



**NATIONAL HIGHWAY AUTHORITY**

Ministry of Communications

Government of Pakistan



**REQUEST FOR PROPOSAL**

**FOR**

**“PROVISION, OPERATION & MANAGEMENT  
OF MOBILE WORKSHOPS AND RECOVERY  
VEHICLES**

**ON**

**ISLAMABAD MURREE DUAL CARRIAGEWAY  
(IMDCW) N-75**

**PACKAGE**                     **MW-(N75)**

**Issued to** \_\_\_\_\_

**Issued by** \_\_\_\_\_

**For the period upto 30<sup>th</sup> June 2020**

## **SECTION - I**

### **A. LETTER OF INVITATION (LOI)**

**NATIONAL HIGHWAY AUTHORITY**  
**(Revenue Section - Finance Wing)**  
27-Mauve Area, G-9/1, Islamabad

No. ( )/NHA/GM (Rev)/18/

Dated: - -

**To: ALL RESPECTIVE BIDDERS**Subject: **PROVISION, OPERATION AND MANAGEMENT OF MOBILE WORKSHOPS AND RECOVERY VEHICLES ON (IMDCW) N-75.****LETTER OF INVITATION (LOI)**

National Highway Authority (NHA) intends to engage operators for “**Provision, Operation and Management of Mobile Workshops and Recovery Vehicles on Islamabad Murree Dual Carriageway (IMDCW) N-75**” on fixed monthly charges for a period ending **30th June 2020** from the date of commencement and extendable for further term at the discretion of Employer as deemed necessary. The detail of Mobile Workshops and Recovery Vehicles is as under:-

S#	Package	Description	Location	No of Mobile workshops	No of Recovery Vehicles
1	MW-(N75)	Mobile Workshops and Recovery vehicles on IMDC (N-75)	Km 12+500 to 55+500	03	02

You are hereby invited to submit your bid for the subject contract. Your bid could form the basis for a Contract between you and the Employer National Highway Authority (NHA).

The detailed description of the assignment and its objectives is given in the enclosed Request for Proposal (RFP).  
 Instructions to Bidders (ITBs)

**General Manager (Revenue)**

27-Mauve Area, G-9/1, Islamabad.

Phone: +92-51-9260190, Fax # 92-51-9261116

## **B. INSTRUCTIONS TO BIDDERS (ITB)**

## 1. General

- 1.1 Bidding is open to all operators who have a valid Registration with Pakistan Engineering Council as an **“Operator”** in **category O-5** or above.
- 1.2 The bidder shall bear all costs associated with the preparation and submission of its bid and the Employer shall not be responsible or liable for any such costs in any event whatsoever, regardless of the conduct or outcome of the bidding process.
- 1.3 The Employer is vested with sole discretion for award of contract or cause supervision & be affected for the execution of said contract. Please note that:-
- The Employer is not bound to accept the proposals submitted and reserves the right to reject all proposals or bids as per PPRA Rules.*
- 1.4 To obtain first-hand information on the assignment you shall attend pre-proposal conference at your expense. At no stage NHA shall be liable to incur or reimburse any costs related to any such activities **even if** the contract award does not materialize. You must fully inform yourself of local conditions and take them into account in preparing your proposal.

## 2. Documents Comprising the Bid

- 2.1 In addition to the Invitation for Bids, the Bidding Documents are those stated below, and should be read in conjunction with any Addendum issued under Clause 2.4.
- I. Letter of Invitation (LOI).
  - II. Bid Data Sheet (BDS).
  - III. Terms of Reference (TOR) & Institutional Arrangements.
  - IV. Conditions of Contract: Articles I to XV
  - V. Sample Forms & Annexures/Appendices (if any).
  - VI. Financial Proposal forms & Bid Form.
  - VII. Addendum to the Request for Proposal (if any).
- 2.2 The bidders are required to examine carefully the contents of all the above documents. Failure to comply with the requirements of bid submission will be at the bidders own risk. Pursuant to Clause 11, bids which are not substantially responsive to the requirements of the Bidding Documents will be rejected.

## Clarifications

- 2.3 A prospective bidder requiring any clarification(s) in respect of the Bidding Documents may notify the Employer in writing or by fax at the address:

Office of General Manager (Revenue),

27-Mauve Area, G-9/1, Islamabad.

Phone: +92-51-9260190, Fax # 92-51-9261116

Employer will examine the request for clarification of the Bidding Documents, if received not later than seven (07) days prior to the deadline for the submission of bids or during the Pre-Bid meeting, and if deemed reasonable, at its sole discretion, may issue a clarification/amendment of the Bidding Documents before the date of submission of Bids (without identifying the source of enquiry) to all prospective bidders who have purchased the Bidding Documents.

- 2.4 At any time prior to the submission/opening of bids, the Employer may, for any reason, whether at its own initiative or in response to a clarification requested by a prospective bidder, modify the Bidding Documents by issuing an addendum.
- 2.5 Any addendum thus issued shall become the integral part of Bidding Documents.
- 2.6 To accord prospective bidders reasonable time in which to take an addendum into account in preparing their bids, the Employer may at its discretion extend the deadline for submission of bids.

## 3. Bid Validity

- 3.1 Bids / proposals shall remain valid for the period of One Hundred and Fifty (150) days after the date of bid opening.
- 3.2 In exceptional circumstances prior to expiry of original bid validity period, the Employer may request the bidders to extend the period of validity for a specified additional period which shall in no case be more than the original bid validity period. The request and the responses thereto shall be made in writing. A bidder may refuse the request without forfeiture of his Bid Security. A bidder agreeing to the request will be required to extend the validity of his Bid Security for the period of the extension.

## 4. Bid Security

- 4.1 Each bidder shall furnish, as part of his bid, a Bid Security in the amount of Pak. Rupees equivalent to Rs.500,000/-(Rupees Five Hundred Thousand).

- 4.2 The Bid Security shall be, at the option of the bidder, in the form of Bank Draft/Demand Draft/Pay Order/Bank Guarantee issued by a Scheduled Bank in Pakistan in favour of the “*Road Maintenance Account, National Highway Authority, Islamabad*” valid for a period equal to bid validity.
- 4.3 The Bid Security is required to protect the Employer against the risk of bidder’s conduct which would warrant the security’s forfeiture, pursuant to Sub-Clause 4.8 hereof.
- 4.4 Any bid not accompanied by an acceptable Bid Security shall be rejected by the Employer forthwith as being non-responsive, pursuant to Clause 4.1.
- 4.5 Any amount of bid security which is lying with the Employer for any previous bidding processes shall not be considered for this bidding.
- 4.6 The bid security of all participating bidders will be discharged/ returned as promptly as possible except for the top two (02) lowest bidders, which will be returned upon award of contract to the successful bidder or on the expiry of validity of Bid Security whichever is earlier subject to rights of parties under clause 3.2.
- 4.7 The Bid Security of the successful bidder will be returned when the bidder has furnished the required Performance Security and signed the Contract Agreement, pursuant to Clause 16 & 17.
- 4.8 The Bid Security may be forfeited:
- (a) If a bidder withdraws his bid during the period of bid validity; or
  - (b) If a bidder does not accept the correction of his Bid Price, pursuant to Sub- Clause 11.2 hereof; or
  - (c) In the case of a successful bidder, if he fails to:
    - (i) Furnish the required Performance security in accordance with Clause 16, or
    - (ii) Sign the Contract Agreement, in accordance with Clause 17.

## **5. Format and Signing of Bid**

- 5.1 All Bid documents including Bid Form, Financial Proposal Forms and Schedules to Bid are to be properly completed and signed/stamped by the bidders.
- 5.2 No alteration is to be made in the Form of Bid nor in the Schedules thereto except in filling up the blanks as directed. If any alteration be made or if these instructions be not fully complied with, the bid may be rejected as being non-responsive.

- 5.3 Each bidder shall prepare one (1) Original and one (01) Copy of the documents comprising the bid as described in Clause 2 and clearly mark them “ORIGINAL” and “COPY” as appropriate. In the event of discrepancy between them, the original shall prevail.
- 5.4 The original and a copy of the bid shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign them. This shall be indicated by submitting a written Power of Attorney authorizing the signatory of the bidder to act for and on behalf of the bidder. All pages of the bid shall be initialed and stamped by the person or persons signing the bid.
- 5.5 The bid shall contain no alterations, omissions or additions, except to comply with instructions issued by the Employer, or as are necessary to correct errors made by the bidder, in which case such corrections shall be initialed by the person or persons signing the bid.
- 5.6 Bidders shall indicate in the space provided in the Form of Bid their full and proper addresses at which notices may be legally served on them and to which all correspondence in connection with their bids and the Contract is to be sent.
- 5.7 Bidders should retain a copy of the Bidding Documents as their file copy.

## **6. SUBMISSION OF BIDS**

- 6.1 Each bidder shall submit his bid as under:-
  - a. One (01) ORIGINAL and one (01) COPY of the Bid shall be separately sealed and put in separate sealed envelopes and marked as such.
  - b. The envelopes containing the ORIGINAL and COPY will be put in one sealed envelope and addressed/identified as given in Sub-Clause 6.2 hereof.
- 6.2 The Bidder shall paste the Form duly filled in on the inner and outer envelopes as per given sample including;
  - a. be addressed to the Employer at the address given in Bid Data Sheet.
  - b. bear the Package number and Date of opening of Bid.
  - c. provide a warning not to open before the time and date for bid opening.
- 6.3 The Bid shall be delivered in person or sent by registered mail at the address to Employer as given in Bid data sheet heretofore.
- 6.4 In addition to the identification required in Sub-Clause 6.2 hereof, the inner envelope shall indicate the name and address of the bidder to enable the bid to be returned unopened in case it is declared “late” pursuant to Clause 8.



- 6.5 If the outer envelope is not sealed and marked as above, the Employer will assume no responsibility for the misplacement or premature opening of the bid.

## **7. Deadline for Submission of Bids**

- 7.1 (a) Bids must be received by the Employer at the address specified in Bid Data Sheet not later than the time and date stipulated in the Bid Data Sheet.
- (b) Bids with charges payable will not be accepted, nor will arrangements be undertaken to collect the bids from any delivery point. Bidders shall bear all expenses incurred in the preparation and delivery of bids, which shall not be recompensed by the Employer in any circumstances.
- (c) Where delivery of a bid is by mail and the bidder wishes to receive an acknowledgment of receipt of such bid, he shall make a request for such acknowledgment in a separate letter attached to but not included in the sealed bid package.
- (d) Upon request, acknowledgment of receipt of bids will be provided to those making delivery in person or by messenger.
- 7.2 Bids submitted through telegraph, telex, fax or e-mail or by any means other than those specified hereinabove shall not be considered.
- 7.3 The Employer may, at his discretion, extend the deadline for submission of bids by issuing an addendum in accordance with Clause 2.4, in which case all rights and obligations of the Employer and the bidders previously subject to the original deadline will thereafter be subject to the deadline as extended.

## **8. Late Bids**

- a. Any bid received by the Employer after the deadline for submission of bids prescribed in Clause 7 will be returned unopened to such bidder.
- b. Delays in the mail, delays of person in transit, or delivery of a bid to the wrong office shall not be accepted as an excuse for failure to deliver a bid at the proper place and time. It shall be the bidder's responsibility to determine the manner in which timely delivery of his bid will be accomplished either in person, by messenger or by mail.

## 9. Bid Opening and Evaluation

- 9.1 A committee consisting of nominated members by the Employer will open the bids in the presence of bidders' representatives who choose to attend, at the time, date and location stipulated in the Bid Data Sheet.
- 9.2 The bidder's representatives who are present shall sign in a register evidencing their attendance.
- 9.3 The bidder's name, bid amount, any rebate, bid modifications and withdrawals, the presence or absence of Bid Security, and such other details as the Employer at its discretion may consider appropriate, will be announced by the Employer at the bid opening.

## 10. Clarification of Bids

- 10.1 To assist in the examination, evaluation and comparison of Bids the Employer may, at its discretion, ask the Bidder for a clarification of its Bid. Their quest for clarification and the response shall be in writing and no change in the price or substance of the Bid shall be sought, offered or permitted.

## 11. Preliminary Examination & Determination of Responsiveness of Bids

- 11.1 Prior to the detailed evaluation of bids, pursuant to Clause 12,
- (a) The Employer will examine the Bids to determine whether;
- (i) The Bid is complete and does not deviate from the scope,
  - (ii) Any computational errors have been made,
  - (iii) Required sureties have been furnished,
  - (iv) The documents have been properly signed/stamped,
  - (v) The Bid is valid till required period,
  - (vi) The Bid prices are firm during currency of contract if it is a fixed price bid,
  - (vii) The Bidder is eligible to Bid,
  - (viii) The Bid does not deviate from basic requirements and
  - (ix) The Bids are generally in order.
- (b) A bid is likely not to be considered, if;
- (i) It is unsigned,
  - (ii) Its validity is less than specified,
  - (iii) It is submitted for incomplete scope of work,
  - (iv) It indicates that Bid prices do not include the amount of income tax.
- (c) A bid will not be considered, if;
- (i) It is not accompanied with bid security,
  - (ii) It is received after the deadline for submission of bids,
  - (iii) It is submitted through fax, telex, telegram or email, or any means other than those specified in clause 7.
  - (iv) The bidder refuses to accept arithmetic corrections in its bid,
  - (v) It is materially and substantially different from the

Conditions/Specifications of the Bidding Documents.

- 11.2 If the Bidder does not accept the corrected amount of Bid, his Bid will be rejected and his Bid Security forfeited.
- 11.3 Prior to the detailed evaluation, pursuant to Clause 12 the Employer will determine the substantial responsiveness of each Bid to the Bidding Documents. For purpose of these Clauses, a substantially responsive Bid is one which conforms to all the terms and conditions of the Bidding Documents without material deviations. A material deviation or reservation is one:
- (i) which affects in any way the scope, quality or performance of the Works.
  - (ii) which limits in any substantial way, inconsistent with the Bidding Documents, the Employer's rights or the bidder's obligations as under the Contract; or
  - (iii) whose rectification/adoption would affect unfairly the competitive position of other bidders presenting substantially responsive bids.

The Employer's determination of a Bid's responsiveness will be based on the contents of the Bid itself without recourse to extrinsic evidence.

- 11.4 A Bid determined as substantially non-responsive will be rejected and cannot subsequently be made responsive by the Bidder by rectification of the non-conformity.

**12. Detailed Evaluation of Bids**

- 12.1 The Employer will evaluate and compare only those bids previously determined to be substantially responsive pursuant to Clause 11 as per requirements given hereunder.
- 12.2 Technical Evaluation will be done as per criteria mentioned in bidding document.
- 12.3 Financial Evaluation of bids will be based on Financial Proposals forms to be submitted by the bidders as per Bidding Document.
- 12.4 The detailed information shall be provided as required as it may otherwise make it liable for rejection.
- 12.5 Financial Bids of only the Technically qualified bidders will be announced and put to comparison process.

### **13. Award Criteria**

- 13.1 Subject to Clause 14, the Employer will award the Contract to the bidder whose bid has been determined as substantially responsive & Technically qualified as per Bidding Documents and who has offered the lowest financial bid.

### **14. Employer's Right to Accept any Bid and to Reject any or all Bids**

- 14.1 Notwithstanding Clause 13, the Employer reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids, at any time prior to award of Contract, without thereby incurring any liability to the affected bidders or any obligation to inform the affected bidders of the grounds for the Employer's action except that the grounds for its rejection shall upon request be communicated, to any bidder who submitted a bid, without justification of grounds. Rejection of all bids shall be notified to all bidders promptly.
- 14.2 No negotiations with the bidder having been evaluated as lowest responsive or any other bidder shall be permitted. However, the Employer may have clarification meeting(s) to clarify any item(s) in the bid evaluation report.
- 14.3 The applicant must not be a defaulter of revenue of NHA, in any case/shape, or inventory/assets loss or utility bills at any section/toll plazas/weigh stations/police fines/mobile workshops etc. However, the applicants whose cases are pending with the NHA or in a court of law shall be treated as disputed and may be considered subject to the approval by the Member (Finance).

### **15. Notification of Award**

- 15.1 Prior to expiration of the period of bid validity prescribed by the Employer, the Employer will notify the successful bidder in writing through a letter of acceptance ("Letter of Acceptance") that his bid has been accepted. This letter shall name the sum i.e. Net amount per month, which the Employer shall pay to the Bidder in consideration of the performance of the services by the successful bidder as prescribed by the Contract.
- 15.2 The Letter of Acceptance and its acceptance by the bidder will constitute the formation of the Contract, binding the Employer and the Bidder till signing of the formal Contract Agreement.
- 15.3 Upon furnishing the Performance Security by the successful bidder and other requisites, the Employer will promptly notify the other bidders that their bids have been unsuccessful and return their bid securities.

## **16. Performance Security**

- 16.1 The successful bidder shall furnish to the Employer the Performance Security of Rs.1,000,000/- (One million) in the forms stipulated in the Bid Data Sheet within a period of Fourteen (14) days after the receipt of Letter of Acceptance.
- 16.2 Failure of the successful bidder to comply with the requirements of Sub-Clause 16.1 or Clause 17 or Clause 22 shall constitute sufficient grounds for the annulment of the award and forfeiture of the Bid Security.
- 16.3 If the successful bidder is seriously unbalanced in relation to the Employer's estimate of the cost of services/work to be performed under the contract, THE Employer may require the bidder to produce detailed price analysis for any and/or all items of the Operations/Services to be rendered to check internal consistency of those prices with the prescribed TOR, Scope of Service, methods and schedule proposed. After evaluation of the price analyses, the Employer may require that the amount of the security set forth be increased at the expense of the successful bidder to a level sufficient to protect the Employer against financial loss in the event of default of the successful bidder under the Contract. If some gross inconsistency is found, Employer shall have the right to reject the bid and forfeit the security provided by that bidder.

## **17. Signing of Contract Agreement**

- 17.1 Within fourteen (14) days from the date of furnishing of acceptable Performance Security under the Conditions of Contract, the Employer will send to the successful bidder the Form of Contract Agreement provided in the Bidding Documents, duly filled in and incorporating all agreements between the parties for signing and return it to the Employer.
- 17.2 The formal Agreement between the Employer and the successful bidder shall be executed within fourteen (14) days of the receipt of such Form of Contract Agreement by the successful bidder from the Employer.

## **18. One Bid per Bidder**

- 18.1 Each bidder shall submit only one bid either by himself, or as a partner in a joint venture in each contract / package otherwise bids submitted by him shall not be considered for evaluation and award.

## **19. Bidder to Inform Himself**

- 19.1 The bidder is advised to obtain for himself at his own cost and responsibility all information that may be necessary for preparing the bid and entering into a Contract for execution of the Works. This shall include but not be limited to the following:

- (a) Inquiries on Pakistani Income Tax/Surcharge or any other Levy imposed by the Government of Pakistan to the Commissioner of the Income Tax, Islamabad Pakistan.
- (b) Tax shall be deducted from the operator's invoice as per applicable laws of Government of Pakistan
- (c) All public facilities, equipment and resources shall be kept in excellent operational condition all the times.

**20. Due Diligence**

- 20.1 NHA reserves the right to carry out due diligence in sole discretion during procurement, award and execution of the contract.

**21. Local Conditions**

- 21.1 Bidder must verify and supplement by his own investigations the all-necessary information about site, local conditions etc. for the purposes of filling and submitting his bid and entering into the contract.

**22. Integrity Pact**

- 22.1 The Bidder shall sign and stamp the Integrity Pact sample provided in the Bidding Document for all Federal Government procurement contracts exceeding Rupees ten million. Failure to provide such Integrity Pact shall make the bid non-responsive.

## **SECTION - II**

### **BID DATA SHEET (BDS)**

## **BID DATA SHEET**

1. The name of the Assignment:

**"Provision, Operation and Management of Mobile Workshops and Recovery vehicles on Islamabad Murree Dual Carriageway (IMDCW) N-75"**

2. Name and address of the Employer:

**Chairman**

National Highway Authority.  
27-Mauve Area, G-9/1  
Islamabad.

3. The name and address of the authorized representative of Employer is:

**General Manager (Revenue) NHA.**

4. The Bidding Documents are:

- I. Letter of Invitation (LOI).
- II. Bid Data Sheet (BDS).
- III. Terms of Reference (TOR) & Institutional Arrangements.
- IV. Conditions of Contract: Articles I to XV
- V. Sample Forms & Annexures/Appendices (if any).
- VI. Financial Proposal forms & Bid Form.
- VII. Addendum to the Request for Proposal (if any).

5. The number of copies of the Financial Proposal required:

**One original & one copy**

6. The address for seeking clarification and writing on the proposal:

**General Manager (Revenue)**

National Highway Authority  
27- Mauve Area,G-9/1, Islamabad.  
Phone: +92-51-9260190, Fax: +92-51-9261116

7. Schedule of Pre-Bid Meeting

**Date & Time: 12-03-2019 at 1100 hrs**

**Venue: NHA Auditorium  
27-Mauve Area, G-9/1, Islamabad**



8. The address for submission of Bids:

**NHA's Auditorium**

National Highway Authority, 27-Mauve Area, G-9/1, Islamabad.

9. Schedule for submission and opening of Bids

**Date & Time (Submission) : 21-03-2019 at 1030 hrs**

**Date & Time (Opening) : 21-03-2019 at 1100 hrs**

10. Bid Security:

**Amount: Rs. 500,000/-** as per Clause 4.1 of LOI.

Form & Validity: As per Clause 4.2 of LOI.

11. Bid validity: As per Clause 3 of LOI.

12. Standard form and amount of Performance Security acceptable to the Employer:

**Amount: Rs.1,000,000/-** (Rupees one million) per package

**Form:** Bank Draft/Pay order/Demand Draft in favor of "Road Maintenance Account, National Highway Authority, Islamabad"

**OR**

Bank Guarantee (Form enclosed) issued by a scheduled bank in Pakistan acceptable to Employer

**Validity:** Until 90 days after expiry of the Contract period

13. Period of Completion

**30th June 2020 from the date of commencement.**

14. Description of Mobile Workshops and Recovery Vehicles.

S#	Description	No of Vehicles	Type of Vehicle	Model
1	<b>Mobile workshop</b>	03	Faw with hood or equivalent	Not older than 2013
2	<b>Recovery Vehicle</b>	02	Mazda or any equivalent	Not older than 2013

15.

- (i) *If more than one bidder, quote same bid, then lowest bidder will be decided on the basis of having higher score in the technical evaluation.*
- (ii) *All Financial forms (1B to 4B) be filled, signed/stamped and submitted with the bid, and the total amount mentioned in the said Forms be co-related with final bid price.*
- (iii) *Staff salaries must meet minimum wages as per labor laws otherwise bid will be treated as non-responsive.*

## Eligibility and Technical Criteria

Sr. No	Description	Requirement	Max Marks	
1	PEC Registration (Valid PEC Certificate) (IN case of JV, one out of two firm must be O-5)	O-A, O-B, O-1 O-2 to O-3 O-4 to O-5	10 Marks 08 Marks 06 Marks	10
2	Financial Statements / Audit report duly certified by Chartered Accountant having average net worth over last 03 years (2015-16, 2016-17 & 2017-18) (Total Assets – Total Liability except capital)	> 40 Million 31 - 40 million 21 - 30 million 11 - 20 million Up to 10 million	20 Marks 15 Marks 10 Marks 05 Marks 03 Marks	20
3	Average Annual Turn-Over for the year 2015-16, 2016-17 & 2017-18. (Financial Statements / Audit report duly certified by Chartered Accountant showing turnover of each year separately)	>100 million 51 - 100 million 26 – 50 million Up to 25 million	10 Marks 07 Marks 05 Marks 00 Marks	20
4	General Experience in O&M contracts during last 5 years	03 Marks per year		15
	Relevant Experience during last 5 years	04 Marks per Year		20
5	Corporate Structure	Company Firm Sole Proprietor	10 Marks 06 Marks 03 Marks	10
6	An undertaking on judicial stamp paper to be furnished confirming the detail of litigation / dispute cases with NHA and also mentioning non-performance of the contracts (if any)	No case Upto 3 cases More than 3 cases	05 Marks 03 Marks 01 Marks	05

**Total=****100**

### ***The minimum qualifying marks are 65 (Sixty Five)***

- An undertaking on judicial stamp paper to be furnished confirming the detail of litigation / dispute/ cases, both existing and previous, with NHA and also mentioning non-performance of the contracts (if any) with any govt. or private institute/organization.
- Bidders must have NTN & STN and must be listed in Active Tax payer list (ATPL) of FBR. In case of JV, individual entity must have NTN, whereas NTN of JV must be furnished within one month of award.
- If two or more bidders have quoted same identical bid then bidder will be declared successful on the basis of higher score in Technical Evaluation.

**SECTION - III**

**TERMS OF REFERENCE (TOR)**

**&**

**INSTITUTIONAL ARRANGEMENTS**

## **TERMS OF REFERENCE (TOR)**

### **Purpose:**

1. **Provision Operation & Management of Mobile Workshops and Recovery vehicles on IMDCW N-75** is aimed to provide facility to stranded motorists on IMDCW N-75 as stopping and repairing on Motorways is not allowed. The commuters on Motorways face serious difficulties especially due to tyre puncture, exhaustion of fuel, electrical fault, broken fan belt, hose pipe and radiator leakage etc. As a result, the traffic on Motorways faces problem. The provision of Mobile Workshops and Recovery Vehicles is therefore felt necessary by NHA where emergency repair facility be provided to the Motorways and IMDCW N-75 users in all respect.

### **Methodology:**

2. The Operator shall provide, operate and manage round the clock the Mobile Workshops and Recovery Vehicles for the convenience of the road users. No service charges will be charged from the road users.
3. The Operator, to carry out the said services, shall provide Hyundai Shahzor vehicles or any equivalent vehicle having same engine power or above and ensure that none of the vehicle will be CNG Operated. The Operator shall also make necessary arrangements to carry Additional Fuel about fifty (50) liters each petrol & diesel with each Mobile Workshop to attend the vehicles, requiring re-fueling.
4. The Operator shall provide towing services to defective vehicles free of cost. The Operator shall tow the defective vehicle to the nearest interchange or service area, if the vehicle cannot be put on road by either providing at the spot service such as tyre puncture, starting trouble, small electrical/ mechanical fault etc.
5. Mobile Workshop and Recovery Vehicles shall be properly marked with the Logo and Insignia of the NHA for identification. The Operator will fix the communication system in the vehicle to coordinate with NH & MP & NHA, in case of breakdown of commuters as well as Operator's vehicle.
6. The Operator shall be responsible to provide backup service for 24/7 hours for Operation, Management Services without any extra charges.
7. The Operator shall prepare the register duly signed by AD/DD (Revenue) Concerned / NH&MP having page number and according to format specified at Annex-I.
8. If Operator fails to provide backup facility for round the clock (24 hours) Operation & Management Service, than following actions shall be taken accordingly:-

- (i) For poor performance of Service of Mobile Workshops and/or Recover Vehicle, a penalty may be imposed at the rate of 0.5 percent per day upto a maximum of 20% of the Contract Value of that Workshop and/or Recovery Vehicle whose performance is found unsatisfactory.
- (ii) The response time for reaching to an emergency place will not be more than 30 minutes, if already not committed.
- (iii) The Operator shall be responsible for twenty four (24) hours Operation, Management Services during the contract period with no justification of breakdown. In case of delay in allowable response time, the penalty shall be imposed as detailed below:

	<b>Time</b>	<b>Rupees</b>
A	30 to 60 minutes	25% of day's charges
B	61 to 90 minutes	50 % of day's charges
C	91 to 120 minutes	100% of day's charges

If the operator fails to keep the stock of equipment (Clause-17), minimum required trained staff (Clause-23), or if there is any complaint against the Mobile Workshop and / or recovery vehicle by a commute or NH&MP, appropriate penalty may be imposed which can be upto 30% of the monthly invoice.

9. The Operator will provide Manpower, Equipment (**including wireless sets**) and other resources. The cost of all expenditure made under such cost but not limited to POL, vehicle maintenance, manpower, uniform and accommodation/ food/ medication etc. shall be borne by Operator.
10. Any loss/ theft due to any reason shall be made good by the Operator.
11. In case of change of length of beat upto 10 km by NH & MP, no extra claim would be entertained, in any case.
12. The Operator will ensure that the duty hours for their employees shall be for **08 (Eight)** hours and in **03 (three)** shifts.
13. The Operator will ensure that salary to be paid to their employees shall be as per labour laws.
14. The uniforms shall be approved from designated NHA's Officer as per **Article-II, Clause 2.2.**
15. The operation of Mobile Workshop & Recover Vehicles will be supervised by Dy. Director (Revenue) or an officer not less than BPS-17 nominated by employer.
16. The following and any other equipment demanded by NH&MP authorities should be made available in each Mobile Workshop to make them

beneficial for the commuters. The operator will also ensure availability of price list of spare parts in each Mobile Workshop duly verified by NH&MP and NHA representative. The rate list shall be displayed at prominent place i.e. on inner side of rear screen glass.

S.#	ITEMS	QUANTITY
1	Tow Chain	01 No.
2	Battery Leads	01 No.
3	Ring Spanner Set	01 Set.
4	Goti Set	01 Set.
5	L-Key Set	02 different types
6	Jack (03 Tons)	01 No.
7	Hammer	03 different types
8	Long Goti Set	01 Set
9	Screw Driver Set	01 Set
10	Plainer Set	01 No.
11	Emergency Light	01 No
12	Rocker Spanner Set	01 Set
13	Plug Spanner	01 No.
14	T-Set	01 Set.
15	Electric Meter	01 No.
16	Emery Paper	Different Numbers
17	Grease	01 Cane
18	Silicone	03 Nos.
19	Filter Chain	01 Set.
20	Wire Roll	R roll
21	Elfy	03
22	Air Pressure Gauge	01 No.
23	Puncture Kit	01 No.
24	Air Compressor	01 No.
25	Radiator Pipe	06 Nos.
26	Player	02 Different Size
27	Cutter	01 No.
28	Ranch Small	01 Set.
29	Solution Tap	06 Nos.
30	Saw (Ari)	01 No.
31	Fuse, Bulbs, Belts	05 each of different type

17. Staff may be imparted refresher courses from recognized workshops and recovery vehicles once every six months.
18. Staff should be qualified and at least one year experience in their relevant field from recognized training centers and also one year experience in well reputed workshops. The Auto Mechanic on duty in every shift must have valid driving license.
19. Each Mobile Workshop and Recovery Vehicle must work in close coordination with NH & MP.

20. The CNICs of Mechanics and other staff should be verified by NH & MP authorities.
21. The Experience Certificate of Auto Mechanics should be verified by NH & MP authorities.
22. Each Mobile Workshop and/or Recovery Vehicle is to be operational 24 hours by Operator with 08 (Eight) hours shift and the 03 (Three) shifts per day along with but not limited to the following category of staff:

a. **Staff for Mobile Workshop**

Designation
Driver
Auto Mechanic cum Electrician

b. **Staff for Recovery Vehicle**

Designation
Recovery operator / Driver
Auto Mechanic cum Electrician

Along with this a spare shift will be managed to accommodate emergency/leave vacancies of staff at the cost of OMC.

23. The contract is valid for a period Upto 30th June 2020 from the date of commencement and extendable further for one year at the discretion of Employer as deemed necessary.
24. Each vehicle will have its own log book maintained, highlighting the number of kilometers travelled each day for fine collection, fuel consumed each day and record of routine maintenance. The log book should be available in the vehicle at all times and should be presented at request for monthly invoicing.
25. Monthly invoice of the operator shall be released on issuance of satisfactory performance report by the NH&MP staff of concerned beat/section (if applicable).
26. Employer may terminate the contract at any time during the currency of contract upon un-satisfactory performance or any other reasons thereof.

## **INSTITUTIONAL ARRANGEMENTS**

**Client:** The National Highway Authority (referred as “NHA” hereinafter)

**Program Designer:** General Manager (Revenue) NHA, HQ.

**Service Provider:** The Provision, Operation, Management of Mobile Workshop and/or Recovery Vehicles is the Service Provider (referred as “OM&MC” hereinafter).

### **Management**

#### **Contractor & Operator**

**(OM&MC):** The OM&MC is appointed pursuant to this Agreement for Provision, Operation, Management of Mobile Workshop and/or Recovery Vehicles.

### ***THE EMPLOYER’S ROLE AND OBJECTIVES***

- Responsible for taking all policy decisions and approvals of capital and operational expenditures, and implementation programs including procurement of spare parts, vehicles, operations and maintenance of all facilities and institutional arrangements.

### ***THE PROGRAM DESIGNER’S ROLE AND OBJECTIVES***

- To provide overall guidance to the OM&MC keeping within the policy framework approved by the Employer.
- Responsible for establishment of necessary Technical and Economical criteria and the operating systems to manage and maintain the described services in an effective manner within available resources. {The OM&MC is expected to jointly undertake this exercise with Program Designer}
- Development and application of operation, management and maintenance systems in accordance with contract documents.

### ***SERVICE PROVIDER’S ROLE AND OBJECTIVES***

- The Service Provider shall carry out all the works required by the Employer in accordance with objectives, agreed programs, scope of services and BOQ’s.
- Develop and maintain a register containing the entire inventory of assets and its value at all times and update with an interval of six (06) months. OM&MC shall provide an updated copy of register to the Program Designer for office record.



**SECTION - IV**  
**CONDITIONS OF CONTRACT**  
**ARTICLES I TO XV**

## ARTICLE-I

### PURPOSE OF AGREEMENT DEFINITIONS

#### 1.1 Purpose: Incorporation of TOR:

- (a) The Operator of Services and **Terms of Reference (TOR)** together with this Agreement, sets forth the terms and conditions for the Provision of Mobile Workshop and/or Recovery Vehicle Services for the consideration to be paid by the Employer to the Operator as compensation for the provision of the Services and certain other ancillary matters more particularly set forth herein or in the **TOR** etc.
- (b) All terms and provisions of the Operator of Services and **TOR** are incorporated by reference in this Agreement as through fully set forth herein. Wherever possible, the provisions specially set forth in this Agreement and those set forth in the **TOR** shall be construed to supplement each other, so as to give effect and meaning to all terms and provisions. If there is conflict between any terms of the **TOR** and terms specifically set forth herein then, unless otherwise specifically provided herein or in the **TOR**, the terms of this Agreement shall prevail and take precedence observe the terms of the **TOR** to the extent necessary to resolve such conflict.

#### 1.2 Definitions:

All capitalized terms used herein shall have the meanings assigned to them in this Agreement, as supplemented and modified by the **TOR** to them in this Agreement, as supplemented and modified by the **TOR** to the extent there is no conflict. Any capitalized terms used herein and not defined herein shall have the meanings assigned to them in the **TOR**.

- (a) **“The Agreement”** means the Agreement, Articles, Conditions of Contract and Appendices.
- (b) **“Authority”** means National Highway Authority, Government of Pakistan, Islamabad.
- (c) **“Employer”** means the Chairman, National Highway Authority, Government of Pakistan, Islamabad.
- (d) **“Operator”** means the organization operating the Mobile Workshops and/or Recovery Vehicle on Motorways in accordance with the terms and conditions of the Agreement and the Scope of Work placed at **TOR**.

- (e) **“Chief Operator”** means a person nominated by the Employer to act on behalf of the Employer in accordance with the power delegated to him. The delegated power shall be notified to all concerned from time to time. The Chief Operator shall be General Manager (Revenue) NHA, HQ.
- (f) **“Services”** means services required to be rendered by the Operator in accordance with various articles of the Agreements and the Terms and Reference (**TOR**).
- (g) **“Employer’s Representative”** means General Manager (Region) or any other person appointed by the Employer from time to time.
- (h) **“Modification of Agreement”** is defined as an Agreement in writing negotiated and signed between the Employer and the Operator from any change in the original agreement and any obligations associated therewith.
- (i) **“Contract Price”** means the sum stated in the Letter of Acceptance as payable to the Operator for the Operation & Management of Mobile Workshops & Recovery Vehicles **as per Package given in the LOI**.
- (j) **“Party”** means the Employer or the Operator as the case may be, and Parties means both of them.
- (k) **“Day”** means the Calendar Day.

### **1.3 General Provision:**

- 1.3.1** The Services to be performed by the Operator (**hereinafter called the Services**) relating to the works to be performed (**hereinafter called the works**) are described in **TOR**.
- 1.3.2** Relationship between the Parties: Nothing contained herein shall be Construed as establishment or creating a relationship of a matter and servant or principal and agent as between the Employer and the Operator.
- 1.3.3** Language (s) or Law.
  - (a) The language and languages in which the contract is drawn shall be English.
  - (b) The language, according to which the contract is to be construed and interpreted, designated the **“Ruling Language”**. The ruling language in any dispute shall be **English**.
  - (c) The country or province the law of which is to apply to the Contract is to be construed and interpreted designated the **“Ruling**

**Law**". The Agreement shall be in accordance to the laws of Islamic Republic of Pakistan.

**1.3.4 Headings:**

The heading in these conditions of Contract shall not be deemed to be part thereof or be taken into consideration in the interpretation of the contract thereof.

**1.3.5 Notices:**

All notices under this Contract will be given in writing and will be deemed to have been given if delivered by Registered Post or Courier Services at the specific designation/addresses of the parties as set forth in this Contract Agreement.

## **ARTICLE-II**

### **2.1 UNIFORMS:**

All employees required to meet with public in the capacity of representative and shall be properly uniformed, which will be provided by Operator. These staff positions shall include at a minimum, Mechanic for Petrol Vehicles, Mechanic for Diesel Vehicles, Electrician and Driver. The Operator shall maintain the uniforms in a presentable manner and ensure each person required to wear a uniform has sufficient supply.

### **2.2 Uniform Design:**

The Operator shall submit a sample of proposed uniform designs for the NHA's approval. Set for both summer and winter are to be submitted. Upon approval of the uniform design, the Operator shall place the order in sufficient time to ensure that all personnel are uniformed upon phased commencement of operations by the Operator. The Operator will provide an official replica of its logo and color scheme for the approval of NHA.

### **2.3 Scope of Services:**

Except as otherwise provided in Paragraph 2.4 or elsewhere in this Agreement, throughout the Term of this Agreement (**as herein defined**), the Operator shall provide, all Operation, Management, Supervision, Labor, Materials, Administrative Support, Supplies and Equipment necessary to perform the services described in **TOR (the foregoing being referred to herein as "Services")** all in accordance with the criteria set forth in the provisions of this Agreement.

### **2.4 Cooperation with other Operating Contractors:**

From time to time during the Term, the Employer may award or execute other contracts relating to its ownership, Operation or Maintenance of the system or of other facilities on other roadways that are not included within the system. The Operator shall fully cooperate with the Employer and the parties to such other contracts shall adjust scheduling to the extent reasonably possible; and shall diligently endeavor to perform its services in a manner that will promote integration, synergism and efficiency among the Operator, the Employer and the other Operators. Operator shall not commit nor permit any action on the part of its employees or agents that might unreasonably interfere with the performance of work by any other Operator/Consultant of the Authority.

### **2.5 Services Performed:**

The Services to be performed by Operator shall be performed solely in accordance with the **TOR**.

## 2.6 Termination for Convenience of the Employer:

- a. The Employer shall have the right, at any time and from time to time during the Term, and for any reason whatsoever in the Employer sole discretion, to terminate this Agreement with respect to all or any portion of the Services (**such total or partial termination being referred to herein as a “Termination for Convenience”**). The Employer may exercise its right of Termination for Convenience by furnishing to the Operator, written notices of its decision to do so with reasons, which notice shall specify the services the Employer has elected to remove from the Scope and operation of this Agreement. The Termination for Convenience as to such Services shall be effective **30 (Thirty) days** following the date of such notice. Thereafter all reference herein or in the **TOR** and **TOR** to **“Services”** shall be deemed to refer only to those operation tasks that continue to be required to be performed by the Operator hereunder.
- b. As of the date upon which a Termination for Convenience is effective, the Employer shall reduce the contract amounts as to omit payment for those elements of work and services as to which the Employer exercised its right of termination for Convenience.
- c. In no event shall a Termination for Convenience be deemed default by the Employer under this Agreement or the **TOR**. Nevertheless, the Employer recognized a Termination for convenience will cause temporary but adverse financial consequences upon the Operator.
- d. The parties recognized and agree that the precise amount of adverse financial consequences that would be suffered by the Operator would be impossible to predict at the time of execution of this Agreement. Therefore, the parties agree that the termination fee will be paid by the Employer to the Operator upon the occurrence of any Terminations for Conveniences, which termination fees is a fair and reasonable based on actual expenditures of the adverse economic consequences that will be sustained by the Operator. The Termination Fee shall be computed on the basis of previous 3 months as pro-rata.

## 2.7 Applicable Laws and Regulations:

The Operator shall perform the Services in compliance with the standards and requirements set forth in the SOP Manual, Applicable Laws and Rules, Statutes and Regulations and good business practices.

## **ARTICLE-III**

### **TERM OF AGREEMENT AND EFFECTIVE DATE**

#### **3.1 Term of Agreement:**

The term of this Agreement **(the Term)** shall be for a period till **30th June 2020** from the Date of Commencement and extendable for further term at the discretion of Employer as deemed necessary.

#### **3.2 Effective Date:**

The Effective date shall be the date on which the site is handed over to the OM&MC by the Employer for start of Operation. The ending date of contract will be reckoned as 30<sup>th</sup> June 2020 or till the period contract is extended by the Employer as deemed necessary.

## **ARTICLE-IV**

### **EMPLOYMENT**

#### **4.1 Removal:**

Promptly upon request of the Employer, the Operator shall remove from activities associated with or related to the performance of this Agreement, the employee whom the Employer considers **(for any reason whatsoever, in the Employer's sole discretion)** unsuitable for such work. Such employee shall not be reassigned to perform any work related to the services except with the express written consent of the Employer. No compensation in any form shall be paid to the Operator by the Employer in consideration for the right of removal described in this paragraph or in consideration of the exercise thereof.

#### **4.2 Reassignment:**

The Operator shall structure its relationship and procedures with its employees so that the employees may be assigned to, reassigned or transferred from one Workshop/Location to any other Workshop/Location without impediment, and so that the employees may be reassigned to transferred at any time **(and from time to time)** upon the request of the Employer.

#### **4.3 Drug-Free Workplace Requirements:**

Throughout the Term, the Operator shall provide a drug-free workplace by establishing a drug-free workplace and program in compliance with the Employer's policy.

#### **4.4 Compliance with Workplace Laws:**

- (a)** Throughout the Terms, while performance under this Agreement, Operator, his agents, employees, and Sub-Operator shall observe and fully comply with all Laws, Ordinances and Regulations that may be in force in Pakistan and effective from time to time hereafter.
- (b)** Operator shall prominently post and publish all employment notices and information required to be published by any applicable Law, Rule, Regulation or Ordinance from time to time in effect, for review and consideration by its employees.
- (c)** Operator, its agents and Sub-Operators, shall not discriminate against any employee or applicable for employment due to his or her race, sex, age, national origin, religion or marital status.



#### **4.5 Equal Employment Opportunity.**

- a.** On or before **60 (Sixty) days** after the Effective Date, Operator shall submit to NHA for its review and comment Operator's proposed equal employment opportunity policy and as per the existing rules of the Operator's Organization.
- b.** Operator shall designate a liaison officer who will administer and oversee the program adopted by Operator in accordance with subparagraph (a) shall keep complete and accurate records of all procedures and decisions relating to hiring of individuals.

#### **4.6 Notification of Conviction of Crimes.**

Operator shall notify the NHA of disciplinary action taken against its employees, if convicted of any crime, according to the rules and regulation of Operator.

## ARTICLE-V

### STANDARD OPERATING PROCEDURE MANUAL

#### **5.1 Purpose of SOP Manual:**

- (a) The Employer desires to make available to the public a high level of services and quality in the Operation of Mobile Workshops & Recovery Vehicles. As part of its obligations under this Agreement, the Operator shall prepare a written Standard Operating Procedure Manual (**the “SOP Manual”**), which shall include standards of performance throughout the Term. The **SOP Manual** shall set forth provisions of necessary coordination among Operator, the Authority and any other party to whom the authority awards contract from time to time with respect to the Motorways (M-1, M-3, M-4 & M-4 extension) and IMDCW (N-75). The **SOP Manual** shall include cover all procedures of every kind or nature necessary for the performance of the Services as specified in the Scope of Services. The Operator shall provide the services at all time in accordance with this Agreement as per **TOR** and procedures stated in the approved **SOP Manual**.
- (b) Following development and acceptance of the **SOP Manual** in accordance with this Agreement and the **TOR**, the Operator shall comply with the **SOP** in its performance of Services. The Operator and the Authority shall revise and update the **SOP Manual** from time to time in accordance with the provisions of the **TOR**. References herein or in the **TOR** to the **SOP Manual** shall be deemed to refer to the **SOP Manual** as it may be amended, modified or supplemented from time to time.
- (c) Without limiting the generality of other provisions of this Agreement or the **TOR** with respect to updates and revisions of the **SOP Manual**. The Authority may from time to time develop and institute updates or upgrades to its other components of the System. In order to take advantage of technological developments or advancements to the improve efficiency and correct problems or to accomplish any other purpose deemed important by the Authority, in which event the **SOP Manual** shall be modified to address any appropriate changes with regard to the Operation, Repair or Maintenance of the IMDCW (N-75).

#### **5.2 Change in SOP Manual Causing Additional Costs:**

If the Operator believes a change to the **SOP Manual** if made in accordance with the Operator of Services but beyond clause 12 (TOR) will increase its cost of furnishing the Services, the Operator shall so notify the Employer in writing within **15 (Fifteen) days** after the date of receipt of Employer’s notice of the required revision. Such notice shall include a detailed description of the basis and justification for any claim the Operator may have for adjustments in

compensation for increased costs furnish such notice to the Employer within the time provided in this paragraph. The Operator will have waived any claim it may have to additional compensation for increased costs attribution to the **SOP** compensation claim within **15 (Fifteen) days** period, then the Employer, at its sole option, may either.

- (i) Approve the compensation claim and order the change to become effective as scheduled; or
- (ii) Revoke the notice of change, in which case the change shall not become effective and no additional compensation will be paid.
- (iii) Get that works done through open competitive bidding.

## ARTICLE-VI

### ASSIGNMENT OF AGREEMENT; SUBCONTRACTS

#### 6.1 Assignment Rights and Limitations:

- (a) The Employer has selected Operator to perform the Services based upon characteristics and qualifications of Operator and its employees. Therefore, the Operator may not assign, delegate or subcontract its rights or obligations under this Agreement, any attempt by the Operator to assign to subcontract any performance of this Agreement without consent of the Employer shall be null and void and shall at Employer's option, constitute a default under this Agreement.
- (b) The Operator may assign its rights to receive payment under this Agreement with the Authority prior written consent, which consent shall not be unreasonably withheld.
- (c) The Authority may assign all or any portion of its rights under this Agreement without the consent of or advance notice to the Operator.

#### 6.2 Subcontracts:

- (a) Subject to the right of the Employer to review and approve or disapprove Subcontracts in accordance with this section, and subject to the compliance by the Operator with the provisions of this Agreement with regard to Key Personnel, the Operator shall be entitle to subcontracts some of the services performed to other entities. The subcontracts executed by the Operator in accordance with the terms of this Agreement **(including vendor contracts)** may be referred to herein as **"Subcontracts"** and the Sub-Operator there under may be referred to herein collectively as **"Sub-Operators"**.
- (b) All subcontracts must contain the following provisions:
  - (i) The Subcontracts must provide that it is assignable to the Authority **(or its successor in interest under the terms of this Agreement)** without the prior approval of the parties thereto, and that the assignment thereof shall be effective upon receipt by the Sub-Operator of written notice of the assignment from the Employer. Upon such event, the Employer shall be deemed to assume the obligations of the Operator under the subcontract, but only to the extent such obligations accrue from and after the date of assignment.
  - (ii) Each Subcontract must require the Sub-Operator to comply with the **SOP Manual** as it may be revised, modified and supplemented from time to time and must require the Sub-

Operator to carry forms and amounts of insurance satisfactory to the Employer in its sole discretion. The Employer shall be listed as and additional insured in such insurance policies and copies of insurance certificates and policies shall be delivered to the Employer upon request.

- (iii) The Subcontract must provide that, upon demand of the Employer, the Operator will join in any dispute resolution proceeding instituted in accordance with **Article-X** hereof.
  - (iv) All warranties express and implied of such Sub-Operator shall inure to the benefit of the Employer and its successors and assigns.
- (c) All Subcontracts shall be subject to Employer's prior written approval as to the general form of the subcontract and the identity of the Sub-Operator, which approval may be granted or withheld in the sole discretion of the Employer. The Employer may waive the right to approve a particular subcontract, but such waiver shall not affect Employer's right to review and approve or disapprove other Sub-Contracts. The Employer's approval of a subcontract, the Operator shall not be entitled of the Operator's arrangements for performance of the work covered by such Sub-Contract.

Should it become necessary to replace any member of the site staff during his agreed term the Operator shall forthwith arrange for such replacement with another person.

The Operator shall employ personnel to perform their duties under this Contract.

## **ARTICLE-VII**

### **PAYMENTS**

#### **7.1 Payment Terms:**

All the payments to the Operator shall be made by the Employer within **45 (Forty Five) days** after receipt of invoice.

#### **7.2 Currency of Payment:**

All payment due under the Agreement shall be paid in Pakistan Rupee to the Operator.

#### **7.3 Pakistan Tax Liability:**

All taxes including but not limited to advance Tax Income /Tax/Surcharge or any other Levy imposed by the Government of Pakistan/Provincial Government shall be paid by the OMC according to prevailing laws of income tax in Pakistan during the currency of contract. All personnel and corporate taxes will be paid by the OMC or his personnel.

#### **7.4 Payment Procedure:**

Invoicing will be in accordance with Invoices and Payment Procedure as under:

##### **Invoice and Payment Procedure:**

- i- The OM&MC shall furnish/submit invoice to Dy. Director (Revenue) Concerned latest by 10<sup>th</sup> of each month. Dy. Director (Revenue) will process the invoice based on Performance/Monitoring report of authorized officer of NH&MP (where applicable) for approval of Member (Finance) through Director (Revenue Operation).
- ii- All due payments to the OM&MC shall be paid by NHA out of Road Maintenance Account within Forty Five (45) days of receipt of invoice.

## **7.5 Invoice for Payments and Required Documentation:**

A payment **(as provided in Clause 7.1 & 7.4 hereof)** due to the Operator shall be paid promptly within **45 (Forty Five) days** from the date of submission of the invoice complete in all respects to the Employer/Employer's Representative duly supported by the following documentation reasonably satisfactory to the Authority:

- (a)** An invoice in a form acceptable to Employer, with supporting documentation as reasonably required by Employer.
- (b)** Monthly performance certificate.
- (c)** Detail of vehicles repaired / attended during the month duly verified by concerned Dy. Director / NH&MP.
- (d)** A certificate on Judicial / Stamp paper for payment of dues / salary of staff.

## **ARTICLE-VIII**

### **IDENTIFICATION AND LIABILITY**

#### **8.1 Operator's Responsibility:**

- (a)** The Operator shall take all responsible precautions in the performance of the Service and shall cause its employees against the Sub-Contractor to do the same. The Operator shall be solely responsible for the safety of and shall provide protection to prevent damage, injury or loss to:
  - (i)** All employees of the Operator and the Sub-Contractors and other persons who are involved in the provision of Services of the Emergency Call Radio and Microwave System would responsible, the expected to the affected by the performance of the Service;
  - (ii)** Other property of the Operator and its employees, agents, officers and Sub-Contractors and all other persons for whom the Operator may be legally or contractually responsible or adjacent to the emergency Call Radio Station or other areas upon which services are performed;
  - (iii)** Members of the public who may be using the workshops facility and their vehicles and personality.
- (b)** The Operator shall comply, and cause its employees, agents, officers and Sub-Contractor and all other persons for whom the Operator may be legally or contractually responsible, with applicable laws, ordinance, rules, regulations and orders of the public authorities relating to the safety of persons and property and their protection from damage, injury or loss.
- (c)** The Operator shall be responsible for all damages and loss that may occur with respect to any and all property located on or around the workshops or in any way involved in the provision of the Services by the Operator whether such property is owned by Operator, Employer or any other person to the extent such damage or loss shall have been caused or brought about by acts or omission of Operator or its employees, agents, officers or Sub-Operators or any other person for whom Operator may be legally or contractually responsible.
- (d)** The Operator ensure that all the its activities and activities of its employees, agents, officers and Sub-Contractors and all other persons for whom the Operator may be legally or contractually responsible are undertaken in a manner that will minimize the effect on surrounding property and the public.



- (e) The Operator shall take no responsibility if damage occurs due to Act of God/Natural Calamities like fire, earth quake, floods, storms theft etc.

## 8.2 Indemnification's by the Operator:

- (a) The Operator shall defend, indemnify and hold harmless Authority and each of the individuals that is now **(or may in the future become)** a member of Employer successors and assigns, and the officers, directors, agents, consultants and employees of any of the foregoing **(collectively referred to as the "Indemnified Parties")** from and against any all claims, causes or action, suits, legal or administrative proceeding, damages losses, liabilities, response costs, costs and expenses **(including, without limitation, attorneys, and expert witness fees and costs that may be incurred in connection with the enforcement of this paragraph)** arising out of, relating to or resulting from:
- (i) The performance by the Operator **(or its employees, agents, officers or Sub-Operating Contractors or any other persons for whom Operating Contractor may be contractually or legally responsible)** of the services or other duties or obligations set forth in this Agreement **(including the TOR and SOP Manual)** or the failure to perform the Services in the manner herein required;
  - (ii) The failure of the Operator **(or its employees, agents, officers or Sub-Operator or any other persons may be contractually or legally responsible)** to comply with any applicable law, rules, ordinance, regulation or statute in performing the services or other duties or obligations set forth in this Agreement;
  - (iii) Any legal patent or copyright infringement or other allegedly improper appropriation are use of trade secrets, patents, proprietary information, Know-Know, copyright, right or inventions in performance of the services or other duties or obligations set forth in this Agreement;
  - (iv) Any act or omission of the Operator **(its employees, agents, officers, Sub Operating Contractors or any other persons for whom the Operating Contractor may be contractually or legally responsible)**, including, but not limited to any act or omission that may cause, result in, or contribute to the injury to or death of persons, or the damage to or loss of property;
  - (v) The assertion by any Operator, Sub-Operator or other person that inconvenience, disruption, delay or loss has

been caused all or in part by actions or interference of the Operator or its employees, agents, officers or Sub-Operator or any other persons for whom the Operator **(or its employees, agents, officers or Sub-Operating Contractor may be contractually or legally responsible)** to cooperate reasonably with such Operating Contractors, Sub-Operators or other persons.

- (b) Except to the extent permitted by law, the provisions of this **Paragraph 8.2** shall not inure to the benefit of an Indemnified Party so as to impose liability on the Operator for matters caused by the negligence of the Employer, or so as to relieve the Employer of Liability for the consequences of its own negligence or the negligence of its employees, officers or any other persons for whom the Employer may be contractually or legally responsible.
- (c) If any claim shall be filed by an employees of the Operator **(or a Sub-Operator, anyone directly or indirectly employed by either of them or anyone for whose acts they may be liable)**, the indemnification provisions set forth in this **Paragraph 8.2** shall not be limited, as to the amount or type of damages, compensation or benefits payable by or for the Operator or a Sub-Operator or otherwise, under the terms of or as a consequence of any workers, compensation, disability benefit or other employee benefits laws.

## **ARTICLE-IX**

### **SECURITY AND INSURANCE**

#### **9.1 Issue of Bonds and Insurance:**

The Operator shall procure, at its own expense, bonds **(or other security)** and insurance acceptable to Employer as described herein and shall maintain such bonds **(or other security)** and insurance in full force and effect throughout the term in the manner specified herein.

#### **9.2 Performance Bond:**

**15 (Fifteen) days** prior to the Effective Date, Operator shall deliver to the Employer a Performance Security, in a form of **unconditional irrevocable bank guarantee acceptable to the Employer in the amount equal to Rs. 1,000,000/- (One million)** for a period valid **90 (Ninety) days after expiry of contract** as security for the performance by Operator of the provisions of this Agreement. The amount of such bond shall be adjusted from time to time upon request of the Employer. The terms and provisions of the performance bond shall be satisfactory to the Employer in its sole and absolute discretion. Authority may apply any or all of such bond to reimburse it for damages caused by any defaults of Operator under this Agreement or to remedy any Even of Default. If the bidder is not in default at the expiration or termination of this Agreement, the Employer will authorize the release and return of the Performance Bond to Operator within **90 (Ninety) days**.

#### **9.3 Insurance Coverage:**

The Operator shall without limiting his or the Employer's obligation and responsibilities:

- (a)** The Services together with the equipment, machinery, plant, material etc. for incorporation therein, to the full replacement cost plus fifteen percent to cover any additional incidental cost associated with the services.
- (b)** The Operator's equipment and other things brought on the site by the Operator, for a sum sufficient to provide for their replacement at site.
- (c)** The insurance in **Paragraph (a) and (b) of Article 9.3** above shall be in joint names of Employer and the Operator.
- (d)** The Operator shall insure its personnel employed on the services against accident and shall continue such insurance during the whole of the time that any persons are employed by him on the services. The premium for such insurance shall be paid by the Operator.

- (e) During the contract and the date on which insurance policy comes in to force and effect, if any damage due to accident etc. occurs the Operator shall replace the same and claim cost from Insurance Company.
- (f) If insurance not provided by the “Operator”, a penalty of Rs. 25,000/- per month may be imposed and deducted from the monthly invoice of the OMC.

**9.4 Authority’s Rights to Remedy breach by the Operator:**

If, the Operator fails to provide insurance as required herein, the Authority or its assignee(s) will have the right, but not the obligation to purchase such insurance. In such event, the amount paid for such insurance will be credited against the next accruing payment or payments that otherwise would be made by the Authority to the Operator under this Agreement.

## **ARTICLE-X**

### **DEFAULT; DISPUTE RESOLUTION; REMEDIES**

#### **10.1 Defaults by the Operator:**

- (a) The occurrence of any one or more of the following events shall constitute an event of default by Operator under this Agreement **(each such event being referred to herein as an “Event of Default”)**:
- (i) 03 (Three) **“Displeasure Notices”** served by the **“Performance Monitoring Committee”** to the Operator on the occurrence of (ii) or (iii) below:
  - (ii) Delay or discontinuance of the Services by Operator to be performed pursuant to this Agreement, particularly delay in responding to the Emergency Calls within a reasonable time limit **(response time to be defined in the SOP Manual but it must not be more than 15 (Fifteen minutes))**.
  - (iii) Poor performance of services, misbehavior or excess service charges by the Operator, duly verified by the nominated **“Performance Monitoring Committee”** as referred to in **Article 13.19**.
  - (iv) To extent allowed by law, filing by Operator of a petition in bankruptcy or for reorganization or for an arrangement pursuant to any federal or state bankruptcy law or any similar federal or state law, adjudication of Operator as a bankrupt or insolvent; assignment by Operator for the benefit of creditors; admission in writing by Operator of its inability to pay its debts generally as they become due; filing of a petition or answer proposing the adjudication of Operator as bankrupt or insolvent pursuant to any bankruptcy law or similar in any Court, and failure of Operator to discharge such petition or answer within **90 (Ninety) days** after the filing thereof;
  - (v) Appointment of a receiver, trustee or liquidator of the Operator, or of all or substantially all of the assets of the Operator, in any proceedings, and failure of the Operator to cause such appointment to be canceled or discharged within **90 (Ninety) days** after such appointment, if the appointment was not requested by the Operator.
- (b) Failure by the Operator to satisfy or postpone with respect to any final judgment against it within **20 (twenty) days** of entry of the judgment.

- (c) Attempt by the Operator to assign its rights or delegate its obligations in contravention of the terms of this Agreement, or execution by the Operator of a Sub-contract in violation of the terms of this Agreement;
- (d) Failure by the Operator to perform any component of the Services in a manner acceptable to the Employer in its reasonable discretion, or failure by the Operator to otherwise perform its obligations under this Agreement or to comply with any terms or provisions herein set forth or in the Operator of Services/TOR or **SOP Manual** as it may hereafter be amended, modified or supplemented from time to time.

## **10.2 Event of Default by the Employer:**

The failure of the Employer to make payments to the Operator at the times and in the amounts required by this Agreement shall constitute an event of default by the Employer under this Agreement (**which circumstances shall also be defined as an “Event of Default”**). In the Event of Default by the Employer, the Operator may terminate this Agreement by not less than **90(Ninety) days written notice to the Employer**.

## **10.3 Rights of Non-Defaulting Party upon Occurrence of Event of Default by the Operator:**

- (a) If the Operator commits an Event of Default hereunder, the Operator does not cure the Event of Default; and the parties are not able to resolve the dispute in the manner described in **Paragraph 10.4**, the Employer shall be entitle to exercise any or all of the following remedies, in addition to any or all other remedies or rights provided by law to which the Employer may resort, cumulatively or in the alternative, and in addition to such other rights and remedies elsewhere set forth in this Agreement:
  - (i) The Employer may terminate this Agreement and the Operator’s rights hereunder by giving the Operator notice of termination of **30 (thirty) days**. On the **30<sup>th</sup> (Thirtieth) day** following such termination notice, or on the date specified in such notice, if later, Operator’s rights hereunder shall terminate.
  - (ii) The Employer may terminate some but not all of the Operator’s rights hereunder by modifying the definition of Services to exclude there from those Services as to which the Even of Default has occurred. The Employer shall give the Operator notice of those Services to be terminated and, on the **30<sup>th</sup> (Thirtieth) day** following such termination notice, or on the date specified in such notice, if later, Operator’s obligation to perform thereof, shall terminate.

- (iii) If the Event of Default consists of a failure of the Operator to perform an obligation or duty in the manner or within the time required under the terms of this Agreement, the Employer may either perform such obligation or duty or retain another party to perform such obligation or duty, in either case offsetting the cost of such performance against the payments otherwise due by the Employer to the Operator under this Agreement.
- (iv) The Employer may collect from the Operator, or may offset against amounts due or to become due to the Operator under the provisions of this Agreement, all costs and expenses incurred by the Employer due to the occurrence of the Event of Default.

#### **10.4 Rights of Operator upon Occurrence of Event of Default by the Employer:**

Operator may terminate this Agreement by giving Authority a notice of **90 (Ninety) days**.

#### **10.5 RESOLUTION OF DISPUTES**

##### **Settlement of Disputes**

If any dispute or difference of any kind whatsoever arises between the Operator and the Owner/Employer in connection with or arising out the agreement or performance of the job whether during the progress of the job or after its completion or after its termination, abandonment or breach of the agreement, it shall in the first place be referred to:

- (a) The Dispute Resolution Committee composed of General Manager (Revenue) and General Manager (Finance) NHA and said notice/reference shall contain the cause of action, mentioning facts of the case and relief sought. The Dispute Resolution Committee shall decide the dispute within twenty eight (28) days of the receipt of such notice.
- (b) If the lessee is dissatisfied with the decision of the Dispute Resolution Committee or if the decision of the Dispute Committee is not forthcoming within the stipulated or extended period, the Lessee may within two (02) weeks from the receipt of the decision of the Dispute Resolution Committee or expiry of twenty eight (28) days' time refer the matter to a Member's Committee composed of Member (Administration) and Member (Finance) along with the cause of action, mentioning facts of the case and relief sought. The Member's Committee will act as sole Adjudicator and shall decide the matter within twenty eight (28) days from the date of submission.

- (c) The Lessee, if dissatisfied with the decision of the Adjudicator shall have the rights to serve Notice for Intension to commence arbitration within twenty eight (28) days of receipt of the Adjudicator's decision or within twenty eight (28) days after the expiry of the period stipulated herein above for decision of the Adjudicator in case fails to give decision. The Adjudicator shall take place at Islamabad under the Pakistan Arbitration act of 1940 as amended from time to time. The arbitration proceedings shall take place at Islamabad and shall be conducted in the English language. The Award of the Arbitrator shall be final and binding upon both the parties.

## **10.6 ARBITRATION**

- (a) Following the conclusion of arbitration proceedings, if either party believes the outcome of the arbitration was not fair and equitable, either party may file an action at law or equity to enforce, interpret or construe the provisions of this Agreement.

## **10.7 Cooperation:**

Each party shall diligently cooperate with the other in an effort to resolve disputes in the most fair and amicable manner possible, and shall perform such acts as may be necessary to obtain to prompt and expeditious resolution of the dispute. If either party refuses to diligently cooperate, and the other party, after first giving notice of its intent to rely on the provisions of this paragraph, incurs additional expenses or attorney's fee solely as a result of such failure to diligently cooperate, then the arbitrator court (**whichever is applicable**) may award such additional expenses and attorney's fees to the party giving such notice even if such party is not the prevailing party in the dispute.

## **10.8 Continuing Performance:**

Following the occurrence of any Event of Default or alleged Even of Default, and continuing during any dispute resolution proceedings, each party shall continue to perform its duties and obligations under this Agreement unless otherwise agreed or otherwise directed by a court of competent jurisdiction.

## **10.9 Corrupt or Fraudulent Practices:**

If the Operator has engaged in corrupt or fraudulent practices, in competing for or in executing the Agreement, the Employer may, after giving **14 (Fourteen) days** notice to the Operator, terminate the Agreement. For the purpose of this Sub-Clause:

**Corrupt Practice**" means the offering, giving, receiving or soliciting of anything or value to influence the action of a public official in the procurement process or in Contract execution.



**“Fraudulent Practice”** means a misrepresentation of facts in order to influence a procurement process or the execution of a Contract to the detriment of the Employer, and includes collusive practice among bidders **(prior to or after bid submission)** designed to establish bid prices at artificial non-competitive levels and to deprive the Employer of the benefits of free and open competition.

## **ARTICLE-XI**

### **OBLIGATION OF THE PARTIES UPON TERMINATION OR EXPIRATION OF THIS AGREEMENT**

#### **11.1 Obligations:**

Immediately upon expiration or termination of this Agreement, whether at the expiration of the Term or otherwise, the parties shall do the following:

- (a)** Promptly upon termination, the Operator shall submit to the Employer detailed information relating to each Sub-Operator and employee of the Operator performing work under this Agreement. This information shall be in sufficient detail so that

  - (i)** the Employer will have the ability to contact each Sub-Operator and employee;
  - (ii)** the Employer can easily determine the role or function of each in regard to the Operator's obligations hereunder; and
  - (iii)** if it so elects, the Employer may engage each Sub-Operator or employee on substantially the same terms as each had been contracted by the Operator.
- (b)** Within **10 (Ten) days** after the Operator's submission to the Employer of the information described in subparagraph **(a)** the Employer shall notify the Operator, in writing, of each Subcontract **(including vending contracts)** and employment agreement with respect to which the Employer has or intends to exercise its right to succeed the Operator.
- (c)** Within **15 (Fifteen) days** after the Operator's submission to the Employer of the information described in subparagraph **(a)**, the Operator shall cancel or terminate all Subcontracts and employment agreements except those specified in the notice from the Employer to the Operator as being agreements that it intends to assume.
- (d)** The Operator shall use its best efforts to cancel or minimize any outstanding Subcontracts and employment commitments or liabilities and claims, arising out of the commitments or agreements to be cancelled. The Operator shall provide the Employer with an opportunity to review and approve all settlements contemplated with respect to any Subcontract or employee commitment or agreement, so that the Employer will have **(if it so elects)** a meaningful opportunity to assume outstanding Subcontracts and employee commitments or

Agreements, any settlement shall be subject to approval by the employer.

**11.2 Assignment:**

The Operator shall incorporate a provision in all Sub-contracts that provide for assignment to the employer **(at the Employer's election)**, as more particularly required by **Paragraph 6.2** of this Agreement. Notwithstanding the incorporation of such provisions, at the request of the employer, the Operator shall notify the Sub-operator of its consent to the assignment of the Sub-contract and execute and instrument assigning to the Employer in writing all of the Operator's rights, title and interest under any Subcontracts that the employer desires to assume. At the sole discretion of Employer, the employer may settle all claims arising out of the cancellation of the Subcontracts.

**11.3 Completion of the Services:**

If the Operator commits an event of default hereunder the Employer may appropriate or use any or all facilities and equipment being used by the Operator for the performance of the Services on the **"Risk"** and **"Cost of the Operator"** and may enter into an agreement with others for the performance of the Services under the Agreement or may use other methods which in the opinion of the employer, are required for the performance of the Services in an acceptable manner.

## **ARTICLE-XII**

### **REPRESENTATION OF PARTIES**

#### **12.1 Status of the Operator:**

The Operator represents to the Employer that it is an organization duly created under the laws of **Pakistan** and qualified to transact business in **Pakistan** and that it possess all permits necessary under applicable laws to authorize it to perform the Services.

## **ARTICLE-XIII**

### **MISCELLANEOUS PROVISIONS**

#### **13.1 Waiver:**

This Agreement may not be amended, modified, altered, or changed in any respect whatsoever, except by a further agreement in writing duly executed by the parties hereto. No failure by either party to insist upon the strict performance of any covenant, duty, agreement or condition set forth in this Agreement or to exercise any right or remedy upon a breach thereof shall constitute a waiver of any such breach or of such or any other covenant, agreement, term or condition. Any party hereto, by notice, may, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other parties hereto. No waiver shall affect or alter this Agreement shall continue in full force and effect with respect to any other then-existing or subsequent breach thereof.

#### **13.2 Successors and Assigns:**

This Agreement shall be binding upon and inure to the benefit of Employer and its successors, permitted, assigns and legal representatives, and shall be binding upon and inure to the benefit of Operator and its permitted successor, assigns and legal representatives. In the event of any assignment of this Agreement in whole or in part by Employer, the term “**Employer**” as used in this Agreement shall be deemed to mean the assignee of Employer, and as such, the assignee shall have all rights accorded to Employer.

#### **13.3 Time is Essence:**

Time is of the essence of this Agreement and of the covenants herein set forth.

#### **13.4 Designation of Representatives; Cooperation with Representatives:**

- (a) The Employer and the Operator shall each designate an individual (**or individuals**) who shall be authorized to make decisions and bind the parties on matters relating to the effectuation of this Agreement and the operations and maintenance required hereunder. The designated individuals shall not have the right to make decisions inconsistent with the Agreement, or make amendments thereto or take any action or make any decisions that are not allowed under applicable law. Designation of representatives may be changed by a subsequent writing delivered to the other party. The parties may also designate technical representatives who shall be authorized to investigate and report on matters relating to the Services and negotiate on behalf of each of the parties but who are not authorized to bind the Employer or the Operator. Such representatives shall attend any settlement conference conducted in accordance with this Agreement.

- (b) The Operator shall cooperate with the Employer and all representatives of the Employer. The Operator shall provide such data, reports, certifications, and other documents or assistance reasonably requested by the Employer. The provision of such information shall not in any manner diminish the Operator's rights or obligation under any other provision hereof.

**13.5 Gratuities:**

Neither the Operator nor any of its employees, agents and representatives shall offer or give to an officer, official or employee of the Employer gifts, entertainment, payments, loans or other gratuities. Each of the employees and officer of the Operator and any Sub-Operators shall be obligated to pay the standard rate of all applicable tolls for use of the Roadways.

**13.6 Conflict of Interest:**

During the Term and for a period of contract thereafter, no board member, officers or employee of the Employer during his or her tenure shall have any direct interest in this Agreement or any direct or material benefit arising there from.

**13.7 Survival:**

The dispute resolution provisions set forth in **Article-X**, and all other provisions which, by their inherent character, sense and context are intended to survive the termination of this Agreement, shall survive the termination of this Agreement.

**13.8 Limitation of Third Party Beneficiaries:**

This Agreement shall not create any third party beneficiary hereunder, other than the Indemnified Parties, or authorize anyone not a party hereto to maintain a suit for personal injury or property damage pursuant to the terms or provisions hereof.

**13.9 Permits, License, etc:**

Throughout the terms, the Operator shall procure and maintain, at its sole expense, all permits and licenses that may be required in connection with the performance of services by the Operator, shall pay all charges, fees and Texas, and shall give all notices necessary and incidental to the due and lawful prosecution of the services, copies of required permits and licenses shall be furnished to the Employer upon request.

**13.10 Governing Law:**

This Agreement shall be governed by and constructed in accordance with the law of the Islamic Republic of Pakistan.

**13.11 Notice and Communications:**

- (a) All notices required or permitted by law or by this Agreement to be given to the Employer/Employer’s Representative or the Operator shall be in writing and may be given by either personal delivery or by registered by or by recognized overnight courier service. Notices shall be sent to the parties at the addresses set forth below or at such other addresses, as the parties shall designate to each other from time in writing.

All correspondence with the Operator shall be sent to or as otherwise directed by the Operator the address for such communication shall be:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

All communication to the **Employer** shall be sent to **Employer’s Representative** at the address set forth as follows:

**General Manager (Revenue)**  
**National Highway Authority,**

- (b) Any notice or demand given, delivered or made by mail shall be deemed so give, delivered or made on the date of actual receipt. Notice sent by overnight courier service shall be deemed effective.

On the first business day after deposited with such services, with the fee paid in advance, Any notice demand or document that is personally delivered shall be deemed to be delivered upon receipt by the party to whom the same is given, delivered or made. Notices given by facsimile or telecopy shall not be deemed effective for purposes of this Agreement.

**13.12 Interpretation:**

- (a) For purposes of this Agreement, the singular includes the plural and the plural shall include the singular. Reference to statutes or regulations include all statutory or regulatory provisions consolidating, amending or replacing the stature or regulation referred to. Words not otherwise defined that have well-known

technical or industry meanings, are used in accordance with such recognized meanings. References to persons include their respective permitted successors and assigns and, in the case of governmental persons, persons succeeding to their respective functions and capacities.

- (b) If the Operator discover material discrepancy, deficiency, ambiguity, error or omission in this Agreement, or is otherwise in doubt as to the meaning of any provision of this Agreement, the Operator may immediately notify the Employer and request clarification of the Employer's interpretation of this Agreement.

### **13.13 Severability:**

The invalidity or enforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and the balance hereof shall be construed and enforced as if this Agreement did not contain such invalid or unenforceable portion or provision.

### **13.14 Computation of Periods:**

Reference to "**days**" contained herein shall mean calendar days unless otherwise specified; herein (**including the last date for performance or provision of notice "within" a specified time period**) falls on a Sunday or legal holidays, such act or notice may be timely performed on the next succeeding day that is not a Sunday or legal holiday. Notwithstanding the foregoing, requirements relating to emergencies and other requirements for which it is clear that the intent is to require performance on a non-business day, shall be required to be performed as specified, even though the date in question may fall on a weekend or legal holiday.

### **13.15 Headings:**

The options of the sections of this Agreement are for convenience only and shall not be deemed part of this Agreement or considered in construing this Agreement.

### **13.16 Compliance with Laws:**

The Operator shall keep fully informed regarding, and shall full and timely comply with, all laws, ordinance and regulations and all orders and decrees of bodies or tribunals having any jurisdiction or authority that may affect those engaged or employed in the performance of this Agreement. The Operator shall observe all rules and regulations of health officials. The Operator shall not require any worker to work in surroundings or conditions that are unsanitary, hazardous or dangerous to his or her health or safety.



**13.17 Audits, Inspections and Testing:**

The Operator shall permit **(at all reasonable times)** audits, inspections and testing of Emergency Call System desired by the Employer. Such audit, inspections and testing shall not relieve the Operator of any of its obligations under this Agreement.

**13.18 Entire Agreement:**

This Agreement , including the Appendix attached hereto, together with the **TOR**, proposal as accepted by the Employer plus its technical and financial contents on the basis of which Operator was selected plus agreements and commitments during negotiations and **SOP Manual**, constitutes the entire and integrated agreement between the parties hereto and super cedes and nullifies all prior and contemporaneous negotiations, representation, understandings and agreements, whether written or oral, with respect to the subject matter hereof.

**13.19 Performance Monitoring Committee:**

The **Member (Finance)** will nominate a **Performance Monitoring Committee** to monitor the performance of the Operator and to check the public complaints against the Operator.

## **ARTICLE-XIV**

### **MODIFICATION OF THIS AGREEMENT WITH MUTUAL CONSULTATION**

If the Operator advises the Employer or vice-versa, that any amendments. Modifications or revisions to this Agreement are necessary or desirable to satisfy requirements, the Employer and the Operator shall promptly satisfy requirements, the Employer and the Operator shall promptly consult as to any mutually acceptable action necessary or desirable under the circumstances and negotiate in good faith with a view toward amending, modifying and revising this Agreement in a mutually satisfactory manner.

## **ARTICLE – XV**

### **PENALTIES**

- i. The OMC shall provide an undertaking along with each month IPC, ensuring the release of salaries to staff by 5<sup>th</sup> of each month.
- ii. Hiring and de-hiring of staff strictly be in accordance with provisions of contract (Article-I~XI). In case of any violation salary of the concerned staff shall be withheld.
- iii. In case of violation to the TOR & and conditions of contract (Article-I~XIV), penalty of Rs. 20,000/- shall be imposed per occurrence and a black dot shall be recorded of every successive occurrence.

**SECTION-V**  
**SAMPLE FORMS**  
**&**  
**ANNEXURES/APPENDICES**

**FORM OF ENVELOPE LABEL**

**ORIGINAL BID + 01 COPY**

**WARNING:** DO NOT OPEN BEFORE: \_\_\_\_\_

Contract Title: \_\_\_\_\_

Package: \_\_\_\_\_

Bid Opening Date: \_\_\_\_\_

**To:**

**General Manager (Revenue)**  
**National Highway Authority**  
**27-Mauve Area, G-9/1, Islamabad**

**From:**

Name of Bidder: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

**CONTRACT AGREEMENT  
BETWEEN  
NATIONAL HIGHWAY AUTHORITY (NHA)  
AND  
M/s.....  
FOR  
PROVISION, OPERATION AND MANAGEMENT OF  
MOBILE WORKSHOPS AND RECOVERY VEHICLE ON IMDCW (N-75)**

**Contract No. ....**

**This AGREEMENT (hereinafter, together with the Articles** and all the documents annexed hereto forming and integral part thereof, called **“the Agreement”**) **made this.....day of .....in year .....** between the National Highway Authority, Ministry of Communications, Government of Pakistan, Islamabad. Represented for the purposes of these presets by Chairman, National Highway Authority his assignees, representatives or his successors hereinafter called **“the Employer”** of the one part and M/s.....**Pakistan**, hereinafter called **the OMC/Operator”** of the other part.

**Notwithstanding** such association, the OMC/Operator will be represented hereunder at all times, by **M/s.....**, which will retain full and undivided responsibility for the performance of obligations and the satisfactory completion of the services to be performed for the Operation and Management of Mobile Workshops Contract No.\_\_\_\_\_.

**WHEREAS** the Employer is desirous that Services be rendered for the following project:

**“Provision, Operation and Management of Mobile Workshops and Recovery Vehicle on IMDCW (N-75) Contract No. ....”**

Now therefore the Employer and the OMC/Operator agree as under:

The OMC/Operator agrees to provide brand new Hyundai Shahzor \_\_\_\_\_vehicles/workshops or any equivalent vehicle having same engine power or above and ensure that none of the vehicle will be CNG Operated.

OMC/Operator will provide crew comprising Driver, Electrician & Mechanic in uniform for each shift of the Mobile Workshops along Motorways ( M-4 Extension) & IMDCW (N-75). The OMC/Operator will responsible to ensure availability of Workshop all the time during the currency of the Contract.

The OMC/Operator agrees to bear all the expenses for the fuel, oils, spares and maintenance of the Workshops deployed for O&M services on Motorways ( M-4 Extension) as per terms of reference and Conditions of contract.

The uniforms and living accommodation (for living of contractor’s employees) will be the responsibility of the OMC/Operator.

Whereas, the contract is signed with the effective commencement date for services provided from the date of commencement for the said period as mentioned in the Article I to Article XIV. The Employer is desirous that services be rendered for **“Provision, Operation & Management of Mobile workshops and Recover Vehicle**

on **IMDCW (N-75)**” at the agreed Lump Sum amount per month per package of **Rs.**\_\_\_\_\_ /- (for a period ending 30th June 2020 from the date of commencement.

And whereas, the agreement consists of following documents construed in order of priority.

- Contract Agreement
- Letter of Invitation
- Letter of Acceptance
- Term of Reference (TOR) between the OMC/Operator and Employer (NHA)
- Financial & Bid Forms
- Articles I to XIV
- Addendum (if any)
- Appendices (if any)
- Any other documents forming part of Contract.

**IN WITNESS** whereof parties have executed this Agreement as of the day and year first above written.

For and on behalf of  
National Highway Authority  
**Islamabad**  
(EMPLOYER)

For and on behalf of  
M/s\_\_\_\_\_  
(OMC/OPERATOR)

Witness:  
\_\_\_\_\_  
\_\_\_\_\_

Witness:  
\_\_\_\_\_  
\_\_\_\_\_

FORM OF PERFORMANCE SECURITY  
(Bank Guarantee)

Guarantee No. \_\_\_\_\_

Executed on \_\_\_\_\_

Expiry date \_\_\_\_\_

[Letter by the Guarantor to the Employer]

Name of Guarantor (Bank) with address: \_\_\_\_\_

(Scheduled Bank in Pakistan)

Name of Principal (Contractor) with address: \_\_\_\_\_

Penal Sum of Security (express in words and figures) \_\_\_\_\_

Letter of Acceptance No. \_\_\_\_\_ Dated \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, that in pursuance of the terms of the Bidding Documents and above said Letter of Acceptance (hereinafter called the Documents) and at the request of the said Principal we, the Guarantor above named, are held and firmly bound unto the \_\_\_\_\_ (hereinafter called the Employer) in the penal sum of the amount stated above for the payment of which sum well and truly to be made to the said Employer, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal has accepted the Employer's above said Letter of Acceptance for \_\_\_\_\_ (Name of Contract) for the \_\_\_\_\_ (Name of Project).

NOW THEREFORE, if the Principal (Contractor) shall well and truly perform and fulfill all the undertakings, covenants, terms and conditions of the said Documents during the original terms of the said Documents and any extensions thereof that may be granted by the Employer, with or without notice to the Guarantor, which notice is, hereby, waived and shall also well and truly perform and fulfill all the undertakings, covenants terms and conditions of the Contract and of any and all modifications of said Documents that may hereafter be made, notice of which modifications to the Guarantor being hereby waived, then, this obligation to be void; otherwise to remain in full force and virtue till 84 days after the date of expiry of contract.

Our total liability under this Guarantee is limited to the sum stated above and it is a condition of any liability attaching to us under this Guarantee that the claim for payment in writing shall be received by us within the validity period of this Guarantee, failing which we shall be discharged of our liability, if any, under this Guarantee.

We, \_\_\_\_\_ (the Guarantor), waiving all objections and defenses under the Contract, do hereby irrevocably and independently guarantee to pay to the Employer without delay upon the Employer's first written demand without cavil or arguments and without requiring the Employer to prove or to show grounds or reasons for such demand any sum or sums up to the amount stated above, against the Employer's written declaration that the Principal has refused or failed to perform the obligations under the Contract which payment will be effected by the Guarantor to Employer's designated Bank & Account Number.

PROVIDED ALSO THAT the Employer shall be the sole and final judge for deciding whether the Principal (Contractor) has duly performed his obligations under the Contract or has defaulted in fulfilling said obligations and the Guarantor shall pay without objection any sum or sums up to the amount stated above upon first written demand from the Employer forthwith and without any reference to the Principal or any other person.

IN WITNESS WHEREOF, the above-bounden Guarantor has executed this Instrument under its seal on the date indicated above, the name and corporate seal of the Guarantor being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

\_\_\_\_\_  
Guarantor (Bank)

Witness:

1. \_\_\_\_\_  
\_\_\_\_\_  
Corporate Secretary (Seal)

Signature \_\_\_\_\_  
Name \_\_\_\_\_

Title \_\_\_\_\_

2. \_\_\_\_\_  
\_\_\_\_\_  
**Name, Title & Address**

\_\_\_\_\_  
**Corporate Guarantor (Seal)**



**(INTEGRITY PACT)**

DECLARATION OF FEES, COMMISSION AND BROKERAGE ETC.  
PAYABLE BY THE SUPPLIERS OF GOODS, SERVICES & WORKS IN  
CONTRACTS WORTH RS. 10.00 MILLION OR MORE

Contract No. \_\_\_\_\_ Dated \_\_\_\_\_  
Contract Value: \_\_\_\_\_  
Contract Title: \_\_\_\_\_

..... [name of Operator] hereby declares that it has not obtained or induced the procurement of any contract, right, interest, privilege or other obligation or benefit from Government of Pakistan (GoP) or any administrative subdivision or agency thereof or any other entity owned or controlled by GoP through any corrupt business practice.

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

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

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

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

Name of Operator /Contractor: ..... **[Seal]**

Signature: .....



**SECTION – VI**

**FINANCIAL PROPOSAL FORM**  
**&**  
**BID FORM**

Form 1B

**PROVISION, OPERATION & MANAGEMENT OF MOBILE WORKSHOPS AND  
RECOVERY VEHICLES FOR IMDCW PACKAGE NO. MW-(N75)**

**BREAKDOWN OF SALARY RATES FOR STAFF**

Sr. No.	POSITION	BASIC SALARY PER CAL. MONTH (1)	SOCIAL CHARGES (%AGE OF 1) (2)	OVERHEAD/ PROFIT PER PERSON (3)	FEE/ ALLOWANCE (%AGE OF 1) (4)	Monthly Billing Rate (1+2+3+4) (5)	Remarks
<b>Mobile Workshops</b>							
1	Driver						
2	Auto Mechanic cum Electrician						
<b>Recovery Vehicles</b>							
3	Recovery operator/ Driver						
4	Auto Mechanic cum Electrician						

**Notes:**

**Item No.1:** Basic salary shall include actual gross salary before deduction of taxes.

**Item No.2:** Social Charges shall include Operator's contribution to social security, paid vacation, average sick leave and other standard benefits paid by the company to the employee as required by labor laws.

**Item No.3:** Overhead shall include general administration cost, rent, clerical and security professional staff and business getting expenses, mobilization & demobilization costs etc.

**PROVISION, OPERATION & MANAGEMENT OF MOBILE WORKSHOPS AND  
RECOVERY VEHICLES FOR IMDCW PACKAGE NO. MW-(N75)**

**Bill No. 1 (SALARY COSTS/REMUNERATION OF STAFF)**

<b>Sr. No</b>	<b>Position</b>	<b>Number of Staff for 3x shifts</b>	<b>Total Number of Staff for 3x shifts</b>	<b>Monthly Billing Rate per Employee Rs.</b>	<b>Total Staff Amount Per Month Rs.</b>
<b>For 3x Mobile Workshops</b>					
1	Driver	3	9		
2	Auto Mechanic cum Electrician	3	9		
<b>Total Salary Cost Per Month for three Shifts (Workshops) Rs.</b>					
<b>For 2x Recovery Vehicles</b>					
3	Recovery operator / Driver	3	6		
4	Auto Mechanic cum Electrician	3	6		
<b>Total Salary Cost Per Month for three Shifts (Recover Vehicles) Rs.</b>					

**PROVISION, OPERATION & MANAGEMENT OF MOBILE WORKSHOPS AND RECOVERY VEHICLES FOR IMDCW PACKAGE NO. MW-(N75)**

**Bill No. 2 DIRECT (NON-SALARY) EXPENDITURES PER MONTH**

<b>S. No.</b>	<b>HEAD</b>	<b>Mobile Workshop (Rs)</b>	<b>Recovery Vehicle (Rs)</b>
1.	Utilities Charges (Gas, Water, Communication, Electricity etc).		
2.	Cost/ Rental of Furniture/Furnishings.		
3.	Cost of Office/Other Equipment & Office supplies: i. Computers and Accessories. ii. Photocopy Machines. iii. Transport Vehicles/ Rentals (including POL & Maintenance).		
4.	Advisory Services and other similar Costs, if any		
5.	<u>Insurances/Medical</u> a) Third party & other insurances as required. b) Medical/ Hospitalization, accident and travel insurance policy costs for Staff.		
6.	Cost of Bonds and Securities (if any)		
7.	Taxes (all) as per Government of Pakistan Laws.		
<b>Total Cost per Month (Rs)</b>			

**PROVISION, OPERATION & MANAGEMENT OF MOBILE WORKSHOPS AND RECOVERY VEHICLES FOR IMDCW PACKAGE NO. MW-(N75)**

**SUMMARY OF COST OF OMC**

*(All costs on monthly basis)*

<b>Sr. No</b>	<b>Description</b>	<b>Mobile Workshop (Rs) Col-1</b>	<b>Recovery Vehicle (Rs) Col-2</b>	<b>Remarks</b>
1.	Salary Cost/Remuneration			Based on Bill No. 1 (Form 2B)
2.	Direct (Non-Salary) Cost			Based on Bill No. 2 (Form 3B)
3.	OMC Overhead and Profit			
4.	Any other cost associated with Scope of Work but not mentioned above. (Please explain if used)			
7.	Sub total cost per Month			
<b>Total Cost per Month (Rs) Col-1 + Col-2</b>				
<b>Total Cost per Month in Figures</b>				

**BID FORM FOR PROVISION, OPERATION AND MANAGEMENT OF MOBILE WORKSHOPS AND RECOVERY VEHICLES ON (IMDCW) N-75**

General Manager (Revenue)  
National Highway Authority-HQ  
27 Mauve area G-9/1,  
Islamabad, Pakistan.  
Phone: +92-51-9260190, Fax: +92-51-9261116

1. Having examined the bidding documents including Addenda Nos. *[insert numbers]*, the receipt of which is hereby duly acknowledged, we, the undersigned, offer to provision, Operation and Management of Mobile workshops and recovery Vehicles on (IMDCW) N-75 (**Package No. MW-N75**) in conformity with the said bidding documents as per following:

**Rate Quoted by OMC per month per package (in Figures/ Words):**

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2. As a security for due performance of the undertaking and obligations of this bid, we submit herewith a Bid Security in the amount of **Rs. 500,000/-** drawn in your favor or made payable to you and valid for a period for twenty eight (28) days beyond the period of validity of Bid.
3. We undertake, if our Bid is accepted, to provide the services in accordance with terms and conditions as specified in the bidding documents.
4. If our Bid is accepted, we will promptly submit the Performance Security for the due performance of the Contract, in the amount and form as prescribed by the Employer in bidding documents.
5. We agree to remain committed to this Bid for a period of One Hundred and Fifty (150) days from the date fixed for Bid opening under Clause-3 of the IFB and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
6. Until a formal Contract is prepared and executed, this Bid, together with your written acceptance thereof and your notification of award shall constitute a binding Contract between us.

**Signature & Stamp of Bidder**

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**NHA**

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**OMC**



7. We understand that you are not bound to accept the lowest or any bid you may receive.
8. We do hereby declare that the Bid is made without any collusion, comparison of figures or arrangement with any other persons making a Bid for the Services.
9. We confirm, if our Bid is accepted, that all partners of the joint venture will be liable jointly and severally for the execution of the Contract and the composition or the constitution of the joint venture shall not be altered without the prior consent of the Employer.

**Name of Bidder** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Stamp:** \_\_\_\_\_