**Infrastructure Works and Telecom Implementation**

**Framework Agreement**

This framework agreement **(Hereinafter referred to as “the FWA”)** is made and entered into by and between:

**Mobile Interim Company No.2 S.A.L.,** registered at the Trade Register of Beirut under the number /1000382/, and registered at the Ministry of Finance under the number /291711/, having its principal place of business at touch Building, (Beirut Central-bloc B), Fouad Chehab Avenue, Beirut, Lebanon.

(Hereinafter referred to as **“MIC2”**).

**And**

**……….,** registered at the Trade Register of Beirut under the number /..……../, and registered at the Ministry of Finance under the number /………../, having its principal place of business at …………….., Beirut, Lebanon, represented in this framework agreement by its …………………………...

(Hereinafter referred to as **“Contractor”**).

Each of the two parties is hereinafter referred to as a ‘**’Party**”’ and collectively as the "**Parties**".

Whereas, MIC2 is operating the second mobile network for the account and for the benefit of the Republic of Lebanon (hereinafter referred to as “ROL”); and,

Whereas, MIC2 has plans to implement/construct new sites and/or carry out all kind of infrastructure Works and Telecom Implementation works all over the Lebanese territories (including but not limited to: renovation, repair, civil works (excavation, fire system, wood, concrete, steel, sanitary, paint), electrical works, telecom installations, and mechanical works) at its premises and/or sites in various places on the Lebanese Territory to cater for infra works projects (Hereinafter referred to as “Projects”) and, therefore, needs to procure the services of specialized contractors in sites implementation/construction and provisioning of infrastructure and Telecom Implementation works, for the implementation/construction of sites at the locations where the sites will be implemented/constructed and/or for the provisioning of infrastructure and Telecom Implementation works at its premises and/or sites and to this effect it has launched a tender on ………………………. for the said Projects by one or more bidders having a proven experience in that field; and,

Whereas, at the outcome of the abovementioned tender, Contractor was selected for the execution of the Projects;

Whereas, Contractor has declared its commitment to the execution of the Projects as described in above paragraph (2) and has stated its commitment to the provisions of the FWA and has acknowledged that the FWA constitutes the basis of the final contractual relationship that shall be established with MIC2 as per the RFP general document and technical specifications listed in Annex (1) attached to this FWA hereinafter and/or the specifications listed in the relevant purchase order; and,

Whereas, MIC2 and Contractor wish by the present Framework Agreement to set out the terms and conditions upon which Contractor shall implement/construct MIC2 sites and/or carry out all kind of infrastructure Works and Telecom Implementation works.

The present FWA will be published on the Public Procurement Authority (PPA) website after it is signed and dated as specified in Article 64 sub clause 3.

NOW THEREFORE, in consideration of the above, it is hereby mutually agreed between the Parties as follows:

**1. The Entire Agreement**

The Preamble above, the Annex (es) and the Appendix (ces) attached hereto and any purchase order issued under this FWA form an integral part of this FWA.

Appendix 1: Down Payment Guarantee

Appendix 2: Performance Bond

Annex 1: RFP general document and technical specifications

Annex 2: UPL price List

**2. Scope of Work and Specifications**

2.1. The scope of work shall consist of providing scheduled implementation/construction of sites and/or scheduled provisioning of infrastructure Works and Telecom Implementation works for MIC2 as detailed in Article (3) hereinafter and/or in the relevant purchase order.

2.2. Contractor undertakes to perform its obligations in the implementation/construction of the sites and/or in the provisioning of infrastructure Works and telecom works in line with the specifications set out in Annex (1) and/or the scheduled infrastructure Works and Telecom Implementation works detailed in the relevant purchase order, under the monitoring of MIC2 and as per MIC2’s directives where necessary, in the event where MIC2 elects to assign Contractor with the task of implementing one site or more and/or of provisioning of infrastructure Works and Telecom Implementation works at designated premises and/or sites by virtue of the FWA.

2.3. Key personnel deployed by Contractor for the performance of works under this FWA must be pre-approved by MIC2.Contractor shall ensure that all their teams are equipped with safety gears (Helmets, full body harness, safety boots, eyes protection, first aid medical kits, etc..). Moreover rigging teams who will work on heights need to be properly trained and have official climbing certificates.

2.4. For the purposes of the performance of the FWA, Contractor undertakes to have one authorized and qualified representative (must be either an Engineer or a Team Leader) on behalf of Contractor present at all times on each site and/or premises during the implementation/construction process and/or the provisioning of infrastructure Works and Telecom Implementation works.

2.5. Contractor undertakes to comply with the conditions and technical specifications as presented by MIC2 in Annex (1) and/or the relevant purchase order.

2.6. Contractor may not use any equivalent products/materials unless that has been pre-approved by MIC2 in writing, and as per the specifications set out by MIC2 in Annex (1) and/or the relevant purchase order particularly in respect to the specifications of the products/materials in terms of kind and manufacturers, provided that the use of such equivalent material does not lay any financial burdens upon MIC2, and provided that MIC2 has the right to a reduction of the prices if the equivalent products/materials in question are less costly.

2.7. If certain material prices increase/decrease in the market by more than 10% , then MIC2 and/or the contractor has to apply price modification on the affected line items proportional to the price variance.”

2.8. MIC2 may change or improve the technical specifications of site implementation/construction and/or of infrastructure Works and Telecom Implementation works products/materials during the term of the FWA and undertakes to notify the Contractor accordingly. Contractor undertakes to accept such changes or improvements without any objection or reservation.

2.9. Contractor is responsible for the warehousing of the supplied materials till the installation in site.

2.10. Contractor is responsible to provide or arrange any machinery or tools needed to complete the scope (for example pickups, cranes, execution machinery, cement mixer, magnetic thickness gauge for Galvanization coating thickness, professional pulley theodolite, torque spanner, earth-resistance meter, electric welding machine, gradienter, etc...)

**3. Oder of products and Delivery Period**

3.1. MIC2 shall issue one or several written purchase order(s) of the quantities of products/materials and/or infra works required from the Contractor (Hereinafter referred to as the “Purchase Order” or “PO”). Each PO shall be considered a separate contract resulting from this FWA and it will be subject to the provisions of Article 64 of the Public Procurement Law no.244/2021.

3.2. The PO shall be forwarded to Contractor by any means at MIC2’s sole discretion.

3.3. The PO issued by MIC2 shall only be legally or financially effective in favor of Contractor in light of Contractor’s good intentions and full commitment to its contractual obligations and the proper fulfillment of such obligations.

3.4. There is no minimum purchase commitment on purchase volumes for any site implementation/construction and/or of infrastructure Works and Telecom Implementation works products/materials under this FWA, MIC2 shall not be obliged to order any of the products/materials and/or infrastructure Works and Telecom Implementation works throughout the term of this FWA and accordingly MIC2 shall not be considered liable in any way whatsoever for not purchasing products/materials and/or infra works from the Contractor throughout the term of this FWA.

3.5. Whenever requested by MIC2 in each project, the delivery period of each type of the completed and accepted sites must be clearly indicated on the implementation/construction plan mentioned in the relevant purchase order and must not in any way exceed the following specified intervals for each type of sites:

-   Twenty One (21) Working days for Green Field sites type.

-  Seven (7) Working days for Roof Top sites type.

- Other works should be completed within a time frame proportional to the above two items, based on the complexity of this specific job or task.

3.6. The delivery period of each type of the completed and accepted infrastructure Works or Telecom Implementation works must be clearly indicated on the Implementation/construction plan mentioned in the relevant purchase order.

3.7. A penalty of one percent (1%) of the total amount of the relevant purchase order will be applied to the benefit of MIC2 for each five (5) calendar days of delay in finalizing the subject Projects., and shall be up to a maximum of 10% of such PO value and shall be deducted by MIC2 from the amount due to the Contractor..

3.8. The Title and risk of loss and or of damage to products or materials transfers to MIC2 upon Provisional Acceptance.

* 1. **Purchase Order Changes**
     1. MIC2 may at any time by written notice to the contractor require a variation (“Change”) to a Purchase Order, provided written notice of the Change is delivered to Contractor within two (2) weeks prior to shipment of the products that will be subject to the Change or services that are to be provided. Any change shall follow article 29 sub-clause 1-G of PPL 244,
     2. Within five (5) days after receiving such written notice from MIC2, the contractor shall advise MIC2 of its effect on the System and send a written notice (“Response to Change”) to MIC2 specifying the effect that such a change may have upon the Purchase Order including price, delivery of products and services, impact (if any) on the Delivery Plan and/or Implementation Plan.
     3. Within three (3) days of receipt of the Response to Change, MIC2 shall by written notice to the contractor inform the contractor as to whether MIC2 wishes the Change and Response to Change to be incorporated in the Purchase Order and if MIC2 so advises, then a formal Change Order setting out in detail the nature of the change shall be given to the contractor.
     4. The Contractor agree:
* that any change in the Purchase Order Price or change of the Delivery Plan and/or Implementation Plan based on contractor’s advice must be reasonable and shall be justified by the Contractor to the satisfaction of MIC2; and
* not to cause a delay in Delivery or Implementation longer than the maximum number of Working Days needed to implement the Change

**4. Site implementation and/or infrastructure Works and Telecom Implementation Works Acceptance**

4.1. MIC2 shall not grant its acceptance for the implemented site(s) and/or infrastructure Works and Telecom Implementation works unless the implemented site(s) and/or infrastructure Works and Telecom Implementation works are totally completed without any minor or major reserve and in conformity with the defined implementation timeframe as detailed in the relevant purchase order.

4.2. Contractor must be present on site with MIC2 for the commissioning of the products/materials and installations.

(i) Commissioning forms must be completed by all Parties as presented by MIC2.

(ii) Complete set of site documentation must be prepared and submitted prior to the site acceptance.

(iii) Documents must include the site drawings and specifications, the installed system drawings and layouts.

(iv) Contractor shall provide all needed tests for acceptance, for example Compressive strength test for concrete, compaction test, verticality test, grounding system resistivity test, etc…

4.3. Any acceptance of implementation/construction and/or provisioning shall not be effective unless issued by MIC2 in writing.

4.4. All products/materials and installations must include the Contractor’s warranty and the free after-sales services, for the periods defined in Annex (1) and/or the relevant purchase order.

4.5. Defective products/materials shall be replaced within the time limit set in Annex (1) and/or the relevant purchase order.

4.6. A product/material shall be deemed to be defective or non-conforming if it is not in conformance with the specifications as detailed in attached Annex (1) and/or the relevant purchase order.

**4.7. Acceptance**:

Acceptance Committee (لجنة الاستلام) as specified in Article 101 and Article 32 of PPL 244 shall accept the works within 2 weeks after PO execution and services conformity with the RFP technical requirements defined in Annex 1.

**5. Liability and Indemnities**

5.1. Contractor shall fully indemnify MIC2, together with its officers, agents and employees, against any claims with respect to damages to property, loss and personal injury, including death, howsoever caused to any personnel, or which may be imposed on or incurred by MIC2 arising directly out of the negligent acts or omissions of Contractor, its agents, subcontractors, or employees during the performance of any work hereunder or arising out of the products/materials malfunctioning/hidden defects save to the extent caused by the direct negligence of MIC2 or its employees or agents.

5.2. Contractor, its assigned personnel, and any of its employees involved directly or indirectly in the implementation/construction of sites and/or the provisioning of infrastructure Works and Telecom Implementation works shall be individually and jointly responsible for the terms and conditions of this FWA.

5.3. Contractor is solely and fully responsible for its assigned personnel, their remuneration, allowances, compensations, work emergencies, and any other rights and obligations that might arise during or on the occasion of their relationship with MIC2. Contractor must carry an insurance policy covering all his staff working on site during and in the occasion of implementation/construction and/or infrastructure Works and Telecom Implementation work process as well as damages caused by Contractor’ representative work on site.

5.4. Contractor shall, at its sole expense, defend any suit based upon a claim or cause of action and satisfy any judgment that may be rendered against MIC2 resulting from the works done under this FWA.

5.5. Contractor will be still liable for any damages that happens on MIC2’ site and/or premises even related to the quality of the work or materials even after this FWA is terminated for any reason.

**6. Cost, Prices**

6.1 for New Sites Implementations, Sites Relocation and Distributed Antenna System (DAS) Deployment will be based on Purchase Orders without any price review or competition. Contractor shall abide by the unified price list (UPL) cost related to the site implementation/construction and/or telecom and infrastructure works and/or the prices of the products/materials, which is set in the list attached to this FWA as per Annex 2. or as per the relevant Purchase Order. The attached UPL is subject to change by virtue of Article 29- (1-A) of the PPL 244/2021,once per Calendar year by MIC2, proportionally as following:

1. if the official steel price has been changed more than 10% whether by decrease or increase as set by LME London stock exchange.
2. if the official concrete price has been changed more than 10% whether by decrease or increase as set by the Ministry of Industry.

6.2 For the works related to Sites Dismantling, Sites Optimizations, Sites Infrastructure Maintenance and Telecom Implementations, Purchase Orders will be awarded based on competition and lowest offer at the execution stage of each request.

**7. Invoicing and Payments**

**7.1. Invoicing**

* + 1. Invoicing for sites implementation/construction and/or provisioning of infrastructure Works and Telecom Implementation works shall be made for each quantity of implemented sites and/or accomplished infrastructure and Telecom Implementation works as follows:
* **Fifty percent (50%) of the relevant purchase order value shall be invoiced by Contractor upon PO issuance provided that Contractor submit a Down Payment guarantee representing (100%) of the amount of the down payment in Fresh US Dollars issued by an accredited Lebanese qualified Bank listed on the Lebanese Central Bank list of Banks or foreign bank that have received a credit rating of at least a “prime” investment grade (BBB or above). The template of the said down payment guarantee is attached herein below as appendix (1)**
* **Fifty percent (50%) of the relevant purchase order value shall be invoiced by Contractor at the date MIC2 has issued the Final Acceptance Certificate.**
  + 1. The final invoices must be based on the exact measured work quantities implemented and or carried out on sites/premises and approved by both MIC2 and Contractor.

**7.2. Payments**

* + 1. MIC2 shall pay Contractor the cost of sites implementation/construction and/or infrastructure Works and Telecom Implementation works and/or the price of the materials within sixty days (60) days after invoice submission and technical acceptance and signature of related invoice by MIC2.
    2. The above costs and/or prices constitutes all the financial entitlements of Contractor from MIC2 under the FWA, and it includes all expenses that may be incurred by Contractor in relation to the FWA.
    3. Within fifteen (15) days of signing the first Purchase Order, the Contractor shall provide MIC2 with a Performance Bond in an amount equal to /5000 USD) in Fresh USD (including VAT if applicable) in cash or issued (as per article 36 of the PPL 244/2021), by an accredited Lebanese qualified Bank listed on the Lebanese Central Bank list of Banks or foreign bank that have received a credit rating of at least a **“prime” investment grade (BBB or above),**and accepted by MIC2 to guarantee the implementation by the Contractor of its obligations under this FWA, particularly the implementation of the relevant POs in good faith and in conformance with the set-out KPIs as well as the highest standards of the technical and commercial state of art within the deadlines specified by MIC2. The Contractor shall bear all costs in relation to the provision of the performance bond. The performance bond shall remain valid and effective from the date of issuance up to one year (to be renewed each year till the termination of the FWA). The text of the said Performance Bond is attached to this FWA as Appendix (2).

**8. Tax**

Each Party shall bear taxes and other fiscal charges resulting from the FWA as prescribed by the Law in Lebanon.

**9. Term and Termination**

9.1. This FWA will be effective as of the date of the first relevant purchase order (the “Effective Date”) and shall remain valid for four (4) years non renewable or extendable under the same terms and conditions.

9.2. . MIC2 shall have the right to terminate the FWA at any time and without having to state the reason(s) for termination, and without any liability on MIC2, provided that the decision to terminate the FWA is notified to Contractor one (1) month prior to the effective date of termination.

9.3. If at the time of expiry a certain amount of works is not completed by Contractor, then the FWA shall be deemed extended until the completion of all the said amount of works.

9.4. MIC2 has the right to terminate this FWA immediately, without the need for any notice of whatsoever kind, if the Supplier become bankrupt or insolvent and in case of Supplier merger or absorption by a third party by virtue of the second paragraph of Article 33 of the Public Procurement Law no.244/2021.

**9.5.** This FWA may be terminated by MIC2 immediately with the right to claim compensation if Supplier materially breaches this FWA or any of the RFP terms and conditions, and fails to cure such breach within Fifteen (15) days after receipt of a written demand for cure from MIC2.The amount of the said compensation shall be defined by virtue of the last paragraph of Article 33 of the Public Procurement Law no.244/2021

**9.6.** Any termination of the FWA and its related POs will be in line with Article 40 of the Public Procurement Law no.244/2021

**10. Confidentiality**

10.1. Contractor shall keep in strict confidence and shall use all reasonable endeavors to bind all of its executives, employees, agents and personnel to keep in strict confidence all the information received, or which it obtains or to which it has access directly or indirectly from MIC2 in connection with this FWA and shall not in any time disclose such information to any third party or make use of any such information for any purpose other than as required to execute the object of this FWA.

10.2. Contractor is aware that MIC2 is entitled to disclose any information and/or document relating to this FWA to the Republic of Lebanon represented by the Ministry of telecommunications, without obtaining Contractor’s prior approval.

10.3. The confidentiality provisions contained in this Article shall survive the termination or expiration of the FWA.

**11. Relationship of the Parties**

11.1. The relationship of the Parties established by this FWA shall be solely that of independent contractors. Nothing contained in this FWA shall be construed to make one Party the agent for the other or partner of the other for any purpose. Neither Party shall by virtue of this FWA have the right or authority to act for, or to bind the other in any way, or to sign the name of the other, or to represent that the other is in any way responsible for its acts and omissions.

11.2. The FWA shall not produce any legal or material obligations upon MIC2 towards third parties beyond the scope of MIC2’s relationship with Contractor. Any party who has not signed the FWA is not a party thereto.

**12. Non-exclusivity**

12.1. The FWA is not exclusive to Contractor. MIC2 retains the right to contract other parties for part of the work covered by this FWA.

12.2. In the event where MIC2 does not assign any works to Contractor under this FWA, MIC2 shall not be deemed in a position of failure to perform any of its contractual obligations.

**13. Force Majeure**

13.1. Neither Party is liable for delay or failure to perform any of its obligations under this FWA insofar as the performance of such obligation is prevented by a force majeure event. Each Party shall notify the other Party of the occurrence of such a force majeure event and shall use all reasonable endeavours to continue to perform its obligations hereunder for the duration of such force majeure event. In case force majeure event exceeded one (1) month period, whether continuously or intermittently, either Party has the right to immediately terminate the FWA by means of written notice without bearing any liability whatsoever.

13.2. For the purposes of this FWA, a force majeure event means any event, which is unpredictable, beyond the reasonable control of the Party liable to affect performance and external to this Party, and shall include but not be limited to riots, acts of war, acts of terrorism, epidemics, major fire, or natural disasters. For the avoidance of doubt, force majeure does not include strikes or other employment disputes of either Party’s personnel or such Party’s subcontractor’s personnel.

**14. Assignment**

Contractor shall not assign this FWA, totally or partially, or any right or obligation hereunder without the prior written consent of MIC2 and if so, then it should not exceed the limit defined in article 30 of PPL 244. However MIC2 shall have the right to assign, transfer or purport all of its rights and obligations under this FWA to the Republic of Lebanon or any of its designee, without having to refer to Contractor or to obtain its consent prior to such assignment. The assignee of the present FWA shall also have the right of assignment provided for under this Article.

**15. Applicable Law and Dispute Resolution**

15.1. Both Parties agree that the Lebanese Laws shall apply to any litigation arising out of the application or interpretation of this FWA.

15.2. Disputes arising in connection with the FWA shall be finally settled by the competent Courts of Law in Beirut.

**16. Waiver**

Waiver of any provision herein shall not be deemed a waiver of any other provision herein, nor shall waiver of a breach of any provision of this FWA be construed as a continuing waiver of other breaches of the same or other provisions of this FWA.

**17. Notices**

Both Parties have elected domicile at the addresses mentioned beside their respective names in the preamble. Any notification made to these addresses shall be considered valid unless any Party has notified the other in writing of any change in said address.

IN WITNESS WHEREOF, the Parties have caused this FWA to be executed in Beirut with effect as of (the day) ………… of (the month) …………, by their respective authorized representatives, on two (2) originals, one to be kept by each Party.

|  |  |
| --- | --- |
| **For and on behalf of**  **Mobile Interim Company No. 2 S.A.L.**  **Salem Itani**  **Chairman General Manager**  **Signature:**  **Nibal Matta Salameh**  **Chief Financial Officer**  **Signature:** | **For and on behalf of**  **Signature:** |

**Appendix 1**

**Down Payment Guarantee**

**To: Mobile Interim Company No. 2 S.A.L.**

**Fouad Chehab Avenue, Touch building, (Beirut Central- Bloc B), Bashoura, Beirut, Lebanon.**

**Beirut - Lebanon**

**(Hereinafter referred to as “MIC2”)**

**From: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Address**

**(Hereinafter referred to as “the Bank”)**

**This down payment guarantee is made on \_\_\_\_\_\_\_\_ (day) of \_\_\_\_\_\_\_\_\_\_\_ (month) …………..(year) by the Guarantor ……………….. in favor of MIC2.**

With reference to the Purchase Order no. ……………. (the “**Purchase Order**”) issued under the framework Agreement (Hereinafter referred to as the “**Agreement”**) entered into by and between **Mobile Interim Company No.2 S.A.L.** (Hereinafter referred to as “**MIC2”**) and **…………………………………………….** (Hereinafter referred to as the “**Contractor”**)on ......./……/……….

We, the undersigned [Bank’s name] (Hereinafter referred to as **“the Guarantor”**) irrevocably, unconditionally, jointly and severally with the **Contractor**, undertakes to pay **MIC2** the total amount of **USD /………../ (United States Dollars…………..)** immediately upon receipt of MIC2’s first written demand, without stating the reasons for such demand, and without having the right to object on such payment irrespective of any circumstances.

It is an obligation of the Contractor to obtain and maintain in full force and effect this down payment guarantee (Hereinafter referred as “**the Guarantee**”) issued and signed by a issued by an accredited Lebanese qualified Bank listed on the Lebanese Central Bank list of Banks or foreign bank that have received a credit rating of at least a **“prime” investment grade (BBB or above).**  in order to ensure the faithful performance of the Contractor’s obligations under the Agreement.

1. **Guarantee**

The Guarantor hereby irrevocably and unconditionally ensures and guarantees the payment of any amount due by the Contractor to MIC2 up to the net amount of USD /……………..…../ (Only United States Dollars ………………………), immediately upon first written demand by MIC2, and in any case, without any notice, reference or further enquiry from the Contractor or any other party and without requiring or obtaining any evidence or proof (other than the first written demand) that MIC2 is entitled to any such payment of the respective Contractor’s guaranteed obligations

1. **Contractor’s Guaranteed Obligations**

By the present Guarantee, the Guarantor hereby guarantees the timely, faithful and satisfactory performance by the Contractor of the obligations pertaining to the execution of the Agreement (the “Guaranteed Obligations”).

1. **Continuity of the Guarantee**

This Guarantee shall continue to be effective, or be revived and reinstated, as the case may be, if at any time, any payment of all or part of the Guaranteed Obligations is rescinded, or must otherwise be returned to MIC2 for any reason, all as though such payment has never been made.

The liability of the Guarantor hereunder shall not be diminished or impaired by any illegality, invalidity, unenforceability of the Guaranteed Obligations against the Contractor; or by the extension or renewal of any amount payable in respect of the Guaranteed Obligations; by any demand made to the Guarantor by MIC2 and /or by any payment made by the Guarantor to MIC2; any other circumstance which might otherwise constitute a defense available to, or a discharge of, the Contractor in respect of the Guaranteed Obligations or the Guarantor in respect of this Guarantee.

1. **Waiver of Defenses**

The Guarantor hereby acknowledges that it does not have any right of discussion or divisibility under Lebanese law.

The Guarantor hereby irrevocably and unconditionally waives, to the fullest extent permitted by applicable law: any and all notices which may be required by statute, rule of law or otherwise to preserve intact any rights of MIC2 against the Contractor; promptness, diligence and any right to the enforcement, assertion or exercise by MIC2 of any right, power, privilege or remedy; and any requirement that MIC2 or any other person exhaust any right, power, privilege or remedy, or mitigate any damages resulting from default, in respect of the Guaranteed Obligations; and the litigation, administration, dissolution, lack of capacity or authority or, any change in the name or constitution of the Contractor or the Guarantor.

1. **Assignment**

It is acknowledged and agreed by the Guarantor that MIC2 may at any time transfer rights under this Guarantee to the Republic of Lebanon or any of its designees assigned to manage and/or to operate the second mobile network in Lebanon instead of MIC2. Accordingly, the Guarantor agrees that the benefit of this Guarantee may be assigned (in whole or in part) by MIC2 without the consent of the Guarantor or of the Contractor to, and may be enforced by, any such third party to whom the benefit of the Guarantee is assigned (in whole or in part) as if such third party were MIC2 under this Guarantee. MIC2 shall then give notice of the assignment to the Guarantor.

However, the Guarantor shall not, nor shall it purport to, assign, transfer, charge or otherwise deal with all or any of its rights under this Guarantee nor grant, declare, create, or dispose of any right or interest in it, without the prior written consent of MIC2.

1. **Notices**

All notices, demands, or communications given or sent to MIC2 or the Guarantor in connection with this Guarantee shall be given in writing addressed to the recipient at the address specified at the top of this Guarantee or at such other address as may be notified by a party to the other, from time to time, for that purpose.

1. **Governing Law**

All disputes arising out, of, or in connection with this Guarantee shall be submitted to the competent courts in Beirut, and settled under the Lebanese Laws.

1. **Expiration**

This Guarantee expires upon …………..from the date of its issuance.

**In witness** of which this Guarantee has been signed on behalf of the Guarantor on the date which appears on the first page.

BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Appendix 2**

**Performance Bond**

To: Mobile Interim Company No. 2 S.A.L

Att: …………………………..

Fouad Chehab Avenue, touch building (Beirut central), Bashoura, Beirut – Lebanon-03-792000.

(Hereinafter referred to as “MIC2”)

From: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address

(Hereinafter referred to as “the Bank”)

**Subject: Performance Bond**

Re: MIC2 …………………………….. Contract

This Performance Bond is made on \_\_\_\_\_\_\_\_ (day) of \_\_\_\_\_\_\_\_\_\_\_ (month) 20...…. by the Bank in favor of MIC2.

Preamble

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(“the Contractor”) was selected by MIC2 on \_\_\_\_/\_\_\_\_/\_\_\_\_ to perform the …………………….. Project (hereinafter referred to as “the Project”) pursuant to the Tender Process and in accordance with the RFP Terms and Conditions.

Pursuant to the RFP Terms and Conditions of the Framework agreement entered into on \_\_\_\_/\_\_\_\_/\_\_\_\_ by and between MIC2 and the Contractor (hereinafter referred to as “Agreement”), it is an obligation of the Contractor to submit within fifteen (15) days following the issuance date of the first Purchase order and to maintain in full force and effect, a Performance Bond equal to /5000/ USD (hereinafter referred as “the Guarantee”) in order to ensure the satisfactory, timely and faithful performance of the Contractor’s obligations under the Agreement.

1. **Guarantee.**

The Bank hereby irrevocably, unconditionally, jointly and severally with the Contractor ensures and guarantees the payment of any amount due by the Contractor to MIC2 up to the aggregate net amount of USD /-----------------/ (US Dollars…………………Only), , in accordance with the provisions of Article (7.3.2) of the Agreement, immediately upon first written demand by MIC2, and in any case, without any notice, reference or further enquiry from the Contractor or any other party and without requiring or obtaining any evidence or proof (other than the first written demand) that MIC2 is entitled to any such payment of the respective Contractor’s guaranteed obligations.

Any amount paid by the Bank under this Guarantee will automatically reduce its amount for the same.

1. **Contractor’s Guaranteed Obligations**.

By the present Guarantee, the Bank hereby irrevocably and unconditionally guarantees the timely, faithful and satisfactory performance by the Contractor of all its obligations under the Agreement all in conformance with the set out timelines, Key Performance Indicators and Service Levels,

1. **The Continuity of the Guarantee.**

This Guarantee shall continue to be effective and in force, or be revived and reinstated, as the case may be, after its expiration,(i) if the Contractor’s obligations under the Agreement are not satisfactorily completed and to the extent of cost of said obligations or (ii) if at any time, any payment of all or part of the Guaranteed Obligations is rescinded, or must otherwise be returned to MIC2 for any reason all as though such payment has never been made.

The liability of the Bank hereunder shall not be diminished or impaired by any illegality, invalidity, unenforceability of the guaranteed Obligations against the Contractor, or by the extension or renewal of any amount payable in respect of the Guaranteed Obligations; or by any demand made to the Bank by MIC2 and or by any payment made by the Bank to MIC2, any other circumstance which might otherwise constitute a defense available to or a discharge of the Contractor in respect of the Guaranteed Obligations or the Bank in respect of this Guarantee.

1. **Release.**

Upon the irrevocable payment in full of the Guaranteed Obligations, MIC2 shall release the Bank by a written instrument signed by the authorized signatory of MIC2. Notwithstanding the prior receipt by the Bank of a written instrument from MIC2 discharging or releasing the Bank, this Guarantee shall continue to be effective against the Bank until the last day of the last Project implementation period as defined in the Agreement, and the right of MIC2 to make a written demand at any time during this period shall not be impaired thereby.

1. **Waiver of Defenses.**

The Bank hereby acknowledges that it does not have any right of discussion or divisibility under Lebanese law in respect of the Guaranteed Obligations.

The Bank hereby irrevocably and unconditionally waives, to the fullest extent permitted by applicable law:

* + - * 1. any and all notices which may be required by statute, rule of law or otherwise, to preserve intact any rights of MIC2 against the Contractor including without limitation, any demand, presentment, protest or notice of acceptance, notice of any liability to which this guarantee may apply; and
        2. promptness, diligence and any right to the enforcement, assertion or exercise by MIC2 of any right, power, privilege or remedy; and
        3. any requirement that MIC2 or any other person exhaust any right, power, privilege or remedy, or mitigate any damages resulting from default, in respect of the Guaranteed Obligations; and
        4. the litigation, administration, dissolution, lack of capacity or authority or, any change in the name or constitution of the Contractor or the Bank.

1. **Assignment.**

It is acknowledged and agreed by the Bank that MIC2 may at any time transfer rights under this Guarantee to the Republic of Lebanon or any of its designee. Accordingly, the Bank agrees that the benefit of this Guarantee may be assigned (in whole or in part) by MIC2 without the consent of the Bank or of the Contractor to, and may be enforced by, any third party to whom the benefit of the Guarantee is assigned (in whole or in part) as if such third party were MIC2 under this Guarantee. MIC2 shall then give notice of the assignment to the Bank.

However, the Bank shall not, nor shall it purport to, assign, transfer, charge or otherwise deal with all or any of its rights under this Guarantee nor grant, declare, create, or dispose of any right or interest in it, without the prior written consent of MIC2.

1. **Notices.**

All notices, demands, or communications given or sent to MIC2 or the Bank in connection with this Guarantee shall be given in writing addressed to the recipient at the address specified at the top of this Guarantee or at such other address as may be notified by a party to the other, from time to time, for that purpose.

1. **Governing Law.**

This Guarantee is governed by, and shall be construed in accordance with the Lebanese law.

All disputes arising out, of, or in connection with the present agreement shall be submitted to the Beirut courts and settled under the Lebanese Laws.

1. **Expiration.**

This Guarantee expires on……………………, and can be renewed at the contractor’s sole expense for a period of ……………….. at the unilateral request of MIC 2; this request will not require approval of Contractor and it will be executed unconditionally. Any claim from MIC2, if any, must be delivered to and duly received by the Bank on or before the expiry date of this Guarantee, after which date this Guarantee will automatically become null and void and no claim whatsoever shall be entertained by the Bank thereafter irrespective of the return or non-return of the original Guarantee instrument to the Bank.

IN witness of which this Guarantee has been signed on behalf of the Bank on the date which appears on the first page.

BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_