

Request for Proposal Document
for

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

Issued on.: October 17, 2024

Request for Proposal No.: TPC/OPS/OCB/Exp. joints/2024-25/008

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 (Expansion Joints). The procedure of bidding is Single Stage-Two Envelope.

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Section 1 - Instructions to Service Providers

This Section specifies the procedures to be followed by Service Providers in the preparation and submission of their Proposals. Information is also provided on the submission, opening, evaluation of Proposals, and on the award of contract.

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Section 1 - Instructions to Service Providers

A. General

1. Scope of Proposal

- 1.1 In connection with the Invitation for 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). 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

- 2.2 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 proposals; or
- 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 indicated 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)
 - Section 4 - Bidding Forms (BF)
 - 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 Document, 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 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 in a manner 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 two envelopes submitted simultaneously, one called the Technical Proposal containing the documents listed in ITB 10.2 and other the Financial Proposal containing the documents listed in ITB 10.3, both envelopes enclosed together in an outer single envelope.
- 10.2 The Technical Proposal shall comprise the following:
- (a) Letter of Technical Proposal;
 - (b) an affidavit, on notarized stamp paper, stating that a bid security amounting to 2 percent of proposal price without indicating the figure in the letter, has been placed in the Financial Proposal;
 - (c) Authorization/Power of Attorney authorizing the signatory of the Proposal to commit the Service Provider, in accordance with ITSP 17.2 and in accordance with Schedule 5;
 - (d) Documentary evidence in form of literature, drawing, data, or broacher and shall consist of detailed item-by-item description of the essential technical and performance characteristics of the Goods/quoted brand establishing conformity and substantial responsiveness of the Goods with the requirements of Section 5, "Operational Specification Schedule" of the Request for Proposal document.
 - (e) Schedules and documentary evidence as stipulated in **DS**,

establishing the Proposal's responsiveness to perform the contract;

10.3 The Financial Proposal shall comprise the following:

- (a) Letter of Financial Proposal;
- (b) completed Schedules, as stipulated in **DS**;
- (c) Bid Security in accordance with ITSP 16.

10.4 In addition to the requirements under ITSP 10.1, Proposals submitted by a Joint Venture, if allowed, shall include, in Technical Proposal, 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 Technical Proposal, together with a copy of the proposed agreement.

11. Letters of Proposal and Schedules

11.1 The Letters of Technical Proposal and Financial Proposal, Schedules along with attachments, and all documents listed under Clause 10, shall be prepared using the relevant forms in Section 4 (Bidding 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 as required.

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 Letter of Financial Proposal 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 (Bidding Forms). Proposals submitted for incomplete scope will be rejected.

13.3 The Price to be quoted in Letter of Financial Proposal shall be the total price of the services. Absence of the total price in the Letter of Financial Proposal 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.

13.5 The entered prices shall be typewritten or if written by hand, must be in indelible ink. The relevant schedule not presented accordingly may be considered nonresponsive.

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 in the form, amount and currency as specified in the **DS**.

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

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

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

16.5 The bid security may be forfeited, if

(a) a Service Provider withdraws its proposal during the period of proposal validity, except as provided in ITSP 15.2; or

(b) the successful Service Provider fails to

(i) sign the Contract in accordance with ITSP 35;

(ii) furnish a performance security in accordance with ITSP 36;

(iii) accept the arithmetical correction of its Proposal in accordance with ITSP 29.

16.6 . The bid security of a Joint Venture shall 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." 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 enclosed in Technical 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. Non-submission of authorization shall lead to rejection of Proposal. If a Service Provider submits authorization but deficient, 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 of the Technical Proposal, the original of the Financial Proposal, and each copy of the Technical Proposal (both hard and soft), in separate sealed envelopes, duly marking the envelopes as "ORIGINAL - TECHNICAL PROPOSAL," "ORIGINAL - FINANCIAL PROPOSAL," and "COPY NO... - TECHNICAL PROPOSAL". The Technical Proposal shall be properly bind and numbered, loose proposals shall not be entertained and rejected summarily. These envelopes, the first containing the originals and the others containing copies, shall then be enclosed in one single envelope per set. If permitted in accordance with ITSP 12, alternative Proposals shall be similarly sealed, marked and included in the sets. The rest of the procedure shall be in accordance with ITSP 18.2 and ITSP 18.5.
- (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; and
- (c) bear the specific identification of this bidding process indicated in ITSP 1.1;

- 18.3 The outer envelopes and the inner envelopes containing the Technical Proposal shall bear a warning not to open before the time and date for the opening of Technical Proposal, in accordance with ITSP 22.1.

- 18.4 The inner envelopes containing the Financial Proposal shall bear a

warning not to open until advised by the Procuring Entity in accordance with ITSP 22.7.

18.5 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 no later than the date and time as 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 – Technical or Financial – 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 specified period of proposal validity.

22. Proposal Opening

22.1 The Procuring Entity shall open the Technical 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 chooses 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**. The Financial Proposals will remain unopened and will be held in custody of the Procuring Entity until the specified time of their opening. If the

Technical Proposals and the Financial Proposals are submitted together in one envelope, the Procuring Entity may reject the entire Proposal. Alternatively, the Financial Proposal may be immediately resealed for later evaluation.

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.

22.3 Second, outer envelopes marked "SUBSTITUTION" shall be opened. The inner envelopes containing the Substitution Technical Proposal and/or Substitution Financial Proposal shall be exchanged for the corresponding envelopes being substituted, which are to be returned to the Service Providers unopened. Only the Substitution Technical Proposal, if any, shall be opened, read out, and recorded. Substitution Financial Proposal will remain unopened in accordance with ITSP 22.1. No envelope shall be substituted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out and recorded at proposal opening.

22.4 Next, outer envelopes marked "MODIFICATION" shall be opened. No Technical Proposal and/or Financial Proposal shall be modified unless the corresponding modification notice contains a valid authorization to request the modification and is read out and recorded at the opening of Technical Proposals. Only the Technical Proposals, both Original as well as Modification, are to be opened, read out, and recorded at the opening. Financial Proposals, both Original as well as Modification, will remain unopened in accordance with ITSP 22.1.

22.5 All other envelopes holding the Technical Proposals shall be opened one at a time, and the following read out and recorded:

- (a) the name of the Service Provider;
- (b) whether there is a modification or substitution;
- (c) the presence of an affidavit stating that a bid security amounting to 2 percent of proposal price without indicating the figure in the letter, has been placed in the Financial Proposal; and
- (d) any other details as the Procuring Entity may consider appropriate.

Only Technical Proposals and alternative Technical Proposals read out and recorded at Proposal opening shall be considered for evaluation. Unless otherwise specified in the **DS**, all pages of the Letter of Technical Proposal are to be initialed by at least three representatives of the Procuring Entity/Members of procurement committee attending Proposal opening. No Proposal shall be rejected at the opening of Technical Proposals except for late proposals, in accordance with ITSP 20.1.

22.6 The Procuring Entity shall prepare a record of the opening of Technical Proposals that shall include, as a minimum, the name of the Service Provider and whether there is a withdrawal, substitution, or

modification; alternative proposals; and the presence or absence of an affidavit for submission of 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. A copy of the record may be distributed to the Service Providers if so requested.

22.7 At the end of the evaluation of the Technical Proposals, the Procuring Entity will invite Service Providers who have submitted substantially responsive Technical Proposals to attend the opening of the Financial Proposal.

22.8 The date, time, and location of the opening of Financial Proposals will be advised in writing by the Procuring Entity. Service Provider shall be given reasonable notice of the opening of Financial Proposals.

22.9 The Service Provider will notify Service Providers in writing who have been rejected on the grounds of their Technical Proposals being substantially nonresponsive to the requirements of the Request for Proposal Document and return their Financial Proposals unopened.

22.10 The Procuring Entity shall conduct the opening of Financial Proposals of all Service Providers who submitted substantially responsive Technical Proposals, in the presence of Service Provider' representatives who choose to attend at the address, on the date, and time specified by the Procuring Entity. The Service Provider's representatives who are present shall be requested to sign the attendance.

22.11 All envelopes containing Financial Proposals shall be opened one at a time and the following read out and recorded:

- (a) the name of the Service Provider;
- (b) whether there is a modification or substitution;
- (c) Presence of requisite Bid Security;
- (d) the Proposals Prices; and
- (e) any other details as the Procuring Entity may consider appropriate.

Only Financial Proposals, and alternative offers read out and recorded during the opening of Financial Proposals shall be considered for evaluation. Unless otherwise specified in the **DS**, all pages of the Letter of Financial Proposals are to be initialed by at least three representatives of the Procuring Entity/members of procurement committee attending proposal opening. No Proposal shall be rejected at the opening of Financial Proposals.

22.12 The Service Provider shall prepare a record of the opening of Financial Proposals that shall include, as a minimum, the name of the Service Provider, the Proposal Price, any discounts, and alternative offers. 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

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|--|--|
| 23. Confidentiality | <p>23.1 Information relating to the examination, evaluation, and comparison 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 information on the Contract award is communicated to all Service Providers.</p> <p>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.</p> <p>23.3 Notwithstanding ITSP 23.2, from the time of proposal opening to the time of Contract award, if any wishes to contact the Procuring Entity on any matter related to the bidding process, it may do so in writing.</p> |
| 24. Clarification of Proposals | <p>24.1 To assist in the examination, evaluation, and comparison of the Technical and Financial 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 substance of the Technical Proposal or prices in the Financial Proposal shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Procuring Entity in the evaluation of the Financial Proposals, in accordance with ITSP 29 or as provided for under relevant rules.</p> <p>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.</p> |
| 25. Deviations, Reservations, and Omissions | <p>25.1 During the evaluation of Proposals, the following definitions apply:</p> <ul style="list-style-type: none"> (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 Technical Proposals | <p>26.1 The Procuring Entity shall examine the Technical Proposals to confirm that all documents and technical documentation requested in ITSP 10.2 have been provided, and to determine the completeness of each document submitted.</p> <p>26.2 The Procuring Entity shall confirm that the following documents and information have been provided in the Technical Proposal. If any of these documents or information is missing, the offer shall be rejected.</p> <ul style="list-style-type: none"> (a) Letter of Technical Proposal; |

- (b) Authorization/Power of Attorney authorizing the signatory of the Proposal to commit the Service Provider;
- (c) an affidavit, on notarized stamp paper, stating that a bid security amounting to 2 percent of proposal price without indicating the figure in the letter, has been placed in the Financial Proposal;
- (d) Documentary evidence in form of literature, drawing or data and shall consist of detailed item-by-item description of the essential technical and performance characteristics of the Goods/quoted brand establishing conformity and substantial responsiveness of the Goods with the requirements of Section 5, "Operational Specification Schedule" of the Request for Proposal document.
- (e) All schedules and supporting documents in accordance with ITSP 10.2 (e).

27. Responsiveness of Technical Proposal

27.1 The Procuring Entity's determination of responsiveness of Technical Proposal is to be based on the contents of the Technical Proposal itself, as defined in ITSP10.

27.2 A substantially responsive Technical Proposal is one that meets the requirements of the Request for Proposal Document including the criteria provided under Clause 1 of Section 3 (Eligibility and Responsiveness/Evaluation Criteria) of Request for Proposal Document 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 Services specified in 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 Technical 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.

27.4 Substantial responsiveness shall be pre-requisite for opening of Financial Proposal. Financial Proposal of nonresponsive Service Providers will be returned unopened.

28. Nonmaterial Nonconformities

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

28.2 Provided that a Technical Proposal is substantially responsive, the Procuring Entity may request that the Service Provider to submit the

necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities in the Technical Proposal related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the Financial 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 During the evaluation of Financial Proposals, 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 Service Provider 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 Financial Proposal does not accept the correction of errors, its Proposal shall be disqualified and its bid security may be forfeited.

30. Evaluation of Financial Proposals

30.1 The Procuring Entity shall evaluate Financial Proposal of substantially responsive Technical Proposals only. Price adjustment due to correction of arithmetic errors, if any, will be affected in accordance with ITSP 29.

31. Comparison of Proposals

31.1 The Procuring Entity shall compare all substantially responsive Proposals to determine the lowest evaluated Proposal, in accordance with ITSP 30.1.

32. Employer's Right to Accept Any Proposal, and to Reject Any or All Proposals

32.1 The Procuring Entity reserves the right to accept or reject any Proposal, and to annul the bidding process and reject all Proposals at any time prior to contract award, without thereby incurring any liability to Service Providers. In case of annulment, all Proposals submitted and specifically, bid securities, shall be promptly returned to the Service Providers.

F. Award of Contract

33. Award Criteria

33.1 The Procuring Entity shall award the Contract to the Service Provider who is substantially responsive to the requirements of Request for Proposal documents/Eligibility and Responsiveness/Evaluation Criteria and whose financial offer has been determined to be the lowest evaluated financial offer and will be declared as successful Service Provider.

34. Notification of Award

- 34.1 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.
- 34.2 Until a formal contract is prepared and executed, the notification of award shall constitute a binding Contract.

35. Signing of Contract

- 35.1 Promptly after notification, the Procuring Entity shall send the successful Service Provider the Contract Agreement.
- 35.2 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.
- 35.3 The original proposals submitted by the service providers shall be retained by the Procuring Entity

36. Performance Security

- 36.1 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 (GCC), using for that purpose the Performance Security Form included in Section 8 (Contract Forms), or another form acceptable to the Procuring Entity.
- 36.2 Failure of the successful Service Provider to submit the above-mentioned Performance Security or to sign the Contract Agreement shall constitute sufficient grounds for the annulment of the award and forfeiture of the bid security. In that event, the Procuring Entity may award the Contract to the next lowest evaluated Service Provider whose offer is substantially responsive.

Section 2 - Data Sheet

A. General

ITSP 1.1	The number of the Invitation for Request for Proposal (RFP) is: TPC/OPS/OCB/Exp. joints/2024-25/008
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 (Expansion Joints) The identification number of the Request for Proposal Document is: TPC/OPS/OCB/Exp. joints/2024-25/008
ITSP 3.1	A Service Provider must be an Association of Persons (AOP) or Company incorporated in or 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 have/must be: <ul style="list-style-type: none"> i. Registered as an AOP or Company with Registrar of Firms or SECP respectively; ii. Registered with FBR for income and sales tax and reflected on active taxpayers list; iii. Registered with KPRA for sales tax on services; iv. A PEC license valid up to June 2025 in category C-5 or above with CE-02 code of specialization; v. Financial statements for year 2021, 2022, 2023 audited by certified accountants; vi. Minimum average annual construction turnover of forty-five million Pak Rupees (PKR.45,000,000) verified through audited financial statements. vii. A positive net worth, for the last year (2023) calculated as the difference between total assets and total liabilities verified through audited financial statements. viii. Executed/ongoing one similar nature contract (construction of bridge/installation of expansion joint) to the worth of twenty-four million Pak Rupees (PKR.24,000,000) or more in last 5 years (2018 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	For <u>clarification purposes</u> only, the Procuring Entity's address is: Attention: Chief Executive Officer (CEO), TransPeshawar Address: TransPeshawar (The Urban Mobility Company), First Floor KPUMA Building Near Main BRT Depot, Chamkani, GT Road, Peshawar, KPK, Pakistan E-mail: To: charbagh@hotmail.com ; khalil.ahmed@transpeshawar.pk
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	<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 be responded via minutes of pre-bid meeting issued by the Procuring Entity.</p>
ITSP 6.4	<p>A Pre-Bid meeting will take place.</p> <p>Date: October 30, 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 may be arranged by the Procuring Entity on demand basis.</p>
ITSP 6.5	<p>Minutes of pre-bid meeting will hoisted on website of the Procuring Entity and sent to all Service Providers who have 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 in opinion of Procuring Entity. The addendum may be sent to the services providers attended pre-bid meeting if so is conducted.</p>

C. Preparation of Proposals

ITSP 9.1	The language of the Proposal is: English
ITSP 10.2 (e)	<p>The Service Providers are required to submit following schedules as provided for in Section 4 (Bidding Forms) along with documentary evidence as stipulated under relevant Schedules,</p> <ol style="list-style-type: none"> 1. Schedule 1: Service Provider's Information Sheet; 2. Schedule 2: Financial Soundness; 3. Schedule 3: Contractual Experience; 4. Schedule 4: Affidavit of integrity pact; 5. Schedule 5: Authorization/Power of Attorney.
ITSP 10.3 (b)	<p>The Service Providers are required to submit following schedules in Financial Proposal on the formats as provided for in Section 4 (Bidding Forms).</p> <ol style="list-style-type: none"> 1. Schedule 6: Breakup of Proposal Prices.
ITSP 12.1	Alternative Proposals are not permitted.
ITSP 15.1	The Proposal validity period shall be one hundred eighty (180) days.
ITSP 16.1	Bid security shall be submitted in PKR from any scheduled bank of Pakistan to the amount of 2% of proposal price in shape Bank Guarantee on format as

	prescribed in Section 4, 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. The original bid security shall be kept sealed in Financial Proposal. The Service Provider shall in addition, place an affidavit, stamp paper and duly notarized, in the Technical Proposal stating that a bid security amounting to 2 percent of the proposal price, without indicating the figure in the letter, has been placed in the Financial Proposal. Otherwise, the Technical Proposal will be considered non-responsive and Financial Proposal will be returned unopened to the Service Provider.
ITSP 16.2	Subject to the succeeding sentences, any bid not accompanied by bid security in accordance with ITSP 16.1 above shall be rejected by the Procuring Entity as nonresponsive. If a Service Provider submits a bid security that (i) deviates in form, amount, and/or period of validity, or (ii) does not provide sufficient identification of the Service Provider, the Procuring Entity shall request the Service Provider 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 rejection of the Bid.
ITSP 16.6	Not applicable.
ITSP 17.1	The Service Provider shall submit one original technical proposal and financial proposal, collectively called Proposal. In addition to the original Proposal, the one copy of Technical Proposal both in hard and soft form shall be provided in accordance with Request for Proposal document.
ITSP 17.2	<p>The written confirmation of authorization to sign on behalf of the Service Provider shall consist of:</p> <p>An authorization (Power of Attorney) shall be provided on the format as given under Section 4 (Bidding Forms, Schedule 5) specifying the representative's authority to sign the Proposal on behalf of, and to legally bind, the Service Provider. Absence of authorization (Power of Attorney) in the bid shall lead to rejection of Proposal.</p>
ITSP 17.2	The Service Provider shall submit an acceptable authorization within three (03) working days.

D. Submission and Opening of Proposals

ITSP 18.1	Service Providers not have the option of submitting their Proposals electronically.
ITSP 18.1 (b)	Not applicable.
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: Reception Desk 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: November 07, 2024</p> <p>Time: 11:30 AM</p>

ITSP 22.1	<p>The Technical 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: November 07, 2024</p> <p>Time: 11:45 AM</p>
ITSP 35.2	<p>Within seven (07) working days of issuance of Notification of Award/Contract Agreement, as the case may be, the Service Provider shall sign the contract.</p>
ITSP 36.1	<p>Performance Security shall be provided within seven (07) working days of issuance of Notification of Award.</p>

Section 3 – Eligibility and Responsiveness/Evaluation Criteria

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1. Substantial Responsiveness of Technical Proposals

1.1. Substantial responsiveness of each proposal will be determined on the basis of following criteria:

- (a) Technical Proposal shall be determined as complete in accordance with ITSP Clause 26;
- (b) The Service Provider shall meet the Eligibility Criteria outlined under Clause 2 below and in term of ITSP Clause 3;
- (c) Proposed expansion Joint shall meet technical specifications and performance characteristics/standards as stipulated under/in conformity with Schedule of Requirements;
- (d) Over all in conformity with Request for Proposal Document.

2. Eligibility Criteria

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

2.1 Country of Constitution

A Service Provider must be an AoP or a company incorporated in/registered with Registrar of Firms or Security and Exchange Commission of Pakistan (SECP) respectively.	must meet requirement	Not Applicable	Not applicable	Not Applicable	Schedule 1 along with attachments
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2.2 Conflict of Interest

No conflicts of interest	must meet requirement	Not Applicable	Not applicable	Not Applicable	Letter of Technical Proposal
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2.3 Registration with FBR

Registered with FBR for income and sales tax and reflected on active taxpayer list.	must meet requirement	Not Applicable	Not applicable	Not Applicable	Schedule 1 along with attachments.
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2.4 Registration with KPRA

Registered with KPRA for sales tax on Services.	must meet requirement	Not Applicable	Not applicable	Not Applicable	Schedule 1 along with attachments
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2.5 Registration with PEC

A valid PEC license up to June 2025 in category C-5 or above with CE-02 code of specialization.	must meet requirement	Not Applicable	Not applicable	Not Applicable	Schedule 1 along with attachments
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2.6 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 1 along with attachments
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2.7 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 (2023) calculated as the difference between total assets and total liabilities should be positive.	must meet requirement	Not Applicable	Not applicable	Not Applicable	Schedule 2 with attachments

2.8 Financial Soundness (Average Annual Construction Turnover)

Minimum average annual construction turnover of forty-five million Pak Rupees (PKR.45,000,000) calculated within last three (03) years from submitted financial statements.	must meet requirement	Not Applicable	Not applicable	Not Applicable	Schedule 2 with attachments
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2.9 Contractual Experience

Executed/ongoing one similar contract (construction of bridge/installation of expansion joint) to the worth of twenty-four million Pak Rupees (PKR.24,000,000) or more in last 5 years (2018 onward).	must meet requirement	Not Applicable	Not applicable	Not Applicable	Schedule 3 along with attachments.
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Section 4 - Bidding Forms

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Contents of Technical and Financial Proposals

The Service Providers are required to submit their Proposals in two separate envelopes marked as “1. Technical Proposal” and “2. Financial Proposal” as provided below. All the forms/format shall be properly filled and submitted with required attachments. Incomplete or partially filled forms shall not be entertained and rejected.

1. Technical Proposal

“Technical Proposal” shall be comprised of following documents. Order/sequence of document while preparing technical proposal shall be observed to facilitate the assessment of proposals in a systematic manner. Moreover, Technical Proposal shall be properly bind and numbered, loose proposals shall not be entertained and rejected summarily.

Table-1

Order	Document Number and Information Required	Check (Y/N)	Page No.
1.	Letter of Technical Proposal		
2.	An affidavit, stamp paper and duly notarized, stating that a bid security amounting to 2 percent of proposal price without indicating the figure in the letter, has been placed in the Financial Proposal		
3.	Documentary evidence in form of literature, drawing, data, or broacher and shall consist of detailed item-by-item description of the essential technical and performance characteristics of the Goods/quoted brand establishing conformity and substantial responsiveness of the Goods with the requirements of Section 5, “Operational Specification Schedule” of the Request for Proposal document.		
4.	Schedule 1 “Service Provider’s Information Sheet”		
(i)	Articles of incorporation or constitution and/or certificate of registration of the legal entity with Registrar of Firms or SECP		
(ii)	Certificate of Registration with FBR for income and sales tax and Active Tax Payer List (ATL) showing status		
(iii)	Certificate of Registration with KPRA for sale tax on services		
	PEC license valid up to June 2025 in category C-5 or above with CE-02 code of specialization		
(iv)	Non-blacklisting certificate on stamp paper and duly notarized 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.		
5.	Schedule 2. Financial Soundness		
(ii)	Audited Financial Statements of relevant years in accordance with schedule 2		
6.	Schedule 3: Contractual Experience		
(i)	Letter of Award/Acceptance or contract agreement or any other credible record of Executed/ongoing one similar nature contract (construction of bridge/installation of expansion joint) to the worth of twenty-four million Pak Rupees (PKR.24,000,000) or more in last 5 years (2018 onward).		
(ii)	Contract Completion Certificate or anticipated completion certificate in case the contract is in progress.		
7.	Schedule 4. Affidavit of integrity pact		

Order	Document Number and Information Required	Check (Y/N)	Page No.
8.	Schedule 5. Authorization/Power of Attorney		

Table-2**2. Financial Proposal**

Order	Document Number and Information Required	Check (Y/N)	Page No.
1.	Letter of Financial Proposal		
2	Schedule 6. Break up of proposal prices		
3.	Original Bid Security to the amount of 2% of proposal price in accordance with ITSP Clause 16.		

Letter of Technical Proposal

The service provider must accomplish the Letter of Technical Proposal on its letterhead clearly showing the service provider's complete name and address.

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 Service Providers (ITSP) Clause 7.
- (b) We offer to execute in conformity with the Request for Proposal Document the following Services:

"Electrical, Mechanical and Civil Works Maintenance Services in Peshawar BRT System (Expansion Joints)"
- (c) Our Proposal consisting of the Technical Proposal and the Financial Proposal shall be valid for a period of one hundred eighty (180) 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.
- (d) If our proposal is accepted, we commit to obtain a performance security in accordance with the Request for Proposal Document.
- (e) We are incorporated/registered in Pakistan.
- (f) We do not have any conflict of interest.
- (g) We are not participating, as a Service Provider in more than one Proposal in this bidding process.
- (h) We agree to permit the Procuring Entity or its representative to inspect our accounts and records and other documents relating to the bid submission.

- (i) 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.
- (j) 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 of Authorized Representative

Name of Service Provider with Seal.

Date

Schedule-1

Service Provider Information Sheet

Service Provider's Information Sheet	
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 have a PEC license valid up to June 2025 in category C-5 or above with CE-02 code of specialization	
Service provider's legal address in country of constitution	
Service provider's authorized representative (name, address, telephone number(s), fax number(s), e-mail address)	
<p>Attached are copies of the following documents.</p> <p><input type="checkbox"/> 1. Articles of incorporation or constitution or certificate of registration of the legal entity with Registrar of Firms or SECP;</p> <p><input type="checkbox"/> 2. Certificate of Registration with FBR for income tax and sales tax and reflected on Active Taxpayer List (ATL);</p> <p><input type="checkbox"/> 3. Certificate of Registration with KPRA for Sales Tax on Services;</p> <p><input type="checkbox"/> 4. PEC license valid up to June 2025 in category C-5 or above with CE-02 code of specialization;</p> <p><input type="checkbox"/> 5. Non-blacklisting certificate on stamp paper and duly notarized 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.</p>	

Schedule-2
Financial Soundness

Each Service Provider must fill out this form.

Financial Data for last 3 Years		
Year 1: 2021	Year 2: 2022	Year: 2023

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 an external auditor approved by SECP.
 - 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-3**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 2.9 of Section 3 (Eligibility and Responsiveness/ Evaluation Criteria)		
<input type="checkbox"/> Attached Letter of Award/Acceptance or contract agreement or any other credible record to substantiate information provided in Schedule 3. <input type="checkbox"/> Attached Contract Completion Certificate of the relevant contract (if the project is completed) or anticipated completion certificate if the contract is in progress.		

Schedule 4

Affidavit of Integrity Pact

(To be submitted on stamp paper of PKR.100 or above and duly notarized)

_____ [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 Procuring Entity/Government of Khyber Pakhtunkhwa (hereinafter called GoKP) or any administrative subdivision or agency thereof or any other entity owned or controlled by it 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 Procuring Entity/GoKP, 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 Procuring Entity/GoKP 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 Procuring Entity/GoKP under any law, contract or other instrument, be voidable at the option of Procuring Entity/GoKP.

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

Name of Authorized Representative

Designation

Sign of Authorized Representative

Name of Service Provider with Seal

Date

Schedule 5
Authorization/Power of Attorney

(To be submitted on stamp paper of PKR.100 or above and duly notarized)

(Incomplete/partially filled authorization/Power of Attorney or person authorizing signatory being incompetent shall be treated as deficient)

I, [Name of person authorizing the signatory of proposal], hereby depose and state that:

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

I am the [Partner/ (duly elected Corporate Secretary or equivalent officer)] of [name of Service Provider], a [Partnership/ Corporation] organized and existing under and by virtue of the laws of Pakistan;

At a regular/special meeting of the Board of Directors/Partners of the service provider, held on [date] at [place], in which meeting a quorum was present and acting throughout, the following resolutions were unanimously passed and approved [in case the Service Provider is a company] or I hereby disposed of [in case the Service Provider is a partnership]:

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

This authorization has not been revoked, amended or modified and remain valid and binding on the Service Provider;

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

Name of person authorizing the signatory.....

Position

Sign of person authorizing signatory (In case of AOP the Power of Attorney shall be signed by all partners to AOP)

Name of Service Provider with Seal

Date:

Letter of Financial Proposal

The service provider must accomplish the Letter of Financial Proposal on its letterhead clearly showing the service provider's complete name and address.

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 Documents, including Addenda issued in accordance with Instructions to Service Providers (ITSP) 7.
- (b) We offer to execute in conformity with the Request for Proposal Documents and the Proposal submitted for the following Services:

“Electrical, Mechanical and Civil Works Maintenance Services in Peshawar BRT System (Expansion Joints)”

- (c) The Proposal Price is:

[amount in PKR in words], [amount in PKR in figures]

The proposal price from the breakup of proposal prices should be entered by the service provider inside this box. Absence of the proposal price in the Letter of Financial Proposal may result in the rejection of the Proposal.

- (d) Our Proposal shall be valid for a period of one hundred eighty (180) days from the date fixed for the proposal submission deadline in accordance with the Request for Proposal Documents, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
- (e) If our Proposal is accepted, we commit to obtain a performance security in accordance with the Request for Proposal Documents.

- (f) 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.
- (g) We understand that you are not bound to accept the lowest evaluated proposal or any other proposal that you may receive.
- (h) We agree to permit the Procuring Entity or its representative to inspect our accounts and records and other documents relating to the proposal submission.

Name of Authorized Representative

Designation

Sign of Authorized Representative

Name of Service Provider

Date

Schedule-6
(On letterhead of the Service Provider)
Breakup of Proposal Prices

1. All Service Providers must read items in conjunction with requirements stipulated under Schedule of Requirements and fill the table carefully.
2. All Service Providers shall quote the unit rate and total rates and prices against each item inclusive of all applicable taxes for completion of each activity/item in all respect.
3. No cutting or over writing is allowed unless otherwise initialed by the authorized person.

Item No	Description	Unit	Quantity	Rate per Unit (in (PKR)	Total Amount (PKR)
1.1	Saw Cutting and Dismantling of Existing Expansion Joint and concrete, disposing off all surplus/waste materials complete in all aspects as directed by the Procuring Entity and preparation of surface for installation of expansion joint.	Cubic meter	37		
1.2	Supply and installation of Bridge Expansion Joint with country-of-origin Europe/USA having top surface grided elastomeric mono-block for the movement of 80mm having 10-year manufacturer and supplier warranty including formwork and epoxy complete in all respect on existing bridge deck at multiple location as specified and as per drawing & design directed by Procuring Entity and/or Schedule of Requirement.	meter	150		
1.3	Supply and applying of Polysulphide sealant with grouting materials including surface preparation and cleaning in expansion joints and concrete cracks at multiple locations, complete in all respect as per direction by Procuring Entity.	Cubic centimeter	35000		
1.4	Provision and laying of (6000PSI) concrete at expansion joints including form work, SBR or equivalent chemical for joint with old concrete compacting, finishing & curing etc. complete in all respect.	Cubic meter	37		
Proposal Price (Inclusive of all applicable taxes including sales tax on services)					

Name of Authorized Representative

Designation

Sign of Authorized Representative

Name of Service Provider

Date

**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 **Electrical, Mechanical and Civil Works Maintenance Services in Peshawar BRT System (Expansion Joints)** under Request for Proposal No. **TPC/OPS/OCB/Exp. joints/2023-24/008** ("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 Letter of Technical and/or Financial Proposal; 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 sign/execute the Contract Agreement, or (ii) fails or refuses to furnish the performance security, in accordance with the Request for Proposal.

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 of Requirement

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

2 SPECIAL CONSTRAINTS RELATED TO WORKS

- 2.1 Corridor and Stations are utilized for bus operation during the day time. The Service Provider should execute all works during non-operation times i.e., from 11:00 PM to 5:00 AM except otherwise allowed by TPC. The resources of Service Provider and associated costs should be calculated based on availability of 6 hours per day for execution of Works.
- 2.2 Service Provider should get permission from TPC for entry to corridor and station one day before the execution of Works 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 Works/Equipment delivered to site till completion of works.
- 2.6 Where technical or functional specifications are not mentioned, the work shall be executed in accordance with Standard Practices or Professional Standards/Ethics.
- 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, it shall be in written and at sole discretion of TPC.

3 BRT Corridor Repair and Maintenance Works (Expansion Joints)

3.1 Dismantling of damaged expansion joints.

- a) Saw Cutting and Dismantling of Existing Expansion Joint carefully not to damage adjacent structure including Anchors, cutting of bridge deck for installation of expansion joint and disposing off all surplus/waste materials properly complete in all aspects as directed by the TPC.
- b) The contractor should be responsible for carrying out dismantling operations strictly in accordance with the applicable specifications or directions of the TP, with appropriate tools and in such a manner to avoid damage to other adjoining work, and those parts of work which are to be retained, and to render unserviceable as little of the material as possible.
- c) The Contractor should be responsible for rectifications /restoration etc. for any damage occurred during work.
- d) Dismantled expansion joints along with nuts and bolts should be delivered to TransPeshawar office.





3.2 Item no.1.2 – Installation of expansion joints.

Supply and installation of Bridge Expansion Joint origin Europe/USA having top surface grided elastomeric mono-block for the movement of 80mm having 10-year manufacturer and Service Provider's warranty including formwork and epoxy complete in all aspect on existing bridge deck at multiple location as specified and as per drawing & design directed by TPC. The Service Provider shall be responsible for provision of requisite original manufacturer/authorized dealer warranty claimable in Pakistan. Similarly, the Service Provider shall provide Service Providers' warranty on an affidavit, as prescribed by the TPC, on a stamp paper of PKR.100 or above and duly notarized.

- a) The Corridor Expansion Joint at various locations are broken / damaged. The patch work of expansion joint may vary in the corridor and may have dimension of 7 to 14 meter in running length.

- b) Service Provider cost for the item should include labour cost, formwork, steel of diameter no 10 bar @ 150 c/c spacing required during fixing of new expansion joint with all accessories, nuts and bolts/ welding etc. with bridge decks existing steel bars, as per manufacturer specification /drawing.
- c) Chemicals used for fixing of above-mentioned joint should confirm to manufacturer standards.
- d) Chemicals/Epoxy/sealant used for the fixing of expansion joint are mentioned below:
 - 1. ASSAPOX FIX
 - 2. ASSAFLEX OC
 - 3. EPOPLUS RE
 - 4. Rapid curing elastomeric concrete having initial gain strength 6000 PSI within 6 hours after placing Origin Europe/USA.
- e) The service provider shall be responsible for providing chemical/epoxy on both sides of the expansion joint up to 01 meter for obtaining proper slope.
- f) The supply for the bridge expansion joint should be done from well-established suppliers of Pakistan with reputable profile (proven track record of previous installations) in supplying of imported expansion joint to public sector departments Import documents shall be submitted to TPC if so directed.
- g) The methodology of installation of the expansion joint should be clearly described by the Contractor with a complete set of manufacturer drawings and should be submitted to TPC for reference and record. Connection or overlapping between bridge expansion joints should be clearly shown. Connection with water proofing of the deck should be shown in detail.
- h) All necessary provisions in deck reinforcement should be indicated. Initial gap at the time of installation should be clearly indicated and justified.
- i) The Contractor should hire technical experts for installation of expansion joint, having proven experience in installation of bridge expansion joints.
- j) Material specifications for elastomeric mono-block Bridge Expansion joint, anchors for fixing should be submitted to TPC for reference and record.
- k) Necessary test certificates from third party independent laboratories showing that the proposed joints meet the applicable standards and specification.
- l) Levelling of expansion joint should be done under the supervision of technical experts as mentioned above.
- m) Any other item/ parameter involved in the above activity should be part of the bid.

The expansion joints should satisfy the following functional requirements during defect liability period after its installation. It should,

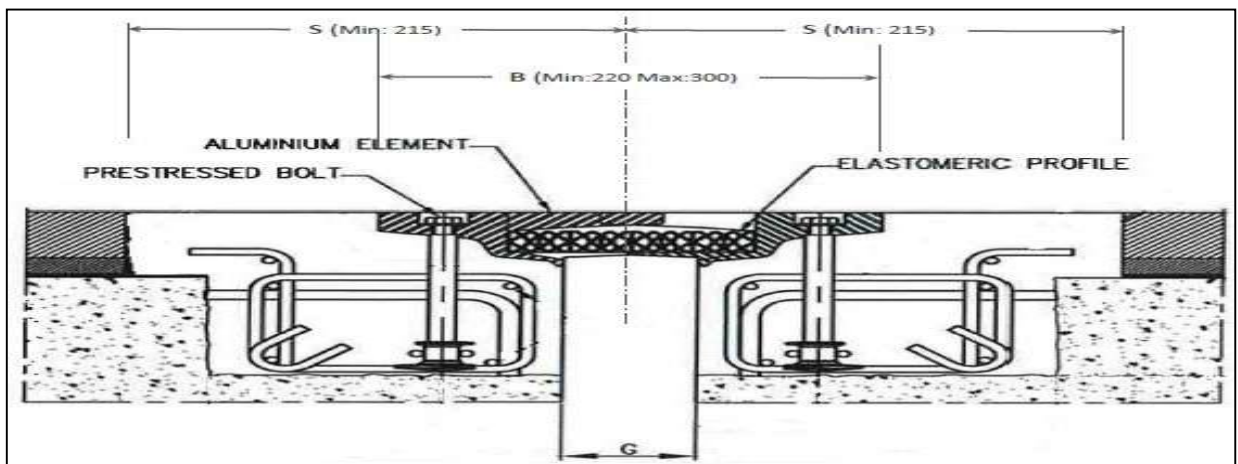
- n) withstand traffic loads of the buses (3-axle bus with 2000 daily bus trips per direction), and accommodate movements between the deck and abutment or the adjacent deck.
- o) have good riding quality and should not cause any inconvenience to road user.

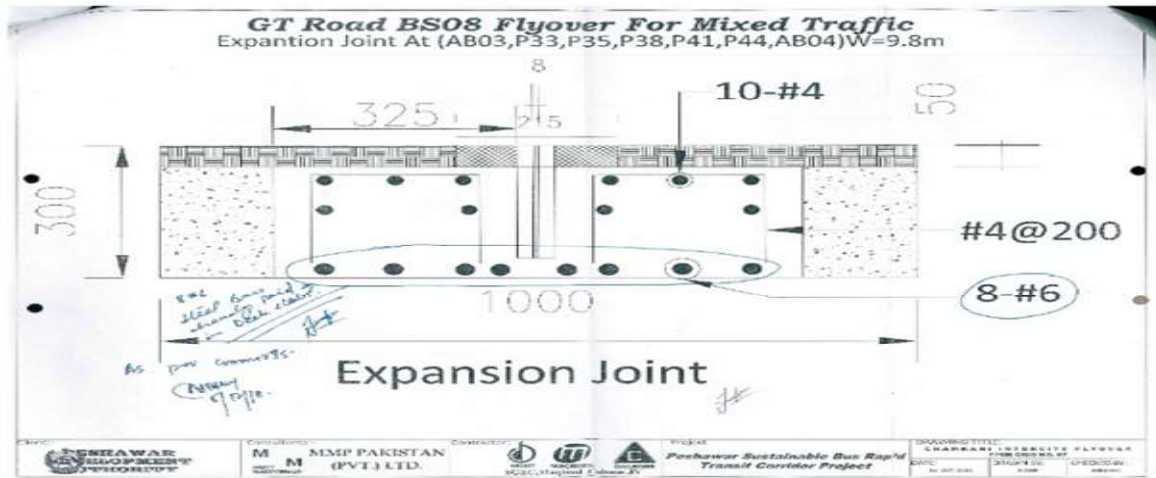
- p) not cause skidding hazard.
- q) not generate excessive noise or vibration during the passage of vehicles.
- r) Have ease of replacement of worn-out parts.
- s) be watertight and will have provision for carrying away water and silt.
- t) be easy to inspect and maintain.
- u) be weather resistant.

3.3 Item no.1.3 – Concrete Works for Expansion Joints

Provision and laying of A2 (4000PSI) and D2 (6000PSI) ready mix concrete including form work, SBR or equivalent chemical for the bonding with old concrete, compacting, finishing & curing etc complete in all aspect. 6000PSI concrete should be used for expansion joints.

- v) Before selection of plant; consideration should include transportation time to sites, unloading time, number of transportation vehicles, condition of manufacturing equipment and production capacity of plant.
- w) Materials/ingredients used in concrete like well graded aggregates having good abrasion and impact value should confirm to ASTM standards for road pavements, TPC can ask for material testing at various stages.
- x) Vibrator should be used during pouring of concrete.
- y) Admixtures for special concrete like water reducing admixture and rapid hardening cement should be used for early and high strength as per ASTM standards wherever required by TPC.
- z) Curing for 14 days should be done by contractor by various techniques as per the direction of TPC.
- aa) For Quality Assurance, compressive strength test of cylinder samples should be done by contractor with the approval of TPC, in any PEC approved labs.





4 KEY PERFORMANCE INDICATORS

2.1 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:

- 2.2 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 will 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.
- 2.3 The Liquidated Damages is the remedy of the TPC, apart from other remedies provided for under the agreement, for the Service Provider failure to achieve the KPI targets.
- 2.4 Any failure of KPI's which entail Liquidated Damages exceeding 10% of the contract price will be considered as breach of contract agreement.
- 2.5 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 enter 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	25,000/- per instance
4.	Failure to get permission letter from TPC in station for Civil, electrical or mechanical work e.g. electricity connection, water usage from station etc.	10,000/- + Not allowed to work
Liquidated Damages for deficiencies in Scope of work		
5.	Delaying Completion of project or specific activity up to 10 days. Day count will start from the date mentioned in work order.	10,000/- one time
6.	If delay to execute activity more than 10 days i.e. not according to the plan.	5000/- x No of days delayed beyond 10 days
7.	No sign/guide boards or speed breakers or safety cones or cordon off the construction site.	5000/- per instance

8.	Not curing of brickwork or concrete	5000/- per instance
9.	Sand dumped at working zone without covering with polythene sheet to avoid pollution and wastage	5000/- per instance
10.	Failure to clear site from construction debris or dump construction debris at specified landfills	5000/- per instance
11.	Work execution is not as per Contract.	5000/- per instance
12.	Concrete not as per specified ratio, if TPC decide to test	25000/- per instance
13.	Failure/declining to provide test results as required by TPC/Contract.	5000/- per instance
14.	Failure to follow PPE's (Personal Protective Equipment) as per contract e.g. safety jackets, helmets, etc.	5000/- per person-per instance
15.	Workers/visitors or any person entering or exiting in the work zone area other than specified entry/exit points	1000/- per instance
Liquidated Damages for deficiencies in defect liability period		
16.	Response time to remove defect during defect liability period is more than 24 hours.	10,000/- x No of days delayed
17.	Repair/ maintenance of minor defects not completed within 24 hours.	10,000/- x No of days delayed
	Repair/ maintenance of major defects not completed within 7 days.	10,000/- x No of days delayed
Liquidated Damages of Institutional or Administrative Nature		
18.	Failure to deliver information required by TPC	5,000/- per instance
19.	To refuse to accept TPC representative visit or to hide information or to provide partial or erroneous information	5,000/- per instance
20.	To breach contractual provisions regarding financial mechanisms	5,000/- per instance
Liquidated for Workers/Contractor		
21.	Under influence on duty due to drugs/alcohol	10,000/- + withdrawal from the system
22.	Free travel or attempt to travel free	Challan + 1,000/-
23.	Misbehavior with any contractor/vendor representative or staff members or with passengers	10,000/- + withdrawal from the system
24.	To cause an accident due to negligence.	10,000/- + withdrawal from the system
25.	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
26.	Damages to the TPC Property	5,000/- x No of days delayed to repair damaged property

27.	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)
28.	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

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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 entity>**, 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 (Expansion Joints) in accordance with Schedule of Requirements (hereinafter called the Services or Works).
- 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 [Schedule of Requirements];
 - (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 [Letter of Financial Proposal and Breakup of Proposal Prices];
- (j) Annex-J [Notification 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 except warranty obligations if any, 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 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 Schedule of Requirements) 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 Schedule of Requirements, 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 Schedule of Requirements.
- 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 Schedule of Requirements.

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 Schedule of Requirements 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 Schedule of Requirements, TPC shall be entitled to demand (and the Service Provider shall be obliged to promptly comply with such demand) that such Staff is immediately removed from the BRT System and replaced with another Technical Staff who is suitably qualified.

11. Co-operation with Other Contractors

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

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

12. Image and Marketing

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

13. Monitoring of the Services

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

14. Incident Reporting

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

15. Tools and equipment and Utility Charges

- 15.1 The Service Provider is required to provide the required tools and equipment to execute and maintain the Works and/or otherwise to provide the Services in accordance with the Schedule of Requirements. 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 Schedule of Requirements for the Service Provider's failure to achieve certain KPIs as indicated in the Schedule of Requirements.
- 18.2 The Parties agree that the amounts specified in this clause 18.2 and the Schedule of Requirements 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 Schedule of Requirements; 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 Schedule of Requirements (despite being given notice in relation thereto), whether or not Liquidated Damages have been imposed, with the result that the Services may be regarded by TPC as being materially defective; or
 - 22.2.14 incurs Liquidated Damages equal to or exceeding the maximum amount of Liquidated Damages as indicated in the Schedule of Requirements/**PCC** 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:

Designation:

CNIC:

Witness # 1:

Name:

CNIC:

Name:

Designation:

CNIC:

Witness # 2:

Name:

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 Project (and/or interim milestones as specified in the Schedule of Requirements) has been completed in accordance with the Contract and defect liability period is successfully accomplished.”
 - 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 Schedule of Requirements 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 Schedule of Requirements 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 **“Schedule of Requirements”** 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 Electrical, Mechanical and Civil Works Maintenance Services in Peshawar BRT System (Expansion Joints);
- 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 Schedule of Requirements 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 Schedule of Requirements; 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, after notifying successful Operation/Execution of the Work 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”** used interchangeably, means the design to the extent required and the procurement, delivery, installation and commissioning and performing of all activities/fulfilment of all obligations provided under Schedule of Requirement.

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 eight (08) 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 forms, at the option of the Service Provider: <ul 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 % of Contract Price as retention money deducted at rate of 5% from each running invoice as guarantee against rectification of the Services 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 subject fulfilment to defect liability obligations.
5.1	Tax	The Sales Tax on Services shall be paid by TPC.
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.

ANNEXURE-C.

PAYMENT CALCULATION SCHEDULE-EXPANSION JOINTS

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

- 1.1 Advance payment shall not be allowed;
- 1.2 For each month following Services Notice, the Service provider shall be entitled to a payment in accordance with Milestones;
- 1.3 Payments against milestone shall be made only once in a month for the works executed; and
- 1.4 Milestones for Payments are as per below table.

Item No	Activity detailed as in Annexure-B	Completion from date of Permission works by TPC	Payments Milestones
1.1	Dismantling of Existing Expansion Joint /Concrete	Term of contract	Pro-rata basis for quantity executed and verified by TPC
1.2	Supply of Expansion Joint	Term of contract	30% upon delivery
1.3	Installation of expansion joint	Term of contract	60 % on Pro-rata basis for quantity executed and verified by TPC & 10 % upon completion
1.4	Concrete Work for Expansion Joint	Term of contract	90 % on Pro-rata basis for quantity executed and verified by TPC & 10 % upon completion

Note: -

- 1- Where Payment Milestones is 90 %, TPC shall pay to Service Provider with minor defects or finishing work, if any. 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 exaggerated as assessed by TransPeshawar. The access amount will be paid in final invoice.
- 3- No invoice shall be paid, if the amount of invoice is less than PKR.2 million. Payment 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 and on receipt of request subject fulfilment to defect liability obligations.

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 Service Provider after contract award.

Table of Forms

Notification of Award..... 8-Error! Bookmark not defined.

Performance Security8-3

Notification of Award

[on letterhead paper of the Procuring Entity]

[date]

To: [Name and address of the Service Provider]

Subject: [Notification of Award.]

This is to notify you that your proposal dated ----- for [name of the contract and identification number, as given in the Data Sheet] for a contract 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 Contract, the Service Provider shall maintain with TransPeshawar a valid and enforceable Performance Security to the amount of 10% of contract price in shape of Bank Guarantee issued by a Schedule Bank of Pakistan on a prescribed format (**attached as Annex-A**) or submit a Demand Draft or Call Deposit Receipt in favor of Chief Executive Officer TransPeshawar in as terms and conditions of the Service Agreement.

3. You are therefore, required to deliver to TransPeshawar, within 07 working days of issuance of this Notification of Award, the duly executed Performance Security to the amount of PKR -----.

Authorized Signature:

Name and Title of Signatory:

Name of Procuring Entity:

Performance Security

[TO BE ISSUED ON JUDICIAL PAPER OF PRESCRIBED FEE BY SCHEDULE BANK OF THE ISLAMIC REPUBLIC OF PAKISTAN]

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

Ref: Notification 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. (“the TPC”)

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 the TPC on its first demand for payment, without regard to any objections or defences to TPC’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 the TPC shall be paid by Guarantor to the TPC within seven (07) days of receipt of the TPC’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 TPC 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 the TPC:</p> <p>Transpeshawar Company</p> <p><Address line1></p> <p><Address line2></p> <p><Address line3></p> <p>Tel: <Insert the TPC's telephone number></p> <p>Fax: <Insert the TPC's fax number></p> <p>Email: <Insert the TPC's email address></p> <p>For the Attention of <_____></p>
<p>For the Guarantor:</p> <p><Insert Guarantor's Name></p> <p><Address line1></p> <p><Address line2></p> <p><Address line3></p> <p>Tel: <Insert Guarantor's telephone number></p> <p>Fax:<Insert Guarantor's fax number></p> <p>Email:<Insert Guarantor's email address></p> <p>For the Attention of <_____></p>