature taken against it likely to affect the Service Provider's status as a going concern and fails to satisfy or apply to have the same set aside within seven (7) days of becoming aware thereof; or
 - 22.2.6 delegates, cedes or sub-contracts this Agreement or part thereof in contravention of the provisions hereof without having obtained TPC's prior written consent; or
 - 22.2.7 contravenes the provisions of Operational Specifications Schedule; or
 - 22.2.8 fails to obtain or maintain as required any of the necessary Operating Licences/permits/approvals/ registration to be used in the rendering of the Services or has such necessary Operating Licences/ permits/ approvals withdrawn, cancelled, suspended or revoked; or
 - 22.2.9 acts or attempts to act in a fraudulent or otherwise illegal manner in obtaining or executing a contract with any government department, provincial administration, municipality, public body, company or person; or
 - 22.2.10 violates or attempts to violate any Applicable Law or otherwise commits any criminal act; or
 - 22.2.11 enters into any agreement or arrangement, whether legally binding or not, with any other person, firm or company to refrain from formally responding to TPC's calls for proposals or the entering into of any negotiations with TPC in relation to this Agreement; or

- 22.2.12 Abandons, suspend services or otherwise repudiates the Services or any of its obligations under this Agreement; or
 - 22.2.13 consistently fails to observe any provision of this Agreement or the Operational Specifications Schedule (despite being given notice in relation thereto), whether or not Liquidated Damages have been imposed, with the result that the Services may be regarded by TPC as being materially defective; or
 - 22.2.14 incurs Liquidated Damages equal to or exceeding the maximum amount of Liquidated Damages as indicated in the Operational Specifications Schedule consecutively for few months.
- 22.3 If TPC:
- 22.3.1 commits a material breach of this Agreement (other than a breach of payment obligations) and fails to remedy the breach within ten (10) Business Days after receipt from the Service Provider calling upon it to do so; or
 - 22.3.2 commits a breach of any payment obligation in accordance with this Agreement and fails without justification to make payment within thirty (30) Business Days after receipt from the Service Provider of a notice calling upon it to do so,
- then the Service Provider shall be entitled, in addition to and without prejudice to any other right it may have under Applicable Law or under the terms of this Agreement, to seek specific performance of the terms of this Agreement or to terminate this Agreement upon sixty (60) days' notice to TPC and in either event, to recover such costs, losses and damages as it may have sustained.
- 22.4 In the event of termination of this Agreement:
- 22.4.1 TPC shall be entitled to immediately take possession of all Works.
- 23. Dispute resolution**
- 23.1 Disputes
- 23.1.1 For the purposes of this clause 23, the term "dispute" shall be interpreted in its widest sense and shall include any dispute or difference in connection with or in respect of the conclusion or existence of this Agreement, the carrying into effect of this Agreement, the interpretation or application of the provisions of this Agreement, the Parties' respective rights and obligations in accordance with and arising out of this Agreement or the validity, enforceability, rectification, termination or cancellation, whether in whole or in part, of this Agreement.
 - 23.1.2 Save as otherwise provided for in this Agreement, any dispute between the Parties arising in connection with this Agreement shall be resolved in accordance with the provisions of this clause 23.
- 23.2 Resolution by Chief Executives
- 23.2.1 Any dispute arising in connection with this Agreement may be referred by either Party to the Chief Executive of the Service Provider and the Chief Executive of TPC (or such other senior executives as the relevant Parties may determine) who shall attempt to resolve the matter within ten (10) Business Days of the dispute being so referred to them or within such other time as may be agreed between the Parties.
- 23.3 Arbitration
- 23.3.1 If the Parties are unable to resolve the dispute pursuant to clause 23.2, either Party shall be entitled to refer a dispute to arbitration in accordance with this clause 23 by notifying the other Party in writing of its intention to do so.

- 23.3.2 The arbitration proceedings shall be carried out under the procedures, rules and regulations of Arbitration Act, 1940 and its successors, and such procedures, rules and regulations shall be deemed to be incorporated into this clause 23.3 by reference. Any such arbitration shall be subject to the Applicable Law.
- 23.3.3 The seat of the arbitration shall be Pakistan and all arbitration hearings shall be held in Peshawar unless otherwise agreed in writing by the Parties.
- 23.3.4 Unless otherwise required by TPC, such arbitration shall be conducted in the English language and the award of any arbitrator or arbitral panel, together with the reasons for the determination, shall be written in the English language.
- 23.3.5 Unless otherwise required by TPC, all evidence, submissions or documents presented at the arbitration in a language other than in the English language shall be accompanied by a simultaneous English language translation thereof, if oral, or if written, a certified English language translation.
- 23.3.6 The arbitrator or arbitral panel shall have full power to open up, review and revise any determinations, decisions or findings in relation to the dispute.
- 23.3.7 The obligations of the Parties shall not be altered by reason of the arbitration being conducted during the term of the Agreement.
- 23.3.8 Any monetary award in any arbitration shall be denominated and payable in PKR.
- 23.3.9 The Parties agree that all interim or final decisions and/or awards of the arbitrator or arbitral panel shall:
- (a) be binding on the Parties and shall be given effect and implemented forthwith by them; and
 - (b) be subject to the confidentiality restrictions in this Agreement and except as provided by agreement between the Parties, may not be publicised or otherwise disclosed provided always that nothing in this clause shall prevent either Party from applying to any court of competent jurisdiction to enforce the award.
- 23.3.10 The Parties hereby expressly agree irrevocably to waive all rights and recourse to appeal or challenge, and neither Party shall request the local courts to open up, revise or review, the final award of the arbitrator or arbitral panel save and except in the specific instances set out in Arbitration Act, 1940.
- 23.3.11 Reference of a dispute to arbitration shall not in any way vitiate nor invalidate the Agreement neither shall it be grounds for the Service Provider to cease performing its obligations nor for TPC to terminate the engagement of the Service Provider under the Agreement and the Service Provider shall proceed with its obligations with all due diligence.

24. Hazardous Substances

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

25. Intellectual Property

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

26. Insurance

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

27. Addresses and notices

- 27.1 The Parties choose for the purposes of this Agreement the following addresses:
- 27.1.1 TPC: TransPeshawar (The Urban Mobility Company), KPUMA Building, Chamkani GT Road, Peshawar, Pakistan.
 - 27.1.2 The Service Provider: [•].
- 27.2 Any legal process to be served on any of the Parties may be served on it at the physical address specified for it in clause 27.1 and it chooses that address for all purposes under this Agreement.
- 27.3 Any notice required by this Agreement to be given in writing shall, if given by email or cell phone-based short message service ("sms"), be regarded as having been given in writing for purposes of this Agreement, provided that the Parties may only utilise sms notification for operational authorisations in circumstances where operational action is required immediately and other changes to operations contemplated in this Agreement due to an emergency or such similar urgent operational matters.
- 27.4 Where operational authorisations are required, TPC will issue and log an authorisation number and any relevant notice in accordance with this clause 27 shall quote such authorisation number.
- 27.5 A notice to any of the Parties which is sent by registered post in a correctly addressed envelope to the address specified for it in clause 27.1 shall be deemed to have been received (unless the contrary is proved) within fourteen (14) days from the date it was posted, or which is delivered to the Party by hand at the physical address specified for it in clause 27.1, shall be deemed to have been received on the day of delivery, provided it was delivered to a responsible person during ordinary business hours.
- 27.6 Any notice by email to a Party at the email addresses of its Authorised Representatives shall be deemed to have been received (unless the contrary is proved) within twenty (20) minutes of transmission if transmitted at any time during which the Services are ordinarily rendered and if transmitted outside such time, within ten (10) minutes of recommencement of the rendering of the Services.
- 27.7 Any notice by sms to a Party at the mobile numbers of its Authorised Representatives shall be deemed to have been received (unless the contrary is proved) within twenty (20) minutes of transmission if transmitted at any time during which the Services are ordinarily rendered and if transmitted outside such time, within twenty (20) minutes of recommencement of the rendering of the Services.
- 27.8 Any notice in accordance with this clause 27 given by sms shall be followed by email confirming the contents and date of transmission of such sms.

27.9 Notwithstanding anything to the contrary in this clause 27, a notice or other communication actually received by any of the Parties (and for which written receipt has been obtained) shall be adequate notice or communication to it notwithstanding that the notice was not sent to or delivered at its chosen address.

27.10 Any Party may by a notice to the other Parties change its physical or postal address, telefax number, email address or mobile number for the purposes of this clause 27 to any other physical or postal address, telefax number, email address or mobile number provided that the change shall become effective on the seventh (7th) day after the receipt of the notice.

28. Change in Law

28.1 The Service Provider acknowledges and agrees that it shall take full risk and responsibility for a Change in Law occurring.

28.2 The Service Provider acknowledges and agrees that any decision to change the financial accordance with the Agreement or vary the scope of Services shall be adjusted with mutual consent of the parties.

29. Remedies

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

30. Confidentiality

30.1 Each Party shall at all times keep in confidence the Confidential Information of the other Party which it may acquire for the purposes of or in connection with this Agreement (whether prior to or after the Commencement Date) and shall not use or permit the use of such Confidential Information and shall procure that its employees shall not use the Confidential Information, for any other purpose and shall not disclose such Confidential Information to any third party.

30.2 Notwithstanding clause 30.1, a Party may disclose the Confidential Information of the other Party to such former Party's employees or Authorised Representatives to the extent that such employees or Authorised Representatives need to know the Confidential Information and shall ensure that such employees or Authorised Representatives are aware of and comply with, the confidentiality obligations contained in this clause 30.2.

30.3 Each Party shall take all such steps as may be reasonably necessary to prevent the Confidential Information of the other Party from falling into the hands of an unauthorised third party.

30.4 The Service Provider shall not make any comments to the media relating to this Agreement and any related matter nor shall it respond to any queries from the media without the prior written approval of TPC.

31. Severance

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

32. No agency

- 32.1 No provision of this Agreement shall be construed as constituting an agency, partnership, or joint venture between the Parties and neither Party shall have any express or implied TPC to bind the other Party in any way or to represent the other Party unless specifically provided to the contrary in this Agreement, and, for the avoidance of doubt, this clause 30.1 shall not affect or otherwise derogate from the obligations and powers of the Service Provider in relation to handing over of the Works to other authorised parties as contemplated in this Agreement.
- 32.2 The Service Provider is an independent contractor performing the Agreement. The Service Provider is not an employee or agent of TPC.

33. Corruption and Fraud

- 33.1 The Service Provider warrants that in entering into the Agreement it has not committed any Prohibited Act.
- 33.2 In the event that the Service Provider is contacted by a Public Official requesting or suggesting that the Service Provider act in a manner which would constitute a Prohibited Act, the Service Provider shall immediately provide TPC in writing with full details of the request (including the identity of the Public Official making the request).
- 33.3 Without prejudice to clause 33.2, the Service Provider shall ensure that its staff undertaking activities in connection with the Agreement are subject to similar obligations to those set out in this clause 33 and the Service Provider shall enforce such obligations.
- 33.4 In the event that the Service Provider fails to comply with the requirements of this clause 33 TPC shall be entitled to terminate the Agreement pursuant to clause 22.1.
- 33.5 The Service Provider shall sign affidavit of Integrity Pact in a format attached with Request for Proposal document.

34. Entire Agreement

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

35. No stipulation for the benefit of a third person

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

36. No representations

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

37. Amendment

- 37.1 Except as set out elsewhere in this Agreement, no modification, amendment, addendum or variation to the Agreement shall be effective or binding, unless it:
- 37.1.1 is made in writing; and
 - 37.1.2 expressly sets out the modification, amendment, addendum or variation to the accordance with the Agreement; and
 - 37.1.3 refers to the Agreement; and

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

38. Indulgences

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

39. General co-operation

39.1 The Parties shall co-operate with each other and shall each execute and deliver to the other Party such other instruments and documents and take such other actions as may be reasonably requested from time to time in order to carry out, evidence and confirm their rights and the intended purpose of this Agreement.

39.2 Each of the Parties undertake at all times to do all such things, perform all such acts and take all such steps within its power and control, as may be necessary for and incidental to the putting into effect or maintenance of the terms, conditions and import of this Agreement and ensuring that the Services are rendered consistently at the highest possible standard expected by TPC.

39.3 Each Party agrees to provide all information reasonably requested by the other in the exercise of their respective rights and performance of their obligations under this Agreement, subject to the confidentiality provisions of clause 30 of this Agreement.

40. Governing law

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

41. Language

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

42. Independent advice

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

42.1.1 it has been free to secure independent legal advice as to the nature and effect of each provision of this Agreement and that it has either taken such independent legal advice or has dispensed with the necessity of doing so; and

42.1.2 each provision of this Agreement (and each provision of the Annexes) is fair and reasonable in all the circumstances and is part of the overall intention of the Parties in connection with this Agreement.

43. Good faith

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

44. Survival of rights, duties and obligations

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

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

44.2.1 under the Surviving Provisions; or

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

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

45. Waiver

45.1 Subject to clause 45.2, no relaxation, forbearance or delay by a Party in enforcing the Agreement will prejudice, affect or restrict the rights, responsibilities, obligations, powers or remedies of that Party nor shall any waiver by either Party of any such rights, responsibilities, obligations, powers or remedies, or of any breach of the Agreement, be deemed to be a waiver of any other right, responsibility, obligation, power or remedy, or of any later or continuing breach of, the Agreement.

45.2 Any waiver of a Party's rights, responsibilities, obligations, power or remedies arising out of, under or in connection with the Agreement shall be in writing, dated and signed by the representative of the Party granting such waiver, and shall specify the right, responsibility, obligation, power or remedy and the extent to which it is being waived. No waiver of a breach of a term of the Agreement operates as a waiver of any other breach of that term, or of a breach of any other term, of the Agreement.

46. Costs

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

On behalf of TransPeshawar:

On behalf of Service Provider:

Name:

Name:

Designation:

Designation:

CNIC:

CNIC:

Witness # 1:

Witness # 2:

Name:

Name:

CNIC:

CNIC:

ANNEX A
DEFINITIONS AND INTERPRETATION

1. Definitions

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

- 1.1.1 **“Agreement”** means this agreement as amended from time to time and including the Annexes;
- 1.1.2 **“Annexes”** means the annexes attached to this Agreement;
- 1.1.3 **“Applicable Law”** means any constitution, statute, ordinance, treaty, decree, proclamation, rules, regulations or subordinated legislation or other legislative measure, as amended from time to time, including all national and provincial statutes and legislation and all municipal by-laws, as well as the common law and customary law and any judgment, decision, order or rule of any court or tribunal with relevant jurisdiction and any decision made by judicial or administrative bodies in accordance with any of the foregoing;
- 1.1.4 **“Authorised Representatives”** means persons authorised in writing by TPC and the Service Provider respectively, as contemplated in accordance with clause 16;
- 1.1.5 **“BRT System”** means the bus rapid transit system in Peshawar known as Peshawar Sustainable BRT Corridor System or any other name that should be assigned to the Peshawar bus/transit system;
- 1.1.6 **“Business Day”** means any day other than weekend or public holiday in Pakistan as notified by Government of KPK;
- 1.1.7 **“Change in Law”** means:
- (c) the adoption of a new Law; or
 - (d) a change in or repeal of a existing Law,
- which after the Effective Date results in:
- (a) a change in the taxes, duties or levies payable by the Service Provider in respect of the Services; or
 - (b) a change in or the repeal of any other requirement for the performance of the Services;
- 1.1.1 **“Completion Certificate”** means the written certification provided by the TPC to the Service Provider which certifies that the completion (and/or interim milestones as specified in the Operational Specification Schedule) has been achieved and defect liability period is completed.”
- 1.1.2 **“Commencement Date”** means the date on which the Services shall commence as notified by TPC by way of a Service Notice referred to in clause 1.3.1;
- 1.1.3 **“Confidential Information”** means all information, without limitation, of whatsoever nature:
- (a) relating to the Disclosing Party’s business, operations, processes, drawings, sketches, plans, models, product information, know-how, market opportunities, customers and business affairs;
 - (b) relating to the relationship of the Disclosing Party with its customers and suppliers; or

(c) relating to the contents of this Agreement and any other information received pursuant to this Agreement,

but excludes information which:

- (a) constitutes an Operational Data; or
- (b) is required to be disclosed under any law or regulation, or by any Regulatory Body, including any stock exchange on which a Receiving Party may be listed, provided that the Receiving Party in question shall first consult with the Disclosing Party before making any such disclosure, statement or announcement; or
- (c) is in the public domain or enters into the public domain in any way, provided that the entry of such information into the public domain did not entail a breach of this Agreement by the Receiving Party; or
- (d) the Receiving Party can show it was within its possession or knowledge, such information being in its use or having been recorded in its files, computers or other recording media, prior to receipt thereof from the Disclosing Party and which information was not previously acquired by the Receiving Party under any obligations of confidence or unlawfully; or
- (e) is disclosed by the Receiving Party with the prior written approval of the Disclosing Party; or
- (f) was disclosed by the Disclosing Party to a third party without restriction on disclosure or use, including without limitation, by way of a patent specification; or
- (g) is hereafter disclosed or made available in good faith to the Receiving Party from a source other than the Disclosing Party, without breach by the Receiving Party of any obligation of confidentiality or non-use owed to the Disclosing Party or without breach by such other source who, to the knowledge of the Disclosing Party, is not subject to an obligation of confidentiality or non-use owed to the Disclosing Party; or
- (h) is developed independently by the Receiving Party without reference to the Confidential Information;

1.1.4 “**Corridor**” means dedicated lane from Chamkani Station to Karkhano station which includes stations, roads turning points, terminals, feeder route ramp etc.;

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

1.1.6 “**Technical Staff**” means those Employees who execute and maintain the Works;

1.1.7 “**Effective Date**” means when this Agreement has been signed by each Party, the latest of the dates upon which this Agreement was signed by any Party;

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

1.1.9 “**Entity**” means individual, association, business, close corporation, firm, company, concern, enterprise, joint venture, trust, undertaking, voluntary association, body corporate and any similar entity;

- 1.1.10 “**Event of Force Majeure**” means an act of God or public enemy, fire, explosion, earthquake, perils of the sea, flood, storm or other adverse weather conditions, war declared or undeclared, act of terrorism, civil war, revolution, civil commotion or other civil disorder, sabotage, riot, blockade, embargo, strikes (excluding strikes by Service Provider staff), lock-outs or other labour disputes, sanctions, epidemics, act of any Government, compliance with law, regulations or lawful demands of any Government or Governmental agency;
- 1.1.11 “**Intellectual Property**” means any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how, trade secrets and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the “look and feel” of any websites;
- 1.1.12 “**Invoice**” means a valid tax invoice as contemplated in clause a);
- 1.1.13 “**KPI**” means the key performance indicator;
- 1.1.14 “**Liquidated Damages**” means the amounts to be deducted from the payments for the Service Provider pursuant to particular service level failures as set out in the Operational Specifications Schedule and in accordance with clause 18 or otherwise paid by the Service Provider to TPC;
- 1.1.15 “**Milestone**” means each step envisaged for the roll-out of the Services during the term of this Agreement as described more fully in the Operational Specifications Schedule and execution of services with seven days of signing of Agreement;
- 1.1.16 “**Month**” or “**Monthly**” means a calendar month;
- 1.1.17 “**Necessary Action**” means any action that TPC deem necessary and appropriate in the event that the Service Provider failed to take remedial action pursuant to clause 21;
- 1.1.18 “**Operating Licence**” means any licence, consent, approval, registration or permit required by the Service Provider to enable it to provide the Services under this Agreement;
- 1.1.19 “**Operational Specifications Schedule**” means the schedule annexed hereto as Annex B;
- 1.1.20 “**Other Contractors**” means collectively, the System Control Service Provider or any subcontractor of the System Control Service Provider (or any member of the consortium making up the System Control Service Provider) and/or Service Provider of Generator, Elevator, Escalator and Allied Services or appointed by TPC in connection with the BRT System;
- 1.1.21 “**Party**” means a party to this Agreement;
- 1.1.22 “**Payment Calculation Schedule**” means the payment calculation schedule attached hereto as Annex C;
- 1.1.23 “**Performance Security**” means the unconditional, irrevocable on-demand performance guarantee provided to TPC by the Service Provider pursuant to clause 3;
- 1.1.24 “**PKR**” means Pakistani rupee;
- 1.1.25 “**Prohibited Act**” means:

- (a) offering, giving or agreeing to give to a Public Official a gift or consideration of any kind as an inducement or reward for:
 - (i) doing or not doing (or for having done or not having done) any act; or
 - (ii) showing or not showing (or for having shown or not shown) favour or disfavour to any person,

in relation to the award or performance of the Agreement or any other agreement with TPC; or

- (b) entering into an agreement for which commission has been paid or has been agreed to be paid by the Service Provider or on its behalf, or to its knowledge, unless before the relevant agreement is entered into, particulars of any such commission and of the terms of any such agreement for the payment thereof have been disclosed in writing to TPC; or
- (c) committing any offence under the Applicable Law creating offences in respect of fraudulent acts; or
- (d) defrauding, attempting to defraud or conspiring to defraud TPC;

1.1.26 “**Project**” means the Landscaping and Maintenance Services of Electrical, Mechanical and Civil Works in Peshawar BRT System (Landscaping and Maintenance Works);

1.1.27 “**Protocol**” means a protocol and/or a standard operating procedure issued from time to time by TPC indicating how, among other things, Services are to be rendered, the manner in which the Service Provider and Other Service Providers should work together, the exact procedures to be followed in order to comply with service level requirements set out in the Operational Specifications Schedule and any other ancillary matters;

1.1.28 “**Public Official**” means an official or employee of a government owned or controlled enterprise or any Regulatory Body and shall include any individual defined as a public official in an Applicable Law;

1.1.29 “**Receiving Party**” means the Party receiving Confidential Information from the Disclosing Party;

1.1.30 “**Regulatory Body**” means any governmental, semi-governmental, administrative, fiscal or judicial ministry, department, commission, authority, tribunal, agency, municipality or body, and shall include the provider of electricity, gas, water, wastewater, telecoms and other such public services, and anybody with a regulatory function under the Applicable Law;

1.1.31 “**Retention Money**” means the accumulated retention moneys which the TPC retains under Sub-Clause 4.2 and pays under the Sub-Clause *ibid*;

1.1.32 “**Service Notice**” means a notice given to the Service Provider by TPC in accordance with this Agreement;

1.1.33 “**Stations**” means the stations described in the Operational Specifications Schedule; and which are intended as passenger embarkation and disembarkation points and Station means any one of them;

1.1.34 “**Surviving Provisions**” means clauses 1 (Preliminary Matters); 22 (*Breach and Termination*); 23 (*Dispute resolution*); 25 (*Intellectual Property*); and this Annex A;

1.1.35 “**Take over Certificate**” means the TPC’s written acceptance of the Work under the Contract, notifying the Work is successfully executed by the Service Provider from which Defect Liability Period starts.

1.1.36 “**Term**” means the duration of the Agreement in accordance with Clause 2.2.

- 1.1.37 **“Termination Date”** means the duration on which Contract / Agreement period expires from the date of Commencement Date or the date on which an earlier termination pursuant to the terms of the Agreement takes effect;
- 1.1.38 **“Warranty”** means the warranties and undertakings given to TPC by the Service Provider, set out in clause 19;
- 1.1.39 **“Works/Services”** means the design to the extent required and the procurement, delivery, installation and commissioning of the Products to be supplied and installed, sufficient for the Contractor to be entitled to receive the Completion Certificate under the Contract or the work to be completed as mentioned in Operational Specification Schedule to receive Completion Certificate.

2. Interpretation

2.1 In the Agreement:

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

- 2.1.15 references to day/s, month/s or year/s shall be construed as Gregorian calendar day/s, month/s or year/s, as the case may be;
- 2.1.16 if a definition imposes substantive rights and obligations on a Party, such rights and obligations shall be given effect to and shall be enforceable, notwithstanding that they are contained in a definition;
- 2.1.17 a reference to a Party includes that Party's successors and permitted assigns;
- 2.1.18 the use of the word "including" followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it and it shall be construed as if it were followed by "without being limited to".

Section 7 - Particular Conditions of Contract

The following Particular Conditions of Contract (PCC) shall supplement the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

Part A – Contract Data

Ref. GCC	Subject	Data
1.1.2 (k)	Implementation Plan	The Service Provider should submit detailed Implementation Plan within 15 days of Effective Date for completion of all activities under the Agreement mentioning days in which each activity will be completed.
2.2.2	Term	The Term of the Agreement is six (06) months and any extension thereof in accordance with the terms and conditions of the Agreement.
3.1	Performance Security	Performance Security to the amount of 10% of the Contract Price in Pak Rupees in one of the form, at the option of the Service Provider: <ol style="list-style-type: none"> a. CDR/DD in the name of Chief Executive Officer (CEO), TransPeshawar; or b. Bank guarantee from a Schedule Bank in Pakistan on prescribed form attached as Annex-D to the Agreement.
4.1	Payment for Services	Payment shall be made in accordance with Payment Calculation Schedule attached as Annex-C to the Agreement.
4.1	Amount of Retention Money	An amount of 5 % as retention money from each running invoice as guarantee against rectification of work in Defect Liability Period shall be withheld by the TPC. Retention money shall be released within 30 days of issuance of Completion Certificate by TPC and on receipt of request.
6.1	The Defect Liability Period	The Defect Liability Period is one (01) year after issuance of Takeover Certificate by the TPC.
18.6	Liquidated Damages	The maximum amount of Liquidated damages is 10% of milestone payment for specific activity or 10 % of the Contract price.

Annex-C
PAYMENT CALCULATION SCHEDULE (PAINT SERVICES)

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

1. Reports to be submitted with Invoice

- 1.1 Tax invoice;
- 1.2 Work Order duly signed by FO and/ or Assistant Manager;
- 1.3 Check Request duly signed by FO and Assistant Manager and Manager, if applicable;
- 1.4 Submission of pictorial evidence of work executed with time, date and location stamp;
- 1.5 Other reports of test, if any or as asked by TPC under the Agreement.

2. Invoice Period

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

Sr No	Item No	Activity as detailed in Annex-B	Completion days from Work order issuance by TPC	Payments Milestones
1	1.1	Paint Work	Term of Contract	90% on Pro rata basis for the quantity executed (Painted) and 10 % Final Acceptance

Notes:

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

3. Withheld Amount and Time of Payment of Withheld Amount

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

Section 8 - Contract Forms

This section contains forms which, once completed, will form part of the Contract. The forms for Performance Security, when required, shall only be completed by the successful Bidder after contract award.

Table of Forms

Notification of Award	8-2
Performance Security	8-3

Notification of Award

[on letterhead paper of the Procuring Entity]

[date]

To: [Name and address of Service Provider]

Subject: [Notification 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 21 days of issuance of this Notification 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:

Attachment: Contract Agreement

Performance Security

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

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

Ref: Letter of Award for [**Name of Service**] dated <Insert date> (the “**Agreement**”) Beneficiary: TRANSPESHAWAR (THE URBAN MOBILITY COMPANY), a Public Limited Company incorporated with Security Exchange Commission of Pakistan in February 09, 2017, with company registration No.0105691 and whose registered address is at TransPeshawar Building, Chamkani, GT Road, Peshawar, KPK. (“**employer**”)

1. GUARANTEE

We <Insert name of Bank> Bank (the “**Guarantor**”) have been informed that <Insert name of the Company> (the “**Service Provider**”) has been awarded the Agreement relating to [**Name of Service**] (the “**Services**”).

- 1.1 The Guarantor hereby irrevocably and unconditionally undertakes to pay to employer on its first demand for payment, without regard to any objections or defences to employer’s demand from the Service Provider or any other person, an amount or amounts not exceeding in total **PKR ----- (in words)**.

2 TIME FOR PAYMENT

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

3 VALIDITY OF GUARANTEE

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

4 PAYMENT FREE OF DEDUCTIONS AND WITHHOLDINGS

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

5 Notices and Demands for Payment

- 5.1 Any demand for payment made under this Guarantee shall be delivered by hand or registered courier and be deemed to be duly made at the time of, and on the date of, delivery.

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

6 DISPUTE RESOLUTION

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

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

.....

(signed)

.....

Name

SCHEDULE TO THE PERFORMANCE GUARANTEE

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