

IN MEMORY OF SHAHEED MOHTARMA BENAZIR BHUTTO

  
**SINDH MODARABA**

*Tender Document*

*Supply & Installation of Server Machines*

*For Sindh Modaraba*

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## DEFINITIONS

“**Bid**” means a tender, or an offer by a person, consultant, firm, company or an organization expressing willingness to undertake a specified task at a price, in response to an invitation by SMML.

“**Bid with Lowest Evaluated Cost**” means the bid quoting lowest cost amongst all those bids evaluated to be substantially responsive;

“**Bidder**” means a person or entity submitting a bid;

“**Bidding Documents**” means all documents provided to the interested bidders to facilitate them in preparation of their bids in uniform manner;

“**Bidding Process**” means the procurement procedure under which sealed bids are invited, received, opened, examined and evaluated for the purpose of awarding a contract;

“**Blacklisting**” means barring a bidder, contractor, consultant or supplier from participating in any future procurement proceedings.

“**Calendar Days**” means days including all holidays;

“**Conflict of Interest**” means -

- (i) Where a contractor, supplier or consultant provides, or could provide, or could be perceived as providing biased professional advice to SMML to obtain an undue benefit for himself or those affiliated with him;
- (ii) Receiving or giving any remuneration directly or indirectly in connection with the assignment except as provided in the contract;
- (iii) Any engagement in consulting or other procurement activities of a contractor, consultant or service provider that conflicts with his role or relationship with the SMML under the contract;
- (iv) Where an official of the SMML engaged in the procurement process has a financial or economic interest in the outcome of the process of procurement, in a direct or an indirect manner;

“**Consultant**” means a professional who can study, design, organize, evaluate and manage projects or assess, evaluate and provide specialist advice or give technical assistance for making or drafting policies, institutional reforms and includes private entities, consulting firms, legal advisors, engineering firms, construction managers, management firms, procurement agents, inspection agents, auditors, international and multinational organizations, investment and merchant banks, universities, research institutions, government agencies, nongovernmental organizations, and individuals;

“**Consulting Services**” means services of an advisory and intellectual nature provided by consultants using their professional skills to study, design, organize, and manage projects, encompassing multiple activities and disciplines, including the crafting of sector policies and institutional reforms, specialist advice, legal advice and integrated solutions, change management and financial advisory services, planning and engineering studies, and architectural design services, supervision, social and environmental assessments, technical assistance, and programme implementation;

“**Contract**” means an agreement enforceable by law and includes General and Special Conditions, Specifications, Drawings and Bill of Quantities;

“**Contractor**” means a person, firm, company or organization that undertakes to execute works including services related thereto, other than consulting services, incidental to or required for the contract being undertaken for the works;

“**Corrupt and Fraudulent Practices**” means either one or any combination of the practices given below;

**“Coercive Practice”** means any impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence the actions of a party to achieve a wrongful gain or to cause a wrongful loss to another party;

**“Collusive Practice”** means any arrangement between two or more parties to the procurement process or contract execution, designed to achieve with or without the knowledge of the SMML to establish prices at artificial, non competitive levels for any wrongful gain;

**“Corrupt Practice”** means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the acts of another party for wrongful gain;

**“Fraudulent Practice”** means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;

**“Obstructive Practice”** means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in a procurement process, or affect the execution of a contract or deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements before investigators in order to materially impede an investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or acts intended to materially impede the exercise of inspection and audit rights provided for under the Rules.

**“Emergency”** means natural calamities, disasters, accidents, war and breakdown of operational equipment, plant, machinery or engineering infrastructures, which may give rise to abnormal situation requiring prompt and immediate action to limit or avoid damage to person(s), property or the environment;

**“Goods”** means articles and object of every kind and description including raw materials, drugs and medicines, products, equipments, machinery, spares and commodities in any form, including solid, liquid and gaseous form, and includes services identical to installation, transport, maintenance and similar obligations related to the supply of goods, if the value of these services does not exceed the value of such goods;

**“Government”** means the Government of Sindh;

**“Head of the Department”** means the administrative head of the department or the organization;

**“Lowest Evaluated Bid”** means a bid for goods, works and services having the lowest evaluated cost among the substantially responsive bids

**“Lowest Submitted Price”** means the lowest price quoted in a bid, which is otherwise not substantially responsive;

**“Mis-procurement”** means public procurement in contravention of any provision of Sindh Public Procurement Act, 2010, any rule, regulation, order or instruction made there under or any other law in respect thereof, or relating to, public procurement;

**“Notice Inviting Tender”** means the notice issued by a SMML through publication in the newspapers or through electronic means for the purpose of inviting bids, or applications for pre-qualifications, or expression of interests, which may include Tender Notice, Invitation for Bids, Notice for Pre-qualifications or Request for Expression of Interests;

**“Open Competitive Bidding”** means a fair and transparent specified procedure defined under these Rules, advertised in the prescribed manner, leading to the award of a contract whereby all interested persons, firms, companies or organizations may bid for the contract and includes both National and International Competitive Biddings;

**“SMML”** means the Sindh Modaraba Management Limited;

**“SM”** means the Sindh Modaraba;

**“Services”** means any object of procurement other than goods or works, and includes consultancy services;

**“Substantially Responsive Bid”** means the bid that contains no material differences or deviations from, or reservations to, the terms, conditions and specifications given in the bidding documents;

**“Supplier”** means a person, firm, company or an organization that undertakes to supply goods and services related thereto, other than consulting services, required for the contract;

**“Value for Money”** means best returns for each rupee spent in terms of quality, timeliness, reliability, after sales service, up-grade ability, price, source, and the combination of whole-life cost and quality to meet SMML’s requirements.

# 1 INVITATION FOR BIDS (IFB)

Sindh Modaraba Management Limited (SMML) invites proposal from the vendor for supply and Installation of Server machines for Sindh Modaraba. More details of the specifications of related services to be provided are given in the scope of service in Section [3] hereto.

**Sindh Modaraba Management Limited (SMML), 100% owned by Government of Sindh, invites proposals for supply & installation of SERVER MACHINES for Sindh Modaraba.** Sindh Modaraba is floated and managed by Sindh Modaraba Management Ltd, having registered office at 1<sup>st</sup> Floor, Imperial Court, Dr. Ziauddin Ahmed Road Karachi. The Modaraba is listed on the Karachi Stock Exchange

Bidder will be selected under procedure described in this Tender Document (TD), in accordance with the Sindh Public Procurement Rules 2010 issued there under (“SPPRA”) which can be found at [www.pprasindh.gov.pk/](http://www.pprasindh.gov.pk/). For the purposes of this document, the any reference to the term “Act” shall mean a reference to the Sindh Public Procurement Act 2009 and any reference to the Rules shall mean a reference to the Sindh Public Procurement Rules 2010.

(SPPRA) which can be found at [www.pprasindh.gov.pk/](http://www.pprasindh.gov.pk/)

This TD includes the following Sections:

- Instructions to Bidders (ITB)
- Eligibility Criteria
- Technical Proposal
- Financial Proposal
- Conditions of Contract

Proposals must be submitted at the below mentioned address;

Yours sincerely,

## **SINDH MODARABA MANAGEMENT LIMITED.**

Head Office  
1<sup>ST</sup> Floor, Imperial Court,  
Dr. Ziauddin Road,  
Karachi 75600

## 2 INSTRUCTION TO BIDDERS (ITB)

### 2.1 Correspondence Address

The contact number and the correspondence address for submitting the proposals are as follow:

Admin Department  
SINDH MODARABA MANAGEMENT LIMITED.  
Head Office  
1<sup>ST</sup> Floor, Imperial Court,  
Dr. Ziauddin Road,  
Karachi 75600  
Tel: 021-35640708 - 9

### 2.2 Eligible Bidders

All the bidders duly incorporated and based in Pakistan governed by rules, laws and statutes of Government of Pakistan and Government of Sindh shall be eligible. [SPPRA Rule 29]

### 2.3 Corrupt Practice

1. SMML requires that Bidders / Suppliers / Contractors, observe the highest standard of ethics during the procurement and execution of contract and refrain from undertaking or participating in any corrupt or fraudulent practices. [SPPRA Rule 2 (q – iii, iv)]
2. SMML will reject a proposal for award, if it determines that the Bidder recommended for award was engaged in any corrupt or has been blacklisted under the Sindh Public Procurement Rules 2010, in competing for the contract in question.
3. Any false information or misstatement on the part of the vendor will lead to disqualification/ blacklisting/ legal proceeding regardless of the price or quality of the product.

### 2.4 Preparation of Bids

#### 2.4.1 Bidding Process

This is the Single Stage – One Envelope Procedure; a bid shall comprise a single package containing Eligibility Criteria (duly filled in all respect) and FINANCIAL PROPOSAL. [SPPRA Rule 46 (1-a&b)]

#### 2.4.2 Cost of Bidding

The bidder shall bear all costs associated with the preparation and submission of its bid and SMML will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.

#### 2.4.3 Language of Bid

The bid prepared by the bidders as well as all correspondence and documents exchanged by the bidder and SMML must be written in English. [SPPRA Rule 6 (1)]

#### 2.4.4 Technical Proposal

Bidders are required to submit the Technical Proposal along with the specification asked in the section Scope of Work with brief description of the bidder's organization outlining their recent experience, the names of Sub-Bidder/Professional Staff who participates during the assignment, the technical approach, sample templates/prototypes of deliverables, methodology, work plan, organization and staff, including workable suggestions that could improve the quality and effectiveness of the assignment. The Technical proposal shall be duly signed by the authorized representative of the Bidder not including any financial information otherwise it will be declared as non responsive.



#### **2.4.5 Financial Proposal**

The Financial Proposal shall be prepared using the standard form attached, duly signed by the authorized representative of the Bidder. Adding of any condition on the said format will not be taken into consideration.

#### **2.4.6 Bid Currencies**

For the purpose of comparison of bids quoted in different currencies, price shall be converted in PAK RUPEE (PKR). The rate of exchange shall be the selling rate prevailing seven working days before the date of opening of the bids. [SPPRA Rule 42 (2)]

#### **2.4.7 Bid Security**

The SMML shall require the bidders to furnish the Earnest Money @ 5% of Bidding Cost or Irrevocable Bank Guarantee, in favor of Sindh Modaraba, acceptable to the bank, which shall remain valid for a period of twenty eight (28) days beyond the validity period for bids, in order to provide the SMML reasonable time to act, if the security is to be called. [SPPRA Rule 37(1)]

Bid Security should be attached with Financial Proposal.

Any Bid not accompanied by an acceptable Bid Security shall be rejected by the SMML as non – responsive.

Bid security shall be released to the unsuccessful bidders once the contract will be signed with the successful bidder or the validity period has expired. [SPPRA Rule 37(2)]

The bid security shall be forfeited:

- If a Bidder withdraws its bid during the period of its validity specified by the Bidder on the Bid Form; or
- In the case of a successful Bidder, if the Bidder fails to;
  - Sign the contract in accordance with ITB Section [2.7.4]; or
  - Furnish performance security in accordance with ITB Section [2.7.5].

#### **2.4.8 Bid Validity**

Bids shall remain valid for a period of ninety (90) days, after the date of bid opening prescribed by SMML; [SPPRA Rule 38 (1)]

Whenever an extension of bid validity period is requested, a bidder shall have the right to refuse to grant such an extension and withdraw his bid and bid security shall be returned forthwith; and [SPPRA Rule 38 (6)]

Bidders who agree to extension of the bid validity period shall also extend validity of the bid security for the agreed extended period of the bid validity. [SPPRA Rule 38 (7-a)]

### **2.5 Submission of Bids**

#### **2.5.1 Sealing and Marking of Bids**

This is the Single Stage – One Envelope Procedure; a bid shall comprise a single package containing Eligibility Criteria (duly filled in all respect) and FINANCIAL PROPOSAL. [SPPRA Rule 46 (1-a&b)]

#### **2.5.2 Response Time**

Bidders are required to submit their Bids within fifteen (15) calendar days from the date of publication of Notice Inviting Tender as per National Competitive Bidding. Bids must be received by SMML at the address specified under ITB Section [2.1] within office hours. [SPPRA Rule 18 (2)]

#### **2.5.3 Extension of Time Period for Submission of Bids**

SMML may extend the deadline for submission of bids only, if one or all of the following conditions exist;

- Fewer than three bids have been submitted and SMML is unanimous in its view that wider competition can be ensured by extending the deadline. In such case, the bids submitted shall be returned to the Bidders unopened; [SPPRA Rule 22 (1)]
- If the SMML is convinced that such extraordinary circumstances have arisen owing to law and order situation or a natural calamity that the deadline should be extended. [SPPRA Rule 22 (2)]

#### **2.5.4 Clarification of Bidding Documents**

An interested bidder, who has obtained bidding documents, may request for clarification of contents of the bidding document in writing, and SMML shall respond to such queries in writing within three calendar days, provided they are received at least five (5) calendar days prior to the date of opening of bid. [SPPRA Rule 23 (1)]

It should be noted that any clarification to any query by a bidder shall also be communicated to all parties, who have obtained bidding documents.

#### **2.5.5 Late Bids**

Any bid received by SMML after the deadline for submission of bids prescribed by SMML pursuant to ITB Section [2.5.2] will be rejected and returned unopened to the Bidder. [SPPRA Rule 24 (1)]. The rejection of bids received after the deadline for submission shall apply regardless of any reason whatsoever for such delayed receipt

#### **2.5.6 Withdrawal of Bids**

The Bidder may withdraw its Technical Proposal and Financial Proposal after it has been submitted by sending a written Withdrawal Notice, duly signed by the Bidder and/or by an authorized representative, and shall include a copy of the authorization. Provided that, written notice of Withdrawal, shall be received by SMML prior to the opening of bids.

No bid shall be withdrawn in the interval between the opening of Bids and the expiration of the period of Bid validity specified in ITB section [2.4.8].

#### **2.5.7 Cancellation of Bidding Process**

1. SMML may cancel the bidding process at any time prior to the acceptance of a bid or proposal; [SPPRA Rule 25 (1)]
2. SMML shall incur no liability towards the bidders, solely by virtue of its invoking sub-rule (2.5.7 – 1); [SPPRA Rule 25 (2)]
3. Intimation of the cancellation of bidding process shall be given promptly to all bidders and bid security shall be returned along with such intimation; [SPPRA Rule 25 (3)]
4. SMML shall, upon request by any of the bidders, communicate to such bidder, grounds for the cancellation of bidding process, but is not required to justify such grounds. [SPPRA Rule 25 (4)]

#### **2.5.8 Mechanism for Redressal of Grievances**

SMML has a Committee for Complaint Redressal to address the complaints of bidder that may occur during the procurement proceedings. [SPPRA Rule 31 (1)]

Any bidder being aggrieved by any act or decision of the SMML during procurement proceedings may lodge a written complaint after the decision causing the grievance has been announced. [SPPRA Rule 31(3)]

The complaint redressal committee upon receiving a complaint from an aggrieved bidder may, if satisfied; [SPPRA Rule 31(4)]

1. prohibit the procurement committee from acting or deciding in a manner, inconsistent with these rules and regulations; [SPPRA Rule 31(4-a)]
2. annul in whole or in part, any unauthorized act or decision of the procurement committee; [SPPRA Rule 31(4-b)] and

3. reverse any decision of the procurement committee or substitute its own decision for such a decision;

Provided that the complaint redressal committee shall not make any decision to award the contract. [SPPRA Rule 31(4-c)]

SMML shall announce its decision as to the grievance within seven (7) days. The decision shall be intimated to the Bidder and the Authority within three (3) working days by SMML. [SPPRA Rule 31(5)]

SMML shall award the contract only after the decision of the complaint redressal committee [SPPRA Rule 31 (6)]

Mere fact of lodging of a complaint by a bidder shall no warrant suspension of the procurement proceedings. [SPPRA Rule 31(7)]

A bidder not satisfied with decision of the SMML complaints' redressal committee may lodge an appeal to the Chief Secretary through the Authority, who shall refer the matter to a review panel in accordance with ITB section [2.5.9]; [SPPRA Rule 31(8)]

A bidder may file an appeal to the Chief Secretary provided; [SPPRA Rule 31(9)]

1. That the bidder has exhausted his complaint to the complaint redressal committee [SPPRA Rule 31(9-a)]; and
2. That he has not withdrawn the bid security deposited by him during the procurement process. [SPPRA Rule 31(9-b)]

The bidder must submit the appeal to the Chief Secretary with the following documents: [SPPRA Rule 31(10)]

1. a letter stating his wish to appeal to the Review Panel and the nature of complaint; [SPPRA Rule 31(10-a)]
2. a copy of the complaint earlier submitted to the complaint redressal committee of the Department and all supporting documents in a sealed envelope; [SPPRA Rule 31(10-b)] and

Upon receipt of an appeal and registration fee, the Chief Secretary shall select a Review Panel to examine the complaint. Simultaneously, the Authority shall inform the bidder and the Head of the concerned Department of the action taken by the Chief Secretary. [SPPRA Rule 31(11)]

On receipt of reference from the Chief Secretary, the Chairperson of the Review Panel shall convene a meeting of the review panel within five working days. [SPPRA Rule 31(12)]

Unless the Review Panel recommends dismissal of the complaint being frivolous, in which case the bidder shall lose the bid security deposited with the SMML, the Review Panel may: [SPPRA Rule 31(13)]

1. propose rejection of the complaint, stating its reasons; [SPPRA Rule 31(13-a)]
2. state the rules or principles that govern the subject matter of the complaint; [SPPRA Rule 31(13-b)]
3. point out the infirmities and breach of rules and regulations by the procuring agencies; [SPPRA Rule 31(13-c)]
4. suggest annulment in whole or in part of a non-compliant act or decision of a SMML, other than any act or decision bringing the procurement contract into force; [SPPRA Rule 31(13-d)]
5. if the SMML is in breach of its obligations under the Act, Rules or Regulations, suggest the payment of compensation by the officer(s) responsible for mis-procurement for cost incurred by the bidder on preparation of bid, including the cost of the complaint registration fee paid by the complainant; [SPPRA Rule 31(13-e)]or
6. Recommends that the procurement proceedings may be terminated, in case the procurement contract has not been signed. [SPPRA Rule 31(13-f)]

It shall be mandatory for both, the complainant and the SMML to appear before the Review Panel as and when called and produce documents, when so required. The Review Panel shall issue the notice of appearance to the Head of the Department for its service who shall ensure the attendance of the Head of SMML along with relevant record. In case of failure of Head of SMML to appear before review panel despite service, the Authority shall bring the matter to the notice of Chief Secretary. In case the complainant fails to appear twice, despite service the reference may be decided ex-parte. The Review Panel shall hear the parties and give its recommendations to the Authority within thirty days of

receipt of reference. In case, more time is required, the Review Panel may seek extension from the Chief Secretary through the Authority enumerating the reasons for delay. The Authority shall submit these recommendations to the Chief Secretary who shall decide the appeal keeping in view the recommendations of the Review Panel; Provided that the Chief Secretary may refer the matter back to the Review Panel, if there is some ambiguity or vagueness in the recommendations and a clarification is to be sought. The Review Panel shall clarify the matter within seven calendar days, following which the Chief Secretary would decide the matter; [SPPRA Rule 31(14)]

The decision of the Chief Secretary shall be final and the SMML shall act upon such findings. After the decision has been issued, the complaint and the decision shall be hoisted by the Authority on its website within three working days; Provided that no information shall be disclosed if its disclosure would be against the public interest or may jeopardize national security. [SPPRA Rule 31(15)]

## **IMPORTANT**

**In addition to above it may be noted that no complain will be entertained unless it is forwarded on company's original letter head, bearing complete address, NTN of the company and CNIC of the complainant.**

### **2.5.9 Review Panel**

The Authority shall maintain a list of Review Panellists for the purpose of reviewing a bidder's complaint. The Panellist shall be appointed on such terms and conditions as the Authority may from time to time notify with the approval of the Chief Secretary. [SPPRA Rule 32(1)]

The List of Specialists shall be formed from a number [SPPRA Rule 32(2)]

1. persons who have been legal professionals; [SPPRA Rule 32(2-a)]
2. persons who have been senior officers in the service of the Government with experience in the procurement area, [SPPRA Rule 32(2-b)]and
3. Persons from a list of specialists with experience in the relevant field. [SPPRA Rule 32(2-c)]

The Specialists shall be grouped into a number of Review Panels, each with a nominated Chairperson, both as approved by the Chief Secretary. Each panel shall have a minimum of 3 members, one from each of the groups De listed in sub rule (2) above and up to 2 co-opted members on a case-by-case basis depending upon the nature of the complaint. [SPPRA Rule 32(3)]

The specialists shall be paid remuneration for their services as determined by the Authority from time to time with the approval of the Chief Secretary. [SPPRA Rule 32(4)]

### **2.5.10 Matters not subject to Appeal or Review**

The following actions of the SMML shall not be subject to the appeal or review: [SPPRA Rule 33]

- Selection method adopted by the SMML; [SPPRA Rule 33 (1)]
- Decision by the SMML under ITB section [2.5.7]. [SPPRA Rule 33 (2)]

## **2.6 Opening and Evaluation of Bids**

### **2.6.1 Opening of Bids by SMML**

The opening of bids shall be as per the procedure set down in Section 2.4.1 dealing with Bidding Process.

### **2.6.2 Clarification of Bids**

No Bidder shall be allowed to alter or modify his bids after the expiry of deadline for the receipt of the bids unless, SMML may, at its discretion, ask a Bidder for a clarification of bid for evaluation purposes. The request for clarification and the response shall be in writing and no change in the prices or substance of bid shall be sought, offered or permitted. [SPPRA Rule 43]

### **2.6.3 Preliminary Examination**

SMML will examine the bids to determine whether the bids are complete and the documents have been properly signed and whether the bids are generally in order.

SMML may waive any minor informality; nonconformity or irregularity in a bid that does not constitute a material deviation, provided such waiver does not prejudice or affect the relative ranking of any Bidder and further provided that such waiver will be at the complete and sole discretion of SMML.

If a bid is not substantially responsive, it will be rejected by SMML and may not subsequently be made responsive by the Bidder by correction of the nonconformity.

### **2.6.4 Supplier Evaluation Criteria**

All bids shall be evaluated in accordance with the evaluation criteria. [SPPRA Rule 42 (1)] SMML will evaluate the bids, which have been determined to be substantially responsive and reject any proposal which does not conform to the specified requirements.



## 2.6.5 Eligibility Criteria

SMML shall evaluate Technical proposal using the following scoring criteria.

S. No.	Description	Marks	Marks Obtained	Remarks
1	Company must have Supplied Computer Servers to preferably 5 or more Companies in Pakistan from January 2014 to Dec 2015. (Attach documentary proof as Annexure-1)	16		For 5 or more Comp.
		12		For 2 to 4 Comp.
		5		For 1 Comp.
		0		No Comp.
2	Company should be in possession of valid Manufacturer Authorization Certificate for last 2 years (2012 & 2013). (Attach documentary proof as Annexure-2)	16		Yes
		0		No
3	The Company must be in I.T. Business for Preferably 10 Years for supply of Computer Servers in Pakistan. (Attach documentary proof as Annexure-3)	10		For 10 and Above Years
		5		For 5 to 9 Years
		0		Less Than 5 Years
4	The Company should have Verifiable Presence/Support/Branch offices in Preferably 3 major cities (Karachi, Lahore & Islamabad) of Pakistan and one technical staff with 3-years practical experience, should be available for support at each location. (Attach Name ,Qualification (attach relevant certificates also) of support staff at each location as Annexure-4)	10		Three Major Cities
		8		Two Major Cities
		6		One City
		0		No office in any major city
5	The Company must provide list of clients other than Modaraba Sector for supply of Computers Servers in Pakistan. (Attach Documentary proof as Annexure-5)	7		10 and Above Clients
		5		3 to 9 Clients
		2		Less than 3 Clients
6	Company must have turnover of Preferably Rs.20-Million or more per year for Last 3-Years in Pakistan. (Attach audited financial statement for last 3 years as Annexure-6)	21		20 Million and above for 3 Years
		14		20 Million for 2 Years
		7		20 Million for 1 Year
		0		Less Than 20 Million in each year
7	The Company must provide Country of Origin Certificate of the Brand for which it has valid Manufacture Authorization Certificate. (Attach documentary proof as Annexure-8)	12		Europe/America/Malaysia / Singapore/Japan
		10		China/Thailand/Korea/ Taiwan
		4		Others
		0		Not Provided
8	Company must have preferably 20 or more permanent employees.(Attach documentary proof as Annexure-8)	8		20 and above
		6		For 15 to 19 Employees
		4		For 10 to 14 Employees
		0		Below 10 Employee
<b>Total Marks</b>		<b>100</b>		

### Note

- Attachment of relevant evidence in each above requisite is mandatory. In case of non-provision of evidence in any of the requisite, the company will be straight away disqualified
- Minimum 80% marks are required for Qualification
- Attach Affidavit on Rs.100/- stamp paper from the owner of the company, stating that the "firm has never been blacklisted by any organization in the past"
- The company will be considered disqualified from the very outset, if not GST registered.
- SMML reserves the right to verify all or any document at any time. In case any fake documents are found, the Company will be disqualified as per SPPRA Rule 30(1) and may be subject to legal proceedings

Note: There can be subsequent modification or amendment to this specific tender for which it is advised to keep you abreast with the notification being hoisted on SMML & SPPRA websites regularly.

## **2.6.6 Discussions Prior to Evaluation**

If required, prior to technical evaluation the bidder may seek any clarification in writing on the eligibility criteria.

## **2.7 Award of Contract**

### **2.7.1 Award Criteria**

Subject to ITB Section [2.7.2], SMML will award the contract to the successful Bidder, whose bid has been determined to be substantially responsive and has been determined to be the lowest evaluated bid, provided further that the Bidder is determined to be qualified to perform the contract satisfactorily.

### **2.7.2 SMML's Right to Accept Any Bid and to reject any or all Bids**

SMML may annul the bidding process and reject all Bids at any time prior to Contract award, without thereby incurring any liability to the Bidder(s).

### **2.7.3 Notification of Award**

Prior to the expiration of the period of bid validity, SMML will notify the successful Bidder in writing by letter or by facsimile, to be confirmed in writing by letter, that his/her bid has been accepted.

The notification of award will constitute the formation of the Contract.

Upon the successful Bidder's furnishing of the Performance Security pursuant to Section [2.7.5], SMML will promptly notify each unsuccessful Bidder and will discharge his/her bid security, pursuant to ITB Section [2.4.7].

### **2.7.4 Signing of Contract**

Within 5 Days from the date of notification of the award the successful bidder shall furnish to SMML particulars of the person who would sign the contract on behalf of the successful bidder along with an original power of attorney executed in favour of such person.

The Contract shall be signed by the parties at Central Office SMML, Karachi, within 10 Days of award of contract.

### **2.7.5 Performance Security**

Within 15 DAYS of receipt of the notification of award from SMML, the successful Bidder shall furnish to SMML the Performance Security of 10 % of contract price which shall be valid for at least ninety (90) days beyond the date of completion of contract to cover defects liability period or maintenance period. The Performance Security shall be in the form of a pay order or demand draft or Bank guarantee issued by a reputable commercial bank in favour of Sindh Modaraba, acceptable to SMML, located in Pakistan. [SPPRA Rule 39 (1)]

Failure of the successful Bidder to comply with the requirement of ITB Section [2.7.4] shall constitute sufficient grounds for the annulment of the award and forfeiture of the bid security, in which event SMML may make the award to the next lowest evaluated Bidder or call for new bids.

The Performance Security forms at Annexure "C" shall not be completed by the bidders at the time of their bid submission. Only the successful Bidder will be required to provide Performance Security.

The Performance Security will be discharged by SMML and returned to the Supplier not later than ninety (90) days following the date of successful completion of the Supplier's performance obligation under the Contract.

### **2.7.6 General Conditions of Contract**

For detailed General Condition of Contract refer to Section [5.1] of this TD.

### **2.7.7 Special Conditions of Contract**

For detailed Special Condition of Contract refer to Section [5.2] of this TD.

### **2.7.8 Integrity Pact**

The successful bidder shall upon the award of the contract execute an Integrity Pact with SMML for all procurements estimated to exceed Rs. 2.5 million. *[Specimen is attached in Annexure "D"]* [SPPRA Rule 89]

### **2.7.9 Non Disclosure Agreement**

The successful bidder shall upon the award of the contract execute a Non Disclosure Agreement with SMML. *[Specimen is attached in Annexure "E"]*



## SCOPE OF WORK / TECHNICAL SPECIFICATION

Sindh Modaraba Management Limited (SMML) requires Supply & installation of Server machines.

Dell / HP or Equivalent	
Parts	Item Description
Processor	Intel Xeon 4 Core Single Processor or better
Processor Speed	3.1 GHz. Or higher
Form Factor	1 U Rack Mount Server with Rails (to be mounted on standard rack)
Cache Memory	Minimum 8 MB cache
Memory	32 GB DDR3 ECC RAM - up to 64 GB support
Network Controller	2 Ports Gigabit Network Interface
Storage Controller	Integrated SATA controller
Disk Drive	2 x 1TB Enterprise SATA HDD for servers (up to 04 HDD support)
Power Supply	Redundant Power Supply
Display Cards	Integrated Graphics on board
Optical Bays	1x Slim Line DVD/RW
Supported OS	Microsoft Windows Server, Red Hat Enterprise Linux, SUSE Linux Enterprise Server, VMware vSphere
Warranty	3 years Standard Comprehensive on-site Warranty

### Note

- I. The tender will be dealt as per single stage one envelope method i.e. the financial and technical bids will be opened at one time and after announcing of financial bids, the contract will be awarded to a bidder who qualifies the eligibility criteria & Offered lowest evaluated financial bid.
- II. This is a Single Stage one envelop procedure, therefore 1st lowest bid will be evaluated first. If the 1st lowest bidder is disqualified evaluation criteria, then next lowest bid will be evaluated. Similarly if 2nd bidder is disqualified, then 3rd lowest bidder will be evaluated and so on.
- III. Vender must keep in stock the appropriate parts in case of malfunction the same parts should be replace within 4 hours time

## 4 FINANCIAL PROPOSAL

### PRICE SCHEDULE

(Applicable for the year 2015-2016)

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

S. NO	Item	Unit Cost	Quantity	*Total Amount
01	Server Machine		02	

*\*This total amount will be taken as financial bid offered by the vendor.*

#### Notes:

1. The company will be considered disqualified from the very outset, if not GST registered.
2. The cost must include all taxes, stamp duty (as applicable under Stamp Act 1989) duly stamped on the contract agreement, installation, commissioning, transportation and labour charges.
3. No advance payment for the supply of equipment will be made; bills are only be processed for necessary payment on receipt of certificate of delivery/satisfaction from the concerned officer.
4. Calculation of bid security. 5% of the \*Total Amount will be submitted with the tender document as bid security in shape of Pay Order /Bank Guarantee in favour of Sindh Modaraba.
5. In case it is revealed at any stage after installation of the equipment that the asked specification of the tender have not been met, the amount of the total installation of that specific equipment will be fined to the vendor with appropriate action as deemed necessary by the procurement committee
6. The successful bidder will be the one whose total sum of cost is the lowest. As it is package tender, so no partial lowest cost will be considered for award of any work.
7. All conditions in the contract agreement are part of this tender document.
8. The tender will be considered cancelled if the contract agreement after due signature is not submitted with SMML after 15 days of completion of bid evaluation report hoisting period (7 days) on SPPRA website.
9. The tender will stand cancelled if any of the given condition of the tender in not met in strictly as per the requisite of the tender document.
10. In case the financial bids are the same, the successful bidder will be the one who has the highest turnover of the two bidders.
11. Pre Bid Meeting: Within one week (For Any Clarification)

*Note. There can be subsequent modification or amendment to this specific tender for which it is advised to keep yourself abreast with the notification being hoisted on Sindh Modaraba & SPPRA website regularly.*

Signature & Stamp of Bidder \_\_\_\_\_

## **5. Contract**

### **5.1 Conditions of Contract**

#### **5.1.1 Definitions**

In this contract, the following terms shall be interpreted as indicated:

“Applicable Law” means the Sindh Public Procurement Act 2009 and the Sindh Public Procurement Rules 2010.

“Procuring Agency” or “PA” means SMML.

“Contract” means the Contract signed by the Parties and all the attached documents listed in its Clause 1 that is General Conditions (GC), and the Special Conditions (SC).

“Contract Price” means the price to be paid for the performance of the Services. “Effective Date” means the date on which this Contract comes into force.

“GC” mean these General Conditions of Contract.

“Government” means the Government of Sindh.

“Currency” means Pak Rupees.

“Member” means any of the entities that make up the joint venture/consortium/association, and “Members” means all these entities.

“Party” means the PA or the Contractor, as the case may be, and “Parties” means both of them.

“Personnel” means persons hired by the Contractor or by any Sub- Contractors and assigned to the performance of the Services or any part thereof.

“SC” means the Special Conditions of Contract by which the GC may be amended or supplemented.

“Services” means the services to be performed by the Contractor pursuant to this Contract, as described in the scope of services.

“In writing” means communicated in written form with proof of receipt.

#### **5.1.2 Law Governing Contract**

This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the laws of the Islamic Republic of Pakistan.

#### **5.1.3 Notice**

- Any notice, request or consent required or permitted to be given or made pursuant to this Contract shall be in writing. Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent to such Party at the address specified in the Contract.
- A Party may change its address for notice hereunder by giving the other Party notice in writing of such change to the address specified in the Contract.

#### **5.1.4 Authorized Representative**

Any action required or permitted to be taken, and any document required or permitted to be executed under this Contract by the SMML or the Supplier may be taken or executed by the officials.

### **5.1.5 Taxes and Duties**

The Supplier, Sub-Suppliers, and their Personnel shall pay such direct or indirect taxes, duties, fees, and other impositions levied under the Applicable Law, the amount of which is deemed to have been included in the Contract Price.

### **5.1.6 Effectiveness of Contract**

This Contract shall come into effect on the date the Contract is signed by both Parties. The date the Contract comes into effect is defined as the Effective Date.

### **5.1.7 Expiration of Contract**

Unless terminated earlier pursuant to Clause GC 5.1.10 hereof, this Contract shall expire at the end of such time period after the Effective Date as specified in the SC.

### **5.1.8 Modifications or Variations**

Any modification or variation of the terms and conditions of this Contract, including any modification or variation of the scope of the Services, may only be made by written agreement between the Parties. However, each Party shall give due consideration to any proposals for modification or variation made by the other Party.

### **5.1.9 Force Majeure**

The failure on the part of the parties to perform their obligation under the contract will not be considered a default if such failure is the result of natural calamities, disasters and circumstances beyond the control of the parties.

#### **5.1.9.1 No Breach of Contract**

The failure of a Party to fulfil any of its obligations under the contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and (b) has informed the other Party as soon as possible about the occurrence of such an event.

#### **5.1.9.2 Extension of Time**

Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

### **5.1.10 Termination**

#### **5.1.10.1 Termination by SMML**

The SMML may terminate this Contract in case of the occurrence of any of the events specified in paragraphs (a) through (e) of this Clause GC 5.1.10.1. In such an occurrence the SMML shall give a not less than thirty (30) days' written notice of termination to the Supplier, and sixty (60) days' in the case of the event referred to in (e).

- a. If the Supplier does not remedy the failure in the performance of their obligations under the Contract, within thirty (30) days after being notified or within any further period as the SMML may have subsequently approved in writing;
- b. If the Supplier becomes insolvent or bankrupt;
- c. If the Supplier, in the judgment of the SMML has engaged in corrupt or fraudulent practices in competing for or in executing the Contract;
- d. If, as the result of Force Majeure, the Supplier(s) are unable to perform a material portion of the Services for a period of not less than sixty (60) days; and
- e. If the SMML, in its sole discretion and for any reason whatsoever, decides to terminate this Contract.

#### **5.1.10.2 Termination by the Supplier**

The Suppliers may terminate this Contract, by not less than thirty (30) days' written notice to the SMML, such notice to be given after the occurrence of any of the events specified in paragraphs (a) through (b) of this Clause GC 5.1.10.2

- a. If the SMML fails to pay any money due to the Supplier pursuant to this Contract without Suppliers fault.
- b. If, as the result of Force Majeure, the Supplier is unable to perform a material portion of the Services for a period of not less than sixty (60) days.

#### **5.1.10.3 Payment upon Termination**

Upon termination of this Contract pursuant to Clauses GC 5.1.10.1 or GC 5.1.10.2, the SMML shall make the following payments to the Supplier:

- a. Payment for Services satisfactorily performed prior to the effective date of termination;
- b. except in the case of termination pursuant to paragraphs (a) through (c) of Clause GC 5.1.10.1, reimbursement of any reasonable cost incident to the prompt and orderly termination of the Contract, including the cost of the return travel of the Personnel and their eligible dependents.

#### **5.1.11 Good Faith**

The Parties undertake to act in good faith with respect to each other's rights under this Contract and to adopt all reasonable measures to ensure the realization of the objectives of this Contract.

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

##### **5.1.12.1 Amicable Settlement**

The Parties agree that the avoidance or early resolution of disputes is crucial for a smooth execution of the Contract and the success of the assignment. The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation.

##### **5.1.12.2 Arbitration**

If the SMML and the Supplier fail to amicably settle any dispute arising out of or in connection with the Contract within ten (10) days of commencement of such informal negotiations, the dispute shall be referred to arbitration of two arbitrators, one to be appointed by each party, in accordance with the Arbitration Act, 1940. Venue of arbitration shall be Karachi, Pakistan and proceedings of arbitration shall be conducted in English.

#### **5.1.13 Data Ownership**

The data in the implemented Computer System shall at all times remain the exclusive property of SMML. The Supplier is hereby required to transfer all necessary passwords, access codes or other information required for full access to the data to SMML upon successful commissioning of the Computer System and should not be available to any other party including the employees of the supplier.

#### **5.1.14 Obligations of the Supplier**

The Supplier shall perform the Services and carry out their obligations hereunder with all due diligence, efficiency and economy, in accordance with generally accepted professional standards and practices, and shall observe sound management practices, and employ appropriate technology and safe and effective equipment, machinery, materials and methods. The Supplier shall always act, in respect of any matter relating to this Contract or to the Services, as faithful advisers to the SMML, and shall at all times support and safeguard the SMML legitimate interests in any dealings with Sub-Suppliers or third Parties.

##### **5.1.14.1 Conflict of Interest**

The Supplier shall hold the SMML's interests paramount, without any consideration for future work, and strictly avoid conflict with other assignments or their own corporate interests.

#### **5.1.14.2 Confidentiality**

Except with the prior written consent of the SMML, the Supplier and the Personnel shall not at any time communicate to any person or entity any confidential information acquired in the course of the Services, nor shall the Supplier and the Personnel make public the recommendations formulated in the course of, or as a result of, the Services.

### **5.2 Special Conditions of Contract**

The following Special Conditions of Contract shall supplement the General Conditions of Contract. Whenever there is a conflict, the provisions herein shall prevail over those in the General Conditions of Contract.

#### **5.2.1 Performance Security**

The amount of performance security shall be ten (10 %) percent of the Contract Price

#### **5.2.2 Payment**

The payment to be made to the Supplier under this Contract shall be made in accordance with the payment schedule as shall be agreed between SMML and the Supplier.

- a. All advance payment will be made against valid guarantee(s).
- b. SMML will effect payment within 30 days on satisfactory delivery of services, upon submitting the invoice under above conditions.

#### **5.2.3 Price**

Schedule of prices shall be as fixed in the Contract.

**BID FORM**

Dated: \_\_\_\_\_, 2015

To,

SINDH MODARABA MANAGEMENT LIMITED.

Head Office  
1<sup>ST</sup> Floor, Imperial Court,  
Dr. Ziauddin Road,  
Karachi 75600

Dear Sir,

Having examined the bidding documents, the receipt of which is hereby duly acknowledged, we, the undersigned, offer, in conformity with the said bidding documents for the sum of \_\_\_\_\_ Rs. [total bid amount in words and figures].

We undertake, if our Bid is accepted, to provide \_\_\_\_\_ (Name of the supplied item), that will be in accordance with the terms defined in the proposal and /or contract.

Our firm, including any subcontractors or suppliers for any part of the Contract, have nationalities from the following eligible countries:-

- a. Country \_\_\_\_\_
- b. Country \_\_\_\_\_

If our Bid is accepted, we will obtain the SMML Guarantee in a sum equivalent to ten percent (10%) of the Contract Price for the due performance of the Contract, in the form prescribed by SMML. (Do mention, if this document have already been provided)

We agree to abide by this Bid for a period of ninety (90) days from the date fixed for Bid Opening and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

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.

Commissions or gratuities, if any, paid or to be paid by us to agents relating to this Bid and to contract execution if we are awarded the contract, are listed below:

**Name & Address of Agent**

**Amount and Currency**

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**(If none, State none)**

We understand that you are not bound to accept the lowest or any bid you may receive.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2015.

\_\_\_\_\_  
*[Signature]*

\_\_\_\_\_  
*[In the Capacity of]*

Duly authorized to sign Bid for and on behalf of \_\_\_\_\_



**BID SECURITY FORM**

Whereas \_\_\_\_\_ [name of the Bidder] has submitted its bid dated \_\_\_\_\_ [date of submission of bid] for supply and installation of SERVER MACHINS.

KNOW ALL PEOPLE by these presents that WE [name of bank] of [name of country], having our registered office at [address of bank] (hereinafter called "the Bank"), are bound unto SMML (hereinafter called "the Purchaser") in the sum of for which payment well and truly to be made to the said Purchaser, the SMML binds itself, its successors, and assigns by these presents. Sealed with the Common Seal of the said SMML this \_\_\_\_\_ day of \_\_\_\_\_ 2015.

THE CONDITIONS of this obligation are:

1. If the Bidder withdraw its Bid during the period of bid validity specified by the Bidder on the Bid Form; or
2. If the Bidder, having been notified of the acceptance of its Bid by the SMML during the period of bid validity:
  - a. fails or refuses to execute the Contract, if required; or
  - b. fails or refuses to furnish the performance security, in accordance with the Instructions to Bidders;

We undertake to pay to the Purchaser up to the above amount upon receipt of its written demand, without the Purchaser having to substantiate its demand, provided that in its demand the Purchaser will note that the amount claimed by it is due to it, owing to the occurrence of one or both of the two conditions, specifying the occurred condition or conditions.

This guarantee will remain in force up to and including twenty eight (28) days after the period of bid validity and any demand in respect thereof shall reach the SMML not later than the above date.

*[Signature and Seal of the Bank]*



**PERFORMANCE SECURITY FORM**

To,

SINDH MODARABA MANAGEMENT LIMITED.

Head Office

1<sup>ST</sup> Floor, Imperial Court,

Dr. Ziauddin Road,

Karachi 75600

WHEREAS \_\_\_\_\_ [name of Supplier] (hereinafter called "Supplier" or "Contractor") has undertaken, in pursuance of Contract/Agreement dated \_\_\_\_\_ 2015 and Bid Form dated \_\_\_\_\_ to \_\_\_\_\_ [Names of the supplied items] (hereinafter called "the Contract").

AND WHEREAS we have agreed to give the Supplier / Contractor guarantee as required pursuant to the bidding document and the contract:

THEREFORE WE hereby affirm that we are Guarantors and responsible to you, on behalf of the Supplier / Contractor, up to a total of [amount of the guarantee in words and figures], and we undertake to pay you, upon your first written demand declaring the Supplier / Contractor to be in default under the Contract and without cavil or argument, any sum or sums within the limits of [amount of guarantee] as aforesaid, without your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This guarantee is valid until the \_\_\_\_ day of \_\_\_\_\_ 2015.

**Signature and Seal of the Guarantors**

**Name of Bank**

**Address**

**Date**

### Integrity Pact

#### Declaration of Fees, Commissions and Brokerage etc Payable by the Suppliers of Services Pursuant To Rule 89 Sindh Public Procurement Rules Act, 2010

\_\_\_\_\_ [the Supplier] 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 it (GoP) through any corrupt business practice.

Without limiting the generality of the foregoing, \_\_\_\_\_ [the Supplier] 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.

\_\_\_\_\_ [The Supplier] 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.

\_\_\_\_\_ [The Supplier] accepts full responsibility and strict liability for making any false declaration, not making full disclosure, misrepresenting facts or taking any action likely to defeat the purpose of this declaration, representation and warranty. It agrees that any contract, right, interest, privilege or other obligation or benefit obtained or procured as aforesaid shall, without prejudice to any other right and remedies available to 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, \_\_\_\_\_ [the Supplier] 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 times the sum of any commission, gratification, bribe, finder's fee or kickback given by \_\_\_\_\_ [the Supplier] 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.

**For and on behalf of**

\_\_\_\_\_

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

**Name:** \_\_\_\_\_

**NIC No:** \_\_\_\_\_

## Form of Contract

This Mutual Non-Disclosure Agreement ("Agreement") is made and entered into between Sindh Modaraba Management Limited, and \_\_\_\_\_, individually referred to as a 'Party' and collectively referred to as the 'Parties'. The Parties wish to exchange Confidential Information (as defined below in Section 2) for the following purpose(s): a) to evaluate whether to enter into a contemplated business transaction; and b) if the Parties enter into an agreement related to such business transaction, to fulfil each Party's confidentiality obligations to the extent the terms set forth below are incorporated therein (the "Purpose").

The Parties have entered into this Agreement to protect the confidentiality of information in accordance with the following terms:

1. The Effective Date of this Agreement is \_\_\_\_\_ 2015.
2. In connection with the Purpose, a Party may disclose certain information it considers confidential and/or proprietary ("Confidential Information") to the other Party including, but not limited to, tangible, intangible, visual, electronic, present, or future information such as:
  - Trade secrets;
  - Financial information, including pricing;
  - Technical information, including research, development, procedures, algorithms, data, designs, and know-how;
  - Business information, including operations, planning, marketing interests, and products;
  - The terms of any agreement entered into between the Parties and the discussions, negotiations and proposals related thereto; and
  - Information acquired during any facilities tours.
3. The Party receiving Confidential Information (a "Recipient") will only have a duty to protect Confidential Information disclosed to it by the other Party ("Discloser"):
  - If it is clearly and conspicuously marked as "confidential" or with a similar designation;
  - If it is identified by the Discloser as confidential and/or proprietary before, during, or promptly after presentation or communication; or
  - If it is disclosed in a manner in which the Discloser reasonably communicated, or the Recipient should reasonably have understood under the circumstances, including without limitation those described in Section 2 above, that the disclosure should be treated as confidential, whether or not the specific designation "confidential" or any similar designation is used.
4. A Recipient will use the Confidential Information only for the Purpose described above. A Recipient will use the same degree of care, but no less than a reasonable degree of care, as the Recipient uses with respect to its own information of a similar nature to protect the Confidential Information and to prevent:
  - Any use of Confidential Information in violation of this agreement; and/or
  - Communication of Confidential Information to any unauthorized third parties. Confidential Information may only be disseminated to employees, directors, agents or third party contractors of Recipient with a need to know and who have first signed an agreement with either of the Parties containing confidentiality provisions substantially similar to those set forth herein.
5. Each Party agrees that it shall not do the following, except with the advanced review and written approval of the other Party:

- Issue or release any articles, advertising, publicity or other matter relating to this Agreement (including the fact that a meeting or discussion has taken place between the Parties) or mentioning or implying the name of the other Party; or
  - Make copies of documents containing Confidential Information.
6. This Agreement imposes no obligation upon a Recipient with respect to Confidential Information that:
- Was known to the Recipient before receipt from the Discloser;
  - Is or becomes publicly available through no fault of the Recipient;
  - Is independently developed by the Recipient without a breach of this Agreement;
  - Is disclosed by the Recipient with the Discloser's prior written approval; or
  - Is required to be disclosed by operation of law, court order or other governmental demand ("Process"); provided that (i) the Recipient shall immediately notify the Discloser of such Process; and (ii) the Recipient shall not produce or disclose Confidential Information in response to the Process unless the Discloser has: (a) requested protection from the legal or governmental authority requiring the Process and such request has been denied, (b) consented in writing to the production or disclosure of the Confidential Information in response to the Process, or (c) taken no action to protect its interest in the Confidential Information within 14 business days after receipt of notice from the Recipient of its obligation to produce or disclose Confidential Information in response to the Process.
7. EACH DISCLOSER WARRANTS THAT IT HAS THE RIGHT TO DISCLOSE ITS CONFIDENTIAL INFORMATION. NO OTHER WARRANTIES ARE MADE. ALL CONFIDENTIAL INFORMATION DISCLOSED HEREUNDER IS PROVIDED "AS IS".
8. Unless the Parties otherwise agree in writing, a Recipient's duty to protect Confidential Information expires after 5 years from the date of disclosure. A Recipient, upon Discloser's written request, will promptly return all Confidential Information received from the Discloser, together with all copies, or certify in writing that all such Confidential Information and copies thereof have been destroyed. Regardless of whether the Confidential Information is returned or destroyed, the Recipient may retain an archival copy of the Discloser's Confidential Information in the possession of outside counsel of its own choosing for use solely in the event a dispute arises hereunder and only in connection with such dispute.
9. This Agreement imposes no obligation on a Party to exchange Confidential Information, proceed with any business opportunity, or purchase, sell, license and transfer or otherwise make use of any technology, services or products.
10. Each Party acknowledges that damages for improper disclosure of Confidential Information may be irreparable; therefore, the injured Party is entitled to seek equitable relief, including injunction and preliminary injunction, in addition to all other remedies available to it.
11. This Agreement does not create any agency or partnership relationship. This Agreement will not be assignable or transferable by Participant without the prior written consent of the other party.
12. This Agreement may be executed in two or more identical counterparts, each of which shall be deemed to be an original including original signature versions and any version transmitted via facsimile and all of which taken together shall be deemed to constitute the agreement when a duly authorized representative of each party has signed the counterpart.
13. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes any prior oral or written agreements, and all contemporaneous oral communications. All additions or modifications to this Agreement must be made in writing and must be signed by the Parties. Any failure to enforce a provision of this Agreement shall not constitute a waiver thereof or of any other provision.

Sindh Modaraba Management Limited

Company Name \_\_\_\_\_

\_\_\_\_\_  
1<sup>st</sup> Floor, Imperial Court,

Registered Address \_\_\_\_\_

\_\_\_\_\_  
Dr. Ziauddin Road, Karachi

\_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Stamp

Stamp