



PREQUALIFICATION DOCUMENT

INSTRUCTIONS TO PROSPECTIVE BIDDERS



GOVERNMENT
OF KHYBER
PAKHTUNKHWA

KHYBER PAKHTUNKHWA
**INTEGRATED TOURISM
DEVELOPMENT PROJECT (KITE)**
PROJECT MANAGEMENT UNIT (DoT)

Department of Tourism, Culture, Sports, Archaeology, Museums & Youth Affairs

DEVELOPMENT OF INTEGRATED TOURISM ZONE PROJECT LOCATED IN GANOOOL, MANSEHRA

DATED

DECEMBER 25, 2022

IMPORTANT NOTICE/DISCLAIMER

This Prequalification Document is provided to the recipient solely for use in preparing and submitting a Prequalification Application in connection with the Project. This Prequalification Document is being issued by the Contracting Authority, supported by the Government of Khyber Pakhtunkhwa, solely for use by Prospective Bidders in considering the Project. Unless expressly specified otherwise, all capitalized terms used herein shall bear the meaning ascribed thereto in the Glossary of this Prequalification Document.

The evaluation criteria were determined by the Contracting Authority and approved by the Evaluation Committee. Neither of these entities or bodies, nor the Government nor their consultants, advisors (including its employees, personnel, agents, consultants, advisors and contractors etc.) make any representation (expressed or implied) or warranties as to the accuracy or completeness of the information contained herein, or in any other document made available to a person in connection with the Prequalification Stage, the RFP Stage and the tender process for the Project and the same shall have no liability for this Prequalification Document or for any other written or oral communication transmitted to the Prospective Bidder in the course of the Prospective Bidder's evaluation of the Project. None of these entities or bodies, nor their employees, personnel, agents, consultants, advisors and contractors etc. will be liable to reimburse or compensate the Prospective Bidder for any costs, fees, damages or expenses incurred by the Prospective Bidder in evaluating or acting upon this Prequalification Document or otherwise in connection with the Prequalification Stage, the RFP Stage or the Project as contemplated herein.

The Prequalification Applications submitted in response to this Prequalification Document by any of the Prospective Bidders shall be submitted with the full understanding and agreement of any and all terms of this Prequalification Document and such submission shall be deemed as an acceptance to all the terms and conditions stated in this Prequalification Document.

Any Prequalification Applications in response to this Prequalification Document submitted by any Prospective Bidder shall be construed based on the understanding that the Prospective Bidder has done a complete and careful examination of this Prequalification Document and has independently verified all the information contained within it and received (whether written or oral) from the Government and the Contracting Authority (including from its employees, personnel, agents, consultants, advisors and contractors etc.).

This Prequalification Document shall neither constitute a solicitation to invest, or otherwise participate, in the Project, nor shall it constitute a guarantee or commitment of any manner on the part of the Contracting Authority or the Government that the Project will be awarded. The Contracting Authority and the Government reserves its right, in its full discretion, to modify the Prequalification Document, the Prequalification Stage, the RFP Stage and/or the Project at any time to the fullest extent permitted by law, and shall not be liable to reimburse or compensate the Prospective Bidder for any costs, taxes, expenses or damages incurred by the Prospective Bidder in such an event. The Contracting Authority may, in its sole and absolute discretion, cancel, suspend and/ or otherwise terminate the EOI process at any time without assigning any reason for the same.

This Important Notice/Disclaimer section forms part of the Prequalification Document.

GLOSSARY

TERM	MEANING
AFFILIATE	In relation to a Prospective Bidder, a Consortium Member, Financial Nominee or Lead Member, a person who Controls, is Controlled by or under the common Control with such Prospective Bidder, a Consortium Member, Financial Nominee or Lead Member.
ANNEXURE	The term shall mean an annexure of this Prequalification Document.
ANTI-CORRUPTION PROVISIONS	Means Coercive Practice, Corrupt Practice, Fraudulent Practice, Obstructive Practice, Money Laundering and Terrorist Activities, Restrictive Practice, Collusive Practice and Undesirable Practice.
CONTRACTING AUTHORITY	The Khyber Pakhtunkhwa Culture and Tourism Authority established under Section 6 of the Khyber Pakhtunkhwa Tourism Act, 2019.
BOARD OF DIRECTORS	The board of directors (or equivalent body) of an entity.
COERCIVE PRACTICE	The term shall bear the meaning ascribed thereto in Section 3.2.9.
CONCESSION AGREEMENT	The term shall bear the meaning ascribed thereto in Section 2.5.1.
CONCESSIONAIRE	The special purpose vehicle/company to be incorporated under the laws of Pakistan for the purposes of the Project by the Prequalified Bidder that is awarded the Project.
CONFLICT OF INTEREST	The term shall bear the meaning ascribed thereto in Section 3.2.3.
CONNECTED PERSON	Any Affiliate of a Prospective Bidder or Consortium Member or Financial Nominee, any director, senior executive or manager of such Prospective Bidder, Consortium Member or Financial Nominee or Affiliate of any of the foregoing, or any person having an ultimate beneficial interest of at least five per cent (5%) of the share capital or ownership interest in a Prospective Bidder, Consortium Member, Financial Nominee or Affiliate of a Prospective Bidder, a Consortium Member, Financial Nominee.
CONSORTIUM	The term shall bear the meaning ascribed thereto in Section 3.1.1.
CONSORTIUM MEMBERS	Members of a Consortium and includes the Lead Member and all Non-Lead Members.

CONSTITUTIONAL DOCUMENTS	The constitutional documents of an entity and being the memorandum of association, articles of association or equivalent charter documents (as appropriate based on the legal status of the entity).
CONTROL OR CONTROLLED	Having, directly or indirectly, a majority of the voting securities in an entity or the right to appoint, approve or remove a majority of the Board of Directors of an entity, or the ability (direct or indirect) to direct or cause the direction of the votes attaching to the majority of the issued shares or interests carrying voting rights of an entity.
CORRUPT PRACTICE	The term shall bear the meaning ascribed thereto in Section 3.2.9.
DBOT	Design, build, operate, maintain and transfer.
ESTIMATED TIMETABLE	The term shall bear the meaning ascribed thereto in Section 4.8.1.
EVALUATION COMMITTEE	The 'EVALUATION COMMITTEE' duly constituted in accordance with the Khyber Pakhtunkhwa Public Private Partnership (Constitution and Functions) Rules, 2021, in respect of the Project.
FINANCIAL CRITERIA	The Financial Criterion 1 & Financial Criterion 2 ascribed in Section 4.3.
FINANCIAL CRITERIA 1	Has the meaning ascribed in ANNEXURE B (BASIC ELIGIBILITY CRITERIA) .
FINANCIAL CRITERIA 2	Has the meaning ascribed in ANNEXURE B (BASIC ELIGIBILITY CRITERIA) .
FINANCIAL NOMINEE	Either: a) an Affiliate of the Prospective Bidder, or where the Prospective Bidder is a Consortium, the Lead Member; or b) a Parent Company, which the Prospective Bidder may put forward to satisfy the Financial Criterion 1 in accordance with Section 4.3.2.
FRAUDULENT PRACTICE	The term shall bear the meaning ascribed thereto Section 3.2.9.
GOVERNMENT	The term shall bear the meaning ascribed to the term 'Government' under the PPP Act, the same being the 'Government of Khyber Pakhtunkhwa'.

INDEPENDENT TECHNICAL ADVISER	A reputable, independent technical adviser engaged by the Prospective Bidder and which shall be responsible for independently confirming satisfaction of the Technical Criterion set out in Section 4.3 (<i>Part I – Prequalification Criteria</i>).
INTEGRATED TOURISM ZONE or ITZ	Means “integrated tourism zone” as defined under the Khyber Pakhtunkhwa Tourism Act, 2019.
INVITATION FOR PREQUALIFICATION	The term shall bear the meaning ascribed thereto in Section 2.6.2.
LEAD MEMBER	The term shall bear the meaning ascribed thereto in Section 3.1.3.
MONEY LAUNDERING OR TERRORIST ACTIVITIES	The term shall bear the meaning ascribed thereto in Section 3.2.9.
NON-LEAD MEMBER	A Consortium Member that is not the Lead Member.
NON-PREQUALIFIED BIDDER	The term shall bear the meaning ascribed thereto in Section 6.2.4.
OBSTRUCTIVE PRACTICE	The term shall bear the meaning ascribed thereto in Section 3.2.9.
PKR	Pakistani Rupees, being the lawful currency of Pakistan.
PAKISTAN	The Islamic Republic of Pakistan.
PARENT COMPANY	A corporate entity that Controls a Prospective Bidder, or if the Prospective Bidder is a Consortium, the Lead Member.
POWER OF ATTORNEY	The Power of Attorney to be provided by the Prospective Bidder in the form prescribed in ANNEXURE E (POWER OF ATTORNEY) .
PPP	Public Private Partnership.
PPP ACT	The Khyber Pakhtunkhwa Public Private Partnership Act, 2020 (as amended from time to time).
PPP UNIT	The term shall bear the meaning ascribed to the term ‘PPP Unit’ under the PPP Act, the same being the Public-Private Partnership Unit established under Section 5 of the PPP Act.
PREQUALIFICATION APPLICATION	The prequalification application including all Annexures and documents required to be submitted by a Prospective Bidder in terms of and in accordance with this Prequalification Document.

PREQUALIFICATION APPLICATION FORM	An application duly executed by the duly authorized representative of the Prospective Bidder (or if the Prospective Bidder is a Consortium, the duly authorized representative of the Lead Member), in the form attached hereto at ANNEXURE C (PREQUALIFICATION APPLICATION FORM) .
PREQUALIFICATION APPLICATION SUBMISSION DEADLINE	The term shall bear the meaning ascribed thereto in Section 5.3.1.
PREQUALIFIED BIDDER	The term shall bear the meaning ascribed thereto in Section 6.2.3.
PREQUALIFICATION CRITERIA	The term shall bear the meaning ascribed thereto in Section 4.3 (<i>Part I – Prequalification Criteria</i>).
PREQUALIFICATION DOCUMENT OR EOI	This ' <i>Prequalification Document, Instruction to Prospective Bidders</i> ', including the Important Notice/Disclaimer and including all Annexures attached hereto, as amended, modified, corrected or clarified and/or supplemented from time to time which, once issued, shall be read together with and as part of this EOI.
PROJECT	The ' INTEGRATED TOURISM ZONE PROJECT ', as described in Section 2.1 (<i>General</i>).
PROJECT COST	The total of the debt and equity investment in the Project.
PROSPECTIVE BIDDER	An entity or Consortium (represented by the Lead Member) established in accordance with Section 3.1.1 that submits the Prequalification Application in response to this Prequalification Document.
RESPONSE TO QUESTIONS DOCUMENT	The term shall bear the meaning ascribed thereto in Section 4.7.2.
RESTRICTIVE PRACTICE	The term shall bear the meaning ascribed thereto in Section 3.2.9.
REQUEST FOR PROPOSAL OR RFP	The request for proposal issued by the Contracting Authority which shall be provided to Prequalified Bidders during the RFP Stage.
RFP STAGE	The stage of the bidding process for the Project where the Prequalified Bidders submit their proposals in response to the RFP.
PREQUALIFICATION STAGE	This stage of the bidding process for the Project where the Prospective Bidder submit its Prequalification Application and which commences on the issue of this Prequalification Document and ends upon identification by the Contracting Authority of the Prequalified Bidders.

SECTION	Any section of this Prequalification Document.
SPP RULES	The Khyber Pakhtunkhwa Public Private Partnership (Selection of Private Partner) Rules, 2021 (<i>as amended from time to time</i>).
SUBSIDIARY COMPANY	A company that is under the Control of the Prospective Bidder, Financial Nominee, Lead Member or Consortium Member, as relevant.
TECHNICAL CRITERION	The technical criterion prescribed in ANNEXURE B (BASIC ELIGIBILITY CRITERIA) .
UNDESIRABLE PRACTICE	The term shall bear the meaning ascribed thereto in Section 3.2.9.
VIRTUAL DATA ROOM	The online virtual data room located at www.kptourism.com and providing certain information and documents relevant to the Project and this Prequalification Document.
VIRTUAL DATA ROOM UNDERTAKING	The agreement regulating the rules of access to the Virtual Data Room to be executed by the Prospective Bidder and the Contracting Authority.



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1 INTRODUCTION

1.1 INTRODUCTION

- 1.1.1 The Contracting Authority, supported by the Government of Khyber Pakhtunkhwa, invites Prequalification Applications from Prospective Bidders for the execution, delivery and completion of the Project as further detailed in this Prequalification Document.
- 1.1.2 The Project has been launched pursuant to the extensive technical and financial feasibility conducted by the Government of Khyber Pakhtunkhwa, to design, build, operate, maintain and transfer the Project under PPP mode.

2 PROJECT DESCRIPTION

2.1 GENERAL

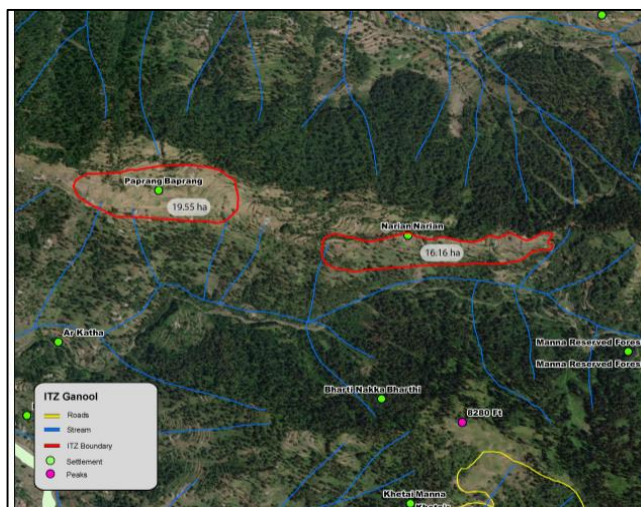
- 2.1.1. To promote tourism in Khyber Pakhtunkhwa, the provincial government has approved and declared a master plan for Integrated Tourism Zones (ITZs) in Malakand and Hazara Divisions to bolster tourism and rural economy in the province. One of the ITZs is Ganool in the Mansehra District.
- 2.1.2. The ITZs initiative will generate projects from the tourism, destination, attraction and infrastructure development and are the key to creating job opportunities and attracting investment by showcasing Khyber Pakhtunkhwa as a tourism hub in Pakistan and worldwide.
- 2.1.3. The heart of a scenic route, ITZ Ganool is located along the scenic lake tourism route in the Hazara division of Mansehra, offering the perfect destination to experience Pakistan's culture and nature. The rich ethnic culture and customs, from the many rural-community settlements in the region, together with Pakistan's most beautiful lakes and natural sceneries is an ideal land for tourist developments.

2.2 PROJECT LOCATION & ACCESSIBILITY

- 2.2.1. ITZ Ganool is located in District Mansehra. The coordinates are given below:

ITZ Name	Ganool 1 & 2
ITZ Coordinates	34° 36' 58.93" N 73° 27' 09.61" E 34° 36' 47.92" N 73° 27' 30.08" E
Access Road	National Highway (N-15)
Nearest Town	Balakot

Figure 1: Defined boundary of ITZ Ganool



- 2.2.2. To reach Ganool from Islamabad, the most efficient way is to take the Route 1 via the Motorway M-1, E-35 Hazara Expressway and National Highway N-15. The route is 219

kilometers long and has an estimated travel time of approximately 3 hours and 42 minutes.

2.2.3. The alternate route 2 from Islamabad to Ganool is via Murree and Muzaffarabad. The route consists of N-75 and S-2. Although this route is relatively 34 kilometers shorter than Route 1, yet it has a prolonged travel time due to its poor road conditions.

2.2.4. The accessibility to Ganool from Islamabad is displayed in Figure 1.

Figure 2: Site Accessibility Route to Ganool



2.3 DEVELOPER’S SCOPE OF WORK

2.3.1 The scope of the Project entails:

On a design, build, operate, and maintain and transfer basis:

- Master Planning of the entire ITZ
- Development of infrastructure within ITZ including road network, utilities, telecommunication & internet facilities etc.
- Plotting of the envisaged land for development
- Tourism development (itself or through sub-lease)
- Operation & Maintenance (O&M) of the ITZ over long term
- Development & Maintenance of the Eco System of the ITZ
- Development categories may include:

- Nature & environment
- Wellness, sports and leisure
- Shopping
- Family entertainment
- History
- Culture and heritage

2.4 PROJECT FEATURES

2.4.1 The Project entails the below-mentioned features:

- a) Total area earmarked for ITZ Ganool is ~60 acres of which expected Gross Floor Area shall be ~35% to - 45%. Local bylaws and CTA considerations shall be followed while development of the ITZ.
- b) Land will be provided by CTA to the developer free from any encumbrance. Major land acquisition has been completed.
- c) CTA will provide the ITZ land to the developers on a long-term license/ lease term with the option to sub-lease under similar terms.
- d) In order to de-risk developer's investment, CTA will allow long term payments for the ITZ land.
- e) GoKPK will ensure road infrastructure to the ITZ's zero point. Development of infrastructure connectivity is at an advanced stage. The developer and the CTA shall work jointly to provide utilities in the ITZ.
- f) Following legal laws or certain provisions of laws shall have no jurisdiction in the ITZ:
 - a. The Khyber Pakhtunkhwa Urban Immovable Property Tax Act 1958;
 - b. The Khyber Pakhtunkhwa River Protection Ordinance, 2002;
 - c. The Khyber Pakhtunkhwa Forest Ordinance, 2002;
 - d. Provisions to be notified by Government from time to time under the Khyber Pakhtunkhwa Local Government Act, 2013;
 - e. The Khyber Pakhtunkhwa Food Safety Authority Act, 2014;
 - f. The Khyber Pakhtunkhwa Environmental Protection Act, 2014;
 - g. The Khyber Pakhtunkhwa Wildlife and Bio-diversity (Protection, Preservation, Conservation and Management) Act, 2015; and
 - h. The Khyber Pakhtunkhwa Mineral Sector Governance Act, 2017.

- 2.4.2 The Project is an important part of the Government's strategy towards developing tourism infrastructure and amenities.
- 2.4.3 The following will be the key guiding principles for successful delivery of the Project:
- a) transparency of the procurement process;
 - b) timeliness of delivery;
 - c) appropriate risk allocation; and
 - d) value for money for the Contracting Authority; and

2.5 **PROJECT STRUCTURE**

- 2.5.1 The Project shall be structured and documented as a DBOT contract (the **Concession Agreement**). At the end of the term under the Concession Agreement, ownership of the Project will transfer to the Contracting Authority from the Concessionaire, who will have no further obligations to the Contracting Authority/Government, unless the Concession Agreement is extended on mutually agreed terms.
- 2.5.2 For the duration of the Concession Agreement, the Concessionaire will be responsible for the development, design, finance, construction, maintenance and operation of the Project. Further details on the technical parameters, including the performance specifications to be met by the Concessionaire, will be provided to Prequalified Bidders at the RFP Stage.
- 2.5.3 Having a strong commitment towards making the Project a successful PPP, and in order to provide Prospective Bidders additional comfort, the Government is considering a number of supporting mechanisms, which may include, *inter alia*, provision of leasehold rights to the Concessionaire on the ITZ land in Ganool, Mansehra.

2.6 **BID PROCESS**

- 2.6.1 The Contracting Authority and the Government, in accordance with SPP Rules and other applicable laws of Pakistan, have initiated the Prequalification Stage in respect of the Project to identify Prospective Bidders for the Project and to select Prequalified Bidders.
- 2.6.2 The Contracting Authority has published an '*Invitation for Prequalification*' dated 11/12/2022 (the **Invitation for Prequalification**) in the Daily Dawn on 11/12/2022, The Nation on 11/12/2022, Mashriq on 11/12/2022 and Nawai Waqt on 11/12/2022, and on the website of the Contracting Authority (www.kptourism.com). This Prequalification Document has been prepared in accordance with that Invitation for Prequalification.
- 2.6.3 The Prospective Bidder shall prepare a Prequalification Application in response to this Prequalification Document. The Prequalification Application shall include the completed Annexures and shall be submitted in accordance with this Prequalification Document.
- 2.6.4 The Prequalification Applications shall be assessed by the Contracting Authority on the basis of the Prequalification Criteria and the requirements of this Prequalification



Document. If the Prospective Bidder is determined by the Contracting Authority to be a Prequalified Bidder, then they shall proceed to the RFP Stage.

- 2.6.5 During the RFP Stage, Prequalified Bidders will be invited to obtain the RFP which will provide legal, commercial, technical and financial background for the Project and set out the instructions and guidelines under which the proposals must be prepared and submitted. The RFP will also describe the detailed methodology for the evaluation of the proposals.

3 PROSPECTIVE BIDDERS

3.1 PROSPECTIVE BIDDER-LEAD MEMBERS

- 3.1.1 A Prospective Bidder for the Project may be a single entity or may take the form of a consortium (a **Consortium**) comprising of Consortium Members, in each case, that are companies (as defined in the Companies Act, 2017), firms, corporate bodies or other legal entities or companies (under regulations that are equivalent to the Companies Act, 2017), firms, corporate bodies established outside Pakistan.
- 3.1.2 If a Prequalified Bidder is awarded the Project, the Prequalified Bidder shall establish the Concessionaire in Pakistan in accordance with the Companies Act, 2017.
- 3.1.3 Each Prospective Bidder that is a Consortium shall appoint and authorize one (1) lead member (the **Lead Member**) who shall represent and irrevocably bind all Consortium Members in all matters connected with the Prequalification Stage and the RFP Stage including but not limited to the submission of the Prequalification Application on behalf of the Consortium.
- 3.1.4 In the case of a Prospective Bidder that is a Consortium, there shall be no more than five (5) Consortium Members and each Consortium Member shall hold not less than a five percent (5%) interest in the Concessionaire.
- 3.1.5 The Prospective Bidder/ Lead Member (including its Subsidiary Companies) must be an experienced developer in accordance with the Prequalification Criteria set out in Section 4.3 (*Prequalification Criteria*).
- 3.1.6 The Lead Member (in the case of a Consortium) and the Prospective Bidder shall give undertakings to the Contracting Authority that:
- a) the Lead Member, shall directly or indirectly own above fifty percent (50%) interest in the Concessionaire and its shareholding shall not change and there shall not be a change of Control;
 - b) there shall not be a change of Control of a Consortium Member or a change of the identity of the Consortium Members;
 - c) there shall not be a change of Control of the Prospective Bidder;
 - d) there shall not be a change of Control of a Financial Nominee; and
 - e) there shall not be a change of Control of each Subsidiary Company that is evaluated as part of the Prequalification Criteria;
- in each case for a minimum period set out in the RFP.
- 3.1.7 A Prospective Bidder shall clearly indicate in its Prequalification Application which entity, being the Lead Member, the Prospective Bidder, the Consortium Member, the Subsidiary Company, or the Financial Nominee is to be evaluated for each such Prequalification Criteria.

3.2 PROSPECTIVE BIDDER PARTICIPATION RESTRICTIONS AND INELIGIBILITY

- 3.2.1 No Prospective Bidder may prequalify if that Prospective Bidder, or where the Prospective Bidder is a Consortium, a Consortium Member of that Consortium:
- a) directly or indirectly owns any interest in another Prospective Bidder or a Consortium Member of another Consortium;
 - b) has established a partnership or alliance with another Prospective Bidder or a Consortium Member of another Consortium in respect of the Project;
 - c) has a representative on the Board of Directors of another Prospective Bidder or a Consortium Member of another Consortium; or
 - d) has a representative on the Board of Directors of a company that Controls another Prospective Bidder or a Consortium Member of another Consortium.
- 3.2.2 No Prospective Bidder may prequalify if that Prospective Bidder, or where the Prospective Bidder is a Consortium a Consortium Member of that Consortium has a Conflict of Interest in respect of the Project.
- 3.2.3 For the purposes of this Prequalification Document, "**Conflict of Interest**" means, in respect of any Prospective Bidder (or where the Prospective Bidder is a Consortium a Consortium Member):
- a) such Prospective Bidder (or where the Prospective Bidder is a Consortium, a Consortium Member of that Consortium) and any other Prospective Bidder (or a Consortium Member of another Consortium) have either directly or indirectly the right to direct the respective Prospective Bidder's or Consortium Member's management and policies by operation of law or legal agreement;
 - b) such Prospective Bidder (or where the Prospective Bidder is a Consortium, a Consortium Member of that Consortium) receives or has received any direct or indirect subsidy, grant, loan from any other Prospective Bidder (or a Consortium Member from another Consortium) or has provided any such direct or indirect subsidy, grant, loan to any other Prospective Bidder (or Consortium Member of another Consortium);
 - c) such Prospective Bidder (or where the Prospective Bidder is a Consortium, a Consortium Member of that Consortium) has a relationship with another Prospective Bidder (or Consortium Member from another Consortium), either directly or through common third parties, that puts them in a position to have access to each other's information or influence the Prequalification Application of the other Prospective Bidder (or Consortium Member of another Consortium);
 - d) such Prospective Bidder (or where the Prospective Bidder is a Consortium, a Consortium Member of that Consortium) has participated as a consultant(s) and/ or adviser(s) or has directly assisted the Government or Contracting Authority in the preparation of any documents, design or technical specifications of the Project;
 - e) such Prospective Bidder (or where the Prospective Bidder is a Consortium, a Consortium Member of that Consortium) employs or has employed or engaged as contractor an officer or employee of the Government or Contracting Authority for matters related to or incidental to the Project, the Prequalification Stage, the RFP Stage or the Prequalification Document; or

- f) such Prospective Bidder (or where the Prospective Bidder is a Consortium, a Consortium Member of that Consortium) appoints any legal, financial or technical adviser engaged by the Government or Contracting Authority in relation to the Project for matters related to or incidental to the Project, the RFP Stage, the Prequalification Stage or the Prequalification Document.
- 3.2.4 Prospective Bidders (or where the Prospective Bidder is a Consortium, a Consortium Member of that Consortium) or their agents and/or employees shall not engage in discussions or other communications with any other Prospective Bidder (or Consortium Member from another Consortium) or their agents and/or employees regarding the preparation or submission of their Prequalification Application. Breach of this provision may result in disqualification of the Prospective Bidder from the Prequalification Stage and the RFP Stage or determination as a Non-Prequalified Bidder in accordance with Section 6.2.4.
- 3.2.5 Notwithstanding anything else to the contrary in this Prequalification Document, Prospective Bidders (or where the Prospective Bidder is a Consortium, the Consortium Members of that Consortium) may use the same firm or firms to obtain geotechnical, topographical, or other information about the site and may use the same firm or firms to obtain legal advice in respect of the Prequalification Stage, RFP Stage, the Project or the Prequalification Application provided that adequate information barriers are put in place to ensure the requirements of Section 3.2.6 (b) can be satisfied.
- 3.2.6 Notwithstanding the requirements in Sections 3.2.1 to 3.2.5, a Prospective Bidder may prequalify if it can present evidence and provides undertakings reasonably satisfactory to the Contracting Authority that arrangements and processes have been established such that the matters set out in Sections 3.2.1 to 3.2.5:
- a) do not materially affect the independent investment decisions of that Prospective Bidder (or where the Prospective Bidder is a Consortium, the Consortium Member of that Consortium); and
- b) there shall not be any passing of any information between that Prospective Bidder (or where the Prospective Bidder is a Consortium, the Consortium Member of that Consortium) and any other Prospective Bidder (or a Consortium Member of another Consortium) in respect of the Project, the RFP Stage, the Prequalification Stage or the Prequalification Application.
- 3.2.7 Prospective Bidders (and where the Prospective Bidder is a Consortium, each Consortium Member of that Consortium) each Connected Person and their respective partners, suppliers, sub-contractors, sub-consultants, officers, employees, agents, service providers and advisers shall observe the highest standard of ethics and transparency during the Prequalification Stage and RFP Stage and in respect of the Prequalification Application. Notwithstanding anything to the contrary contained herein, the Contracting Authority shall reject a Prequalification Application without being liable in any manner whatsoever to the Prospective Bidder (or Consortium Member) if it determines that the Prospective Bidder (or a Consortium Member) or a Connected Person has directly or indirectly or through an agent, engaged in or breached any Anti-Corruption Practice.
- 3.2.8 Furthermore, a Prospective Bidder (and where the Prospective Bidder is a Consortium, each Consortium Member of that Consortium) shall not be eligible to participate in any request for prequalification or request for proposal for any other project of the

Government or Contracting Authority for a period of three (3) years from the date such Prospective Bidder, or Consortium Member or a Connected Person is considered by the Government or Contracting Authority to have directly or indirectly or through an agent, engaged or indulged in or breached Anti-Corruption Practices.

3.2.9 For the purposes of this EOI, the following terms shall have the meaning hereinafter respectively assigned to them:

- a) **Corrupt Practice** means the offering, giving, receiving, or soliciting, directly or indirectly, of a bribe or anything of value to influence the actions of any persons connected with the Prequalification Stage or RFP Stage or the Prequalification Application for or on behalf of the Government or Contracting Authority, including their respective representatives;
- b) **Coercive Practice** means impairing or harming or threatening to impair or harm, directly or indirectly, any person or the property of that person to influence improperly the actions of a person involved in the Prequalification Stage or RFP Stage or the Prequalification Application;
- c) **Collusive Practice** means an arrangement between two or more persons involved in the Prequalification Stage or RFP Stage or the Prequalification Application designed to achieve an improper purpose, including influencing improperly or unlawfully the actions of another person;
- d) **Fraudulent Practice** means any act or omission including a misrepresentation that knowingly or recklessly misleads or attempts to mislead a person involved in the Prequalification Stage or RFP Stage or the Prequalification Application to obtain a financial or other benefit or to avoid an obligation;
- e) **Obstructive Practice** means:
 - (1) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede an investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/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
 - (2) acts intended to materially impede the exercise of the inspection and audit rights of the Government, or Contracting Authority and their respective representatives or financier/s of the Project including any development partner of the financier/s; and
- f) **Restrictive Practice** means forming a cartel or arriving at any understanding or arrangement among the Prospective Bidders (or in the case of a Consortium among Consortium Members of different Consortiums) with the objective of restricting or manipulating a full and fair competition in the Prequalification Stage or RFP Stage.
- g) **Undesirable Practice** means (i) establishing contact with any member of the Contracting Authority or Government or any person connected with or employed or engaged by the Government or Contracting Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the

Prequalification Stage or RFP Stage or the Prequalification Application; or (ii) having a Conflict of Interest;

- h) **Money Laundering or Terrorist Activities** means engaging in or facilitating any form of money laundering or terrorist financing.

3.2.10 The Prospective Bidder (and where the Prospective Bidder is a Consortium each Consortium Member) represents, warrants and covenants that as on the date of the Prequalification Application:

- a) neither it nor, to the best of its knowledge, any Connected Person has breached any Anti-Corruption Practices;
- b) it shall not breach, and shall not cause any Connected Person to breach, any Anti-Corruption Practices;
- c) no loan, offer, advantage or benefit of any kind has been given, made, promised to be made, requested, agreed to be received or accepted, or authorised to be made, given or received, directly or indirectly, by it or any Connected Person, in respect of the Government or Contracting Authority or official of the Government or Contracting Authority;
- d) it has not procured, and will not procure, any other person to commit or otherwise be involved with any breach of Anti-Corruption Practices on its or any other person or entity's behalf;
- e) neither it nor anyone engaged by it in connection with this EOI or the Project, including any Connected Person has been, or is, subject to:
 - (1) a conviction in any court for any offence involving any breach of Anti-Corruption Practices; or
 - (2) a dismissal or resignation from any employment on the grounds of being implicated in any breach of Anti-Corruption Practices;
- f) neither it nor any Connected Person has been, or is, subject to:
 - (1) being debarred or cross-debarred by multilateral development banks under the agreement for mutual recognition of debarment decisions (including African Development Bank, the Transaction Adviser, European Bank For Reconstruction And Development, Inter-American Development Bank or World Bank Group) on the grounds of any breach of obligations substantially similar to the Anti-Corruption Practices;
 - (2) as on the date of the Prequalification Application the Prospective Bidder (or where the Prospective Bidder is a Consortium each Consortium Member) nor a Connected Person has been, or is, subject to any formal investigation, enquiry or enforcement proceedings by any government authority with regard to any breach of any obligations substantially similar to the Anti-Corruption Practices;

3.2.11 Without limiting any other obligation of the Prospective Bidder (and where the Prospective Bidder is a Consortium each Consortium Member) the Prospective Bidder (and where the Prospective Bidder is a Consortium each Consortium Member) shall:

- a) keep the Government and Contracting Authority informed on an on-going basis as to the initiation, progress and disposition of any investigations or proceedings relating to any matter connected to the Prospective Bidder (and where the Prospective Bidder is a Consortium each Consortium Member) or a Connected Person in relation to compliance with Anti-Corruption Practices;
- b) promptly notify and provide full details to the Government and the Contracting Authority if the Prospective Bidder (or where the Prospective Bidder is a Consortium each Consortium Member) becomes aware of:
 - (1) any breach of Anti-Corruption Practices by a Connected Person;
 - (2) any solicitation, directly or indirectly, of a bribe or anything of value by an officer, employee, consultant or agent of the Government or Contracting Authority; or
 - (3) a Conflict of Interest;
- c) in the event of a breach of the warranties given under Section 3.2.10 provide full details of such breach.

3.2.12 The Prospective Bidder (and where the Prospective Bidder is a Consortium each Consortium Member) shall use its best endeavours to incorporate the Anti-Corruption Practices set out in Sections 3.2.7 to 3.3.10 into any contract entered into by the Prospective Bidder (and where the Prospective Bidder is a Consortium each Consortium Member) with a third party for the purpose of implementing any portion of the Project.

3.2.13 Necessary action will be taken by the Contracting Authority or Government against a Prospective Bidder or Consortium Member should they engage, indulge in or breach any Anti-Corruption Practices under applicable Pakistan laws.

3.3 INELIGIBILITY OF A PROSPECTIVE BIDDER

3.3.1 A Prospective Bidder shall not be eligible to submit a Prequalification Application where that Prospective Bidder or where the Prospective Bidder is a Consortium, a Consortium Member of that Consortium:

- a) has been: (A) barred by any central, state or local government or government instrumentality in Pakistan, or in any other jurisdiction to which the Prospective Bidder or a Consortium Member belongs or in which the Prospective Bidder or a Consortium Member conducts its business, or (B) debarred by any multilateral financial institution, from participating in any project on a private participation basis and the bar subsists as on the Prequalification Application Submission Deadline
- b) is from a country which does not have diplomatic relations with Pakistan or where by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations or under applicable law in Pakistan prohibits any import of goods or contracting of works or services

from such country or any payments to persons or entities in such country as a consequence of such compliance; or

- c) is under investigation for (or its Connected Persons are under investigation) for any of fraud, corruption, collusion or money laundering or from a criminal act involving dishonesty, physical violence or harm to human life.

3.3.2 A Prospective Bidder (and in the case of a Consortium, a Consortium Member) should not have, in the three (3) years preceding the Prequalification Application Submission Deadline:

- a) entered into a contract with the Government, Contracting Authority, federal or local or provincial government of Pakistan and the contract was terminated due to an event of default on the part of the Prospective Bidder or Consortium Member;
- b) a Government, an Contracting Authority, federal government or local or provincial government of Pakistan has been awarded a penalty or requirement to pay compensation or damages by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Prospective Bidder or Consortium Member as the case may be in connection with a contract entered with a Government, an Contracting Authority, federal government or local or provincial government of Pakistan;
- c) been convicted (or any of its Connected Persons have been convicted) of fraud, corruption, collusion or money laundering or from a criminal act involving dishonesty, physical violence or harm to human life.

3.4 COSTS

3.4.1 The Prospective Bidder shall bear all costs, fees and expenses associated with the preparation and submission of its Prequalification Application, including, without limitation, all costs and expenses related to the Prospective Bidder's preparation of responses to questions or requests for clarification.

3.5 NO OBLIGATION TO SELECT OR PROCEED

3.5.1 Notwithstanding any other section in this Prequalification Document, by submission of a Prequalification Application by a Prospective Bidder, such Prospective Bidder and, in case of a Consortium, Consortium Member of such Consortium acknowledges and agrees that:

- a) the Contracting Authority may, at its sole discretion and at any stage, refuse to consider and completely withdraw from the Prequalification Stage; or decide to terminate the entire bidding process, without assigning any reason whatsoever; or decide to proceed with the Project under a new procurement process (including any new PPP procurement process); or decide to proceed with the Project in some manner other than as a PPP; or reject any Prequalification Application that, in the sole opinion of the Contracting Authority, is incomplete or irregular, contains exceptions or deviations that are unacceptable to the Contracting Authority, or contains false or misleading statements, claims, or information, or omits any material information that must be submitted under this Prequalification

Document, or for any other reason whatsoever;

- b) the Contracting Authority's decision with respect to the compliance or non-compliance of a Prequalification Application shall be final and binding and that the Contracting Authority shall in no way be obliged to consult the Prospective Bidder and, in case of a Consortium, Consortium Member of such Consortium in making its decisions; and
- c) any Prequalification Application submitted in response to this Prequalification Document is submitted upon a full understanding and agreement of the terms related to the aforementioned points (a) and (b) and therefore the submission of a Prequalification Application in response to this Prequalification Document would be deemed as an acceptance to the aforesaid terms.

3.6 AMENDMENTS & MODIFICATIONS

- 3.6.1 To the extent permitted under the applicable laws of Pakistan, the Contracting Authority may, at its sole discretion, at any time, and for any reason whatsoever, without becoming liable to any Prospective Bidder or in case of a Consortium, to any Consortium Member or to any other party, by way of addenda, modify, amend, or otherwise change all or any part of this Prequalification Document, including suspending, postponing, or terminating all or any part of the tendering process. Any addendum shall be issued by the Contracting Authority in writing and the same will be explicitly identified as an addendum to this Prequalification Document. Any such amendments and modifications shall be binding on each Prospective Bidder or in case of a Consortium, any Consortium Member or any other party.

4 PREQUALIFICATION: PREPARATION

4.1 LANGUAGE OF PREQUALIFICATION APPLICATION

4.1.1 The Prequalification Application prepared by the Prospective Bidder, and all correspondence and documents related to the Prequalification Applications shall be submitted in English, as specified in **ANNEXURE A (DATA SHEET)**.

4.2 DOCUMENTS COMPRISING THE PREQUALIFICATION APPLICATION

4.2.1 The Prequalification Applications submitted by the Prospective Bidder shall comprise the following documents:

- i. Part I – the information required by Section 4.3 (*PART I – PREQUALIFICATION CRITERIA*);
- ii. Part II – the documents or information required by Section 4.4 (*PART II – PREQUALIFICATION FORM AND OTHER DOCUMENTS*);
- iii. Part III – where the Prospective Bidder is a Consortium, the documents required by Section 4.5 (*PART III – CONSORTIUM DOCUMENTS AND REQUIREMENTS*); and
- iv. Part IV – the Power of Attorney required by Section 4.6 (*PART IV – POWER OF ATTORNEY*).

The Prequalification Applications shall contain no fees or fees schedules or other reference to rates and fees for undertaking the Project. Prequalification Applications containing such fee related information will be rejected.

4.3 PART I – PREQUALIFICATION CRITERIA

In Part I of the Prequalification Application, the Prospective Bidder shall submit proof that it (together with the Subsidiary Company, the Lead Member, Non-Lead Members and the Financial Nominee as relevant) meets the basic eligibility criteria set out in **ANNEXURE B (BASIC ELIGIBILITY CRITERIA)**.

4.3.1 TECHNICAL CRITERIA – SUBMISSION OF EVIDENCE FROM SUBSIDIARY COMPANIES

The Prospective Bidder shall provide evidence of projects to satisfy the Technical Criterion.

The Prospective Bidder may also include evidence of projects undertaken by one or more Subsidiary Companies to satisfy the Technical Criterion. In each case the evidence shall clearly set out whether the projects involved the Prospective Bidder, the Lead Member or the Subsidiary Company.

For the avoidance of doubt, in the case of the Prospective Bidder, projects undertaken by other companies of the same corporate group, which are not Subsidiary Companies shall not be taken into account to satisfy the Technical Criterion.

In case the Prospective Bidder, or if the Prospective Bidder is a Consortium, the Lead Member, includes evidence of projects undertaken by one or more Subsidiary Companies, it shall submit, in addition to all other documentation required by this

Prequalification Document, the documentation specified in Section 4.4.2 with respect to each relevant Subsidiary Company.

4.3.2 FINANCIAL CRITERIA – SUBMISSION OF EVIDENCE FROM FINANCIAL NOMINEE

The Prospective Bidder or where the Prospective Bidder is a Consortium, the Lead Member shall satisfy the requirements of Financial Criterion 1. In addition, where the Prospective Bidder is a Consortium then each Non-Lead Member shall satisfy Financial Criterion 2.

The Prospective Bidder, or if the Prospective Bidder is a Consortium, the Lead Member, may choose to present financial statements from a Financial Nominee on the basis that the Financial Nominee shall satisfy Financial Criterion 1 in place of the Prospective Bidder/Lead Member.

In case the Prospective Bidder, or if the Prospective Bidder is a Consortium, the Lead Member, chooses to elect to have the Financial Nominee satisfy Financial Criterion 1, it shall submit, in addition to all other documentation required by this Prequalification Document, the documentation specified in Section 4.4.2 with respect to the Financial Nominee. In addition, the Financial Nominee shall guarantee to the Contracting Authority certain of the Prospective Bidder's/ Lead Member's obligations in the form set out in the Financial Nominee Letter of Comfort in **ANNEXURE H (FINANCIAL NOMINEE LETTER OF COMFORT)**. The Financial Nominee shall provide an executed letter of support in the form attached in **ANNEXURE H (FINANCIAL NOMINEE LETTER OF COMFORT)**.

4.4 PART II – PREQUALIFICATION FORM AND OTHER DOCUMENTS

In Part II of the Prequalification Application, each Prospective Bidder shall provide the following:

- 4.4.1 A Prequalification Application signed by the Prospective Bidder (or if the Prospective Bidder is a Consortium, the Lead Member of that Consortium) in the form of **ANNEXURE C (PREQUALIFICATION APPLICATION FORM)**.
- 4.4.2 The following legal documents and background information:
 - a) basic information on the Prospective Bidder (or if the Prospective Bidder is a Consortium, each Consortium Member of that Consortium), as detailed in **ANNEXURE D (BASIC INFORMATION FORM)**, including an up-to-date list of shareholders of the Prospective Bidder (or if the Prospective Bidder is a Consortium an up to date list of shareholders for each Consortium Member);
 - b) a certified copy of the Constitutional Documents of the Prospective Bidder (or if the Prospective Bidder is a Consortium, the Constitutional Documents of each Consortium Member of that Consortium) and any amendments thereto; and
 - c) a certified copy of the Prospective Bidder's certificate of incorporation (or, if the Prospective Bidder is a Consortium, each Consortium Member of that Consortium).

- 4.4.3 An Affidavit, in the form of **ANNEXURE I (AFFIDAVIT)**, confirming, *inter alia*, that the Prospective Bidder (or, if the Prospective Bidder is a Consortium, each Consortium Member of that Consortium):
- a) is able to pay its debts as and when they fall due and is not currently involved in bankruptcy or liquidation proceedings;
 - b) has not been convicted of fraud, corruption, collusion or money laundering and is not currently involved in any fraud, corruption, collusion or money laundering investigation and has not indulged in any Anti-Corruption Practices;
 - c) is not aware of any conflict of interest or potential conflict of interest arising from prior or existing contracts or relationships which could materially affect its capability to comply with the obligations in respect of this Prequalification Document; and
 - d) is not subject to or falls within any of the circumstances listed in Section 3.2 (*Prospective Bidder Participation Restrictions and Ineligibility*) or Section 3.2.10 (*Ineligibility of a Prospective Bidder*).

4.5 PART III – CONSORTIUM DOCUMENTS AND REQUIREMENTS

- 4.5.1 If the Prospective Bidder is a Consortium, there must be a Lead Member who is duly authorized (through a power of attorney signed in front of a notary, as described in Section 4.6 (*Part IV-Power of Attorney*)) by all of the Consortium Members of that Consortium to act on their behalf.
- 4.5.2 A Prospective Bidder that is a Consortium shall submit, as Part III of the Prequalification Application, a written commitment, in the form of a letter duly executed by each Consortium Member, under which each Consortium Member of that Consortium undertakes to and confirms to the Contracting Authority:
- a) an undertaking from each Consortium Member to contribute equity into the Concessionaire on time following the RFP Stage and so as not to delay the Project if the Prequalified Bidder is awarded the Project;
 - b) identifies the Consortium Member that will assume the role of Lead Member on behalf of the Consortium, and agrees that the Lead Member has authority to bind all Consortium Members of that Consortium; and
 - c) the agreement of each Consortium Member that they are jointly and severally liable to the Contracting Authority for the obligations, commitments and documents entered by the Lead Member in respect of matters arising in respect of the Prequalification Application and during the RFP Stage and the Prequalification Stage.

4.6 PART IV – POWER OF ATTORNEY

- 4.6.1 Each Prospective Bidder (or if the Prospective Bidder is a Consortium, each Consortium Member of that Consortium) shall provide, as Part IV of the Prequalification Application, a written power of attorney in the form attached hereto as **ANNEXURE E**

(POWER OF ATTORNEY), that is duly executed, signed and notarized confirming that the person(s) signing the Prequalification Application has(ve) the authority to sign.

4.7 CLARIFICATIONS

- 4.7.1 A Prospective Bidder requiring any clarification on the Prequalification Document, information to be submitted with the Prequalification Application, Prequalification Criteria or any of the requirements set out herein, may send an electronic request for clarification to the Contracting Authority with a copy to the Transaction Adviser at the e-mail addresses indicated in **ANNEXURE A (DATA SHEET)**. Any such request for clarification shall be submitted before January 20, 2023 on 1500 PST.
- 4.7.2 Electronic copies of the response, including an explanation of the query without identification of its source (the **Response to Questions Document**), will be sent to all Prospective Bidders who have requested the Prequalification Document. If similar or repeated queries are made by Prospective Bidders, those queries may be listed as one query and responded to only once.

4.8 TIMETABLE

- 4.8.1 The estimated timetable in respect of the Prequalification Stage and RFP Stage is as follows (the **Estimated Timetable**):

Indicative Transaction Timetable*

ACTIVITY	TARGET DATE
INVITATION FOR PREQUALIFICATION	December 25, 2022
CLARIFICATION REQUESTS SUBMISSION DEADLINE	January 20, 2023
PREQUALIFICATION APPLICATIONS SUBMISSION DEADLINE	January 31, 2023
ANNOUNCEMENT OF PREQUALIFIED BIDDERS	February 14, 2023
MEETING WITH PREQUALIFIED BIDDERS	February 21, 2023
LAUNCH OF RFP	March 14, 2023

** The timetable is presented for indicative purposes only.*

The Contracting Authority may, in its sole discretion and without prior notice to the Prospective Bidders, amend the Estimated Timetable. The Prospective Bidders shall not rely in any way whatsoever on the Estimated Timetable and the Contracting Authority and Government shall not incur any liability whatsoever arising out of amendments to the Estimated Timetable. The Contracting Authority shall notify the Prospective Bidders of changes to the Estimated Timetable.

5 PREQUALIFICATION APPLICATION: SUBMISSION

5.1 FORMAT AND SIGNING OF THE PREQUALIFICATION APPLICATION

- 5.1.1 Each Prospective Bidder shall prepare and submit one (1) printed original, two (2) printed copies and one (1) electronic copy (**USB drive**) of its relevant Prequalification Application, as specified in **ANNEXURE A (DATA SHEET)**, clearly marking each one as “**ORIGINAL**”, “**COPY No. 1**”, “**COPY No. 2**”, etc., as appropriate. In the event of any discrepancy between the copies and the original, the original shall prevail.
- 5.1.2 The original and all printed copies of the Prequalification Application, each consisting of the documents listed in Section 4.2 (*Documents Comprising The Prequalification Application*), shall be typed or written in indelible ink. The person or persons duly authorized to bind the Prospective Bidder shall sign the Prequalification Application by:
- a) signing the original of the relevant Prequalification Application;
 - b) initialling all of the pages of the original of the relevant Prequalification Application; and
 - c) duly numbered, indexed and bound.
- 5.1.3 The relevant Prequalification Application shall contain no alterations, omissions or additions, unless such corrections are signed by the person or persons signing the Prequalification Applications.
- 5.1.4 The USB drive requested shall include a table of contents, shall be free of any virus and shall contain non-compressed and non-protected files in printable and reproducible formats.

5.2 SEALING AND MARKING OF PREQUALIFICATION APPLICATIONS

- 5.2.1 The Prospective Bidder shall seal the original Prequalification Application and each copy in separate envelopes, each containing the documents specified in Section 4.2 (*Documents Comprising The Prequalification Application*), and shall mark the envelopes as “**PREQUALIFICATION APPLICATION – ORIGINAL**” and “**PREQUALIFICATION APPLICATION – COPIES**” (all duly marked as required herein). The envelopes shall be sealed in an outer envelope. The inner and outer envelopes shall:
- a) be addressed to the Contracting Authority at the following address:

Khyber Pakhtunkhwa Culture & Tourism Authority’s office – Olympic place adjacent Peshawar Sports Complex Stadium Road, Cantt, Peshawar.

and
 - b) bear the words: “**INTEGRATED TOURISM ZONES PROJECT. DO NOT OPEN BEFORE 1400 PST ON 31/01/2023**”.

The inner envelopes shall each indicate the name and address of the Prospective Bidder and (in case of a Consortium, the name and address of the Lead Member) to

enable the relevant Prequalification Application to be returned unopened in the event that it is declared “late”.

If the outer envelope is not sealed and marked as required in this Section 5.2 (*Sealing and Marking of Prequalification Applications*), the Contracting Authority will assume no responsibility for any Prequalification Application’s misplacement or premature opening. If the outer envelope discloses the Prospective Bidder’s identity, the Contracting Authority will not guarantee the anonymity of the submission, but this disclosure will not constitute grounds for rejection.

- 5.2.2 The USB drive requested shall be submitted together with the printed Prequalification Application as provided in **ANNEXURE A (DATA SHEET)**. For the avoidance of doubt, it is expressly specified that the Prospective Bidders shall not be allowed to submit their Prequalification Applications by e-mail.

5.3 DEADLINE FOR SUBMISSION OF PREQUALIFICATION APPLICATIONS

- 5.3.1 Prequalification Applications shall be submitted to the Contracting Authority at the address specified above no later than 1400 PST on 31/01/2023 (the **Prequalification Application Submission Deadline**).

- 5.3.2 Any Prequalification Application submitted after the Prequalification Application Submission Deadline shall be rejected and shall be returned unopened to the Prospective Bidder (or in case of a Consortium, to the Lead Member) who sent it.

5.4 CURRENCY AMOUNTS

- 5.4.1 All figures in currency amounts must be submitted in PKR.

- 5.4.2 The exchange rate in the event that the Prospective Bidder is required to convert from one currency to PKR shall be the exchange rate for the conversion of the relevant currency into PKR as set by the State Bank of Pakistan at its website, www.sbp.org.pk and which shall be calculated as at the date of the Invitation for Prequalification.

- 5.4.3 The Contracting Authority reserves the right to dismiss any Prequalification Applications if there are material calculation errors.

- 5.4.4 In the event of any discrepancy between any amount in words and figures in a Prequalification Application, the amount in words shall prevail.

5.5 GOVERNING LAW

- 5.5.1 The Prequalification Stage and the RFP Stage and this Prequalification Document shall be governed by the laws of Pakistan. The Parties agree to submit to the exclusive jurisdiction of the courts of Pakistan.

6 PREQUALIFICATION APPLICATION: OPENING AND EVALUATION

6.1 PRELIMINARY EXAMINATION OF PREQUALIFICATION APPLICATIONS

- 6.1.1 The Contracting Authority (acting upon the instructions of the Evaluation Committee) will carry out a preliminary examination of each Prequalification Application to determine whether it is complete, whether the documents have been properly signed, and whether it is generally in order.
- 6.1.2 Where the Contracting Authority (acting upon the instructions of the Evaluation Committee) deems it convenient or necessary, it may request supplementary information or documentation from a Prospective Bidder (including each Consortium Member). Whenever such request is made, the Prospective Bidder or Consortium Member shall provide the same to the Contracting Authority with a copy to the Transaction Adviser at the addresses specified in **ANNEXURE A (DATA SHEET)**, by such date as may be specified by the Contracting Authority.
- 6.1.3 Any Prequalification Application that does not meet the Prequalification Criteria specified in Section 4.3 (*Part I – Prequalification Criteria*) and the other requirements in Section 4 (*Prequalification: Preparation*) or the other requirements of this Prequalification Document will be rejected by the Contracting Authority and not included for further consideration of the substance of the application in accordance with Section 6.2.3.

6.2 EVALUATION OF THE PREQUALIFICATION APPLICATION

- 6.2.1 The Contracting Authority and the Evaluation Committee will carry out a detailed evaluation of the Prequalification Applications that have not been rejected after the preliminary examination in order to determine whether they meet the Prequalification Criteria and other requirements of this Prequalification Document. In order to reach such a determination, the Contracting Authority and the Evaluation Committee will examine the information supplied by the Prospective Bidders, pursuant to this Section 6.2 (*Evaluation of the Prequalification Application*), and other requirements, taking into account the following factor:

PREQUALIFICATION CRITERIA SPECIFIED IN SECTION 4.3 (*Part I – Prequalification Criteria*) ARE BASED ON "PASS"/"FAIL" FOR EACH SUCH CRITERIA.

- 6.2.2 For the purpose of this Prequalification Document, a Prequalification Application shall be considered non-responsive where amongst other things and without limitation:
- (a) the Prequalification Application is submitted with conditions or qualifications;
 - (b) any requirements set out in this Prequalification Document are not met or satisfied; and
 - (c) the Prequalification Application is not submitted by the due date.
- 6.2.3 For the purposes of this Prequalification Document, a Prequalified Bidder shall be a Prospective Bidder whose Prequalification Application, is determined by the Contracting Authority to be responsive and as meeting the Prequalification Criteria specified in Section 4.3 (*Part I – Prequalification Criteria*) and the other requirements in



Section 4 (*Prequalification: Preparation*) and the other requirements of this Prequalification Document (a **Prequalified Bidder**).

- 6.2.4 A Prospective Bidder whose Prequalification Application is determined by the Contracting Authority to be non-responsive or as not meeting the Prequalification Criteria specified in Section 4.3 (*Part I – Prequalification Criteria*) and the other requirements in Section 4 (*Prequalification: Preparation*) or the other requirements of this Prequalification Document, shall be designated as a “**Non-Prequalified Bidder**”.

7 INVITATION FOR BIDS

7.1 GENERAL

7.1.1 At the end of the evaluation of the Prequalification Applications, the Contracting Authority, will either:

- (a) notify a Prospective Bidder that it has been designated as being a Non-Prequalified Bidder as its Prequalification Application has been rejected on the grounds of being non-responsive, or that it does not meet the Prequalification Criteria and other requirements set forth in Section 4 (*Prequalification: Preparation*) or the requirements of this Prequalification Document; or
- (b) notify a Prospective Bidder that it has been designated as being a Prequalified Bidder and will receive an invitation for bids.

7.1.2 Unless otherwise permitted by the Contracting Authority in writing, the Prospective Bidder (and where the Prospective Bidder is a Consortium, each Consortium Member) shall ensure that, for the period set out in the RFP:

- (a) the Lead Member shall continue to Control the Consortium;
- (b) there shall be no change of Control of a Consortium Member;
- (c) there shall be no change of the Consortium Members of a Consortium;
- (d) there shall be no change of Control of the Prospective Bidder or Prequalified Bidder;
- (e) there shall be no change of Control of the Financial Nominee; and
- (f) where a Subsidiary Company is evaluated as part of the Evaluation Criteria there shall be no change of Control of that Subsidiary Company.

provided that if the Contracting Authority consents to a change in Section 7.1.2 (a), (b), (c), (d), (e) or (f) then following such Contracting Authority consent the Prospective Bidder (and where the Prospective Bidder is Consortium each Consortium Member), Financial Nominee and Subsidiary Company shall comply with the eligibility and other requirements set out in this Prequalification Document.

7.1.3 The specific details of the tendering process, including the deadline and content for submission of bids, will be specified in the RFP to be issued by the Contracting Authority during the RFP Stage.

7.2 PARTNERING BETWEEN PREQUALIFIED BIDDERS

7.2.1 In the case of each Pre-Qualified Bidder (including where the Prequalified Bidder is a Consortium):

- a) Following pre-qualification and until signing of the Concession Agreement, any change in the shareholding of the Consortium (or changes set out in Section 7.1.2 (a), (b), (c), (d), (e) or (f) shall be subject to: (i) the prior written consent of the

Contracting Authority; and (ii) such Consortium or Prequalified Bidder continuing to fulfil the requirements (including the evaluation and qualification criteria) under this Prequalification Document.

- 7.2.2 Prequalified Bidders, once shortlisted through this prequalification process, shall not be allowed to change their composition (including any change in the composition of a Consortium or any change under Section 7.1.2 (a), (b), (c), (d), (e) or (f) on the basis of which they have been prequalified. Any change in the composition (or changes set out in Section 7.1.2 (a), (b), (c), (d), (e) or (f)) of Prequalified Bidders shall be in accordance with Section 7 of this Prequalification Document.

ANNEXURE A – DATA SHEET

The following specific data shall supplement the provisions in the Prequalification Document.

1	PROJECT NAME	INTEGRATED TOURISM ZONE PROJECT
2	ADDRESS AND CONTACT PERSON OF CONTRACTING AUTHORITY	<p>Nawazish Munim KPCTA Olympic Plaza adjacent Peshawar Sports Complex Stadium road Cantt Peshawar. Tel: +92919211090-1 Fax: +92919210871 Email: info@kptourism.com</p>
3	ADDRESS AND CONTACT PERSON OF THE PPP UNIT	<p>Sheharyar Khan PPP Analyst PPP Unit Planning & Development Department Civil Secretariat Peshawar Tel: 03339112229 Email: syed.shaharyar@seed-pk.com</p>
4	TRANSACTION ADVISER	<p>Barrister Ali Asgher Khan Founder, Ali Khan Law Associates Tel: +92 300 4012828 Email: ali.khan@akla.com.pk</p>
5	ADDRESS FOR SUBMISSION OF THE PREQUALIFICATION APPLICATIONS	<p>Khyber Pakhtunkhwa Culture & Tourism Authority Olympic Plaza adjacent Peshawar Sports Complex Stadium road Cantt Peshawar</p>
6	PREQUALIFICATION APPLICATION SUBMISSION DEADLINE	1400 Pakistan time on 31/01/2023
7	LANGUAGE OF PREQUALIFICATION APPLICATION	English
8	NUMBER OF COPIES OF PREQUALIFICATION APPLICATION	<p><u>For the Contracting Authority:</u></p> <ul style="list-style-type: none"> - one (1) printed original together with one (1) electronic copy (DVD or USB drive); and - two (2) printed copies.

ANNEXURE B – BASIC ELIGIBILITY CRITERIA

1. Except for foreign entities each Bidder must possess valid registration certificate from Federal Board of Revenue and Khyber Pakhtunkhwa Revenue Board (where applicable). In case of a Consortium, all lead members of a Consortium are required to comply with this requirement. In case of foreign entities, such Bidder should submit tax certificate of its respective country duly attested by a Pakistani Consulate.
2. The Bidder (and in case of a Consortium, each member of such Consortium) shall submit valid tax returns for the last three (3) years.
3. In the event the Bidder or any member of the Consortium is a government owned or controlled enterprise, such Bidder must establish that it is legally and financially autonomous entity. For such purpose, the Bidder or the relevant member of the Consortium shall submit an affidavit in the manner and form provided in Annexure I – Affidavit, confirming that it is legally and financially autonomous body.
4. The Bidder is not Black Listed by any government entity. An affidavit in the manner and form provided in Annexure I – Affidavit confirming that the Bidder is not blacklisted by government entity shall be submitted with the Proposal. In case of a Consortium, each member of such Consortium shall submit such affidavit.
5. There is no Conflict of Interest of the Bidder and in case of a Consortium, each member of such Consortium.
6. All pending litigation against the Bidder or any member of the Consortium, shall in total not represent more than fifty percent (50%) of the respective net worth, nor shall there be, any litigation that prevents the Bidder or any member of the Consortium to participate in this project. The Bidder and in case of a Consortium, all members of such Consortium shall provide details of all pending litigation. In the event there is no pending litigation, such Bidder/member of a Consortium shall submit an affidavit in the form and manner provided in Annexure I – Affidavit, confirming that there is no pending litigation by or against such Bidder/member of the Consortium. In case of a foreign entity, the affidavit should be notarized by a notary public and attested by a Pakistani Consulate.

➤ **FINANCIAL SITUATION/ HISTORICAL FINANCIAL PERFORMANCE**

- **Net Worth**

The Bidder/each member of the Consortium shall submit audited financial statements for the last three (3) years. For the avoidance of doubt, the audited financial statements of the latest financial year shall be evaluated to determine the net worth of the Bidder.

FINANCIAL CRITERIA 1

Current Net Worth of the Bidder shall be PKR 2.5 billion (excluding any surplus on revaluation) as presented in the most recent financial statements / wealth statement.

FINANCIAL CRITERIA 2

In case of a consortium, each member of the consortium shall have a minimum net worth of PKR 1 Billion.

➤ **TECHNICAL CRITERION**

• **Permanent Human Resource, Organization Structure & Company Profile**

Total number of Permanent human resource managed by the company should at least be 50. Organization Chart of the Bidder along with Detailed Company Profile of each Consortium Member shall be submitted.

List of Permanent Human Resources Employed stating Designation and Contact numbers (Duly attested by Authorized Representative).

• **General Experience**

Bidders must have completed / successfully developed / constructed/ operated as a Master Developer, at least 2 projects in real estate / Tourism / Hospitality Management / infrastructure / Special Economic Zones (SEZs) sector in the last ten (10) years with projects of built-up area not less than 50 acres / worth PKR 5 (Five) Billion, in case of older projects, project costs will be escalated at CAGR of 15% per annum.

Development of SEZ / Industrial Parks/ Real Estate / Tourism / Engineering Procurement Construction (EPC) and / or Item rate contracts experience of PPP infrastructure projects.

Bidders must provide completion certificate for projects mentioned in the documents. The certificates must have been issued by the clients of the projects.

➤ **HISTORY OF NON-PERFORMING CONTRACTS**

- Any non-performance of a contract by the Bidder should not have occurred in the last five (5) years prior to Proposal Submission Deadline based on all information on fully settled disputes or litigation. A fully settled dispute or litigation is one that has been resolved in accordance with the dispute resolution mechanism under the respective contract and where all appeal instances available to the applicant have been exhausted.
- The Bidders shall provide details of such non-performance of contracts or the Bidder (in case of Consortium, the Lead Member of the Consortium) shall submit an affidavit in the form and manner provided in Annexure I – Affidavit.
- The past performance of the applicant on all completed and ongoing projects may also be checked in coordination with other government departments.

➤ **FAILURE TO SIGN CONTRACTS**

- The Bidder shall not have failed to sign a contract in the last five (5) years.
- The Bidders shall provide details of such failure to sign contracts or the Bidder (in case of Consortium, the Lead Member of the Consortium) shall submit an affidavit in the form and manner provided in Annexure I – Affidavit.

ANNEXURE C – PREQUALIFICATION APPLICATION FORM

DATED
[•]

To: [•]
(INSERT ADDRESS)

RE: DESIGN, CONSTRUCTION, OPERATION AND MAINTENANCE OF INTEGRATED TOURISM ZONE PROJECT IN THE PROVINCE OF KHYBER PAKHTUNKHWA (THE PROJECT)

Dear [Sir/Madam],

Pursuant to the Invitation for Prequalification dated [*Please insert the relevant date*], [*Name of Prospective Bidder/Lead Member*] hereby submits its Prequalification Application in conformity with the Prequalification Document (as amended and/or supplemented from time to time) and requests to be considered for prequalification for the Project.

All capitalized terms unless defined herein shall bear the meaning as ascribed thereto in the Prequalification Document.

[*Name of Prospective Bidder or where the Prospective Bidder is a Consortium the Lead Member*] hereby applies to become a Prequalified Bidder in the invitation for bids for the Project.

[*Name of Prospective Bidder/Lead Member*] hereby confirms that it:

- (a) agrees to comply with all the tender rules, laws and regulations governing the tender as issued by the relevant authorities from time to time.
- (b) accepts the right of the Contracting Authority to (i) request additional information reasonably required to assess the application, (ii) amend the procedures and rules or make clarifications thereof, and (iii) extend or amend the schedule of the prequalification and the tender;
- (c) accepts the exclusive application of the federal laws of Pakistan and provincial laws of Khyber Pakhtunkhwa and the jurisdiction of the courts of [•], Pakistan for any dispute with respect to these prequalification procedures and Prequalification Document; and
- (d) fully and completely understands and accepts the terms of the Prequalification Document and hereby undertakes to comply with the same.

[*Name of Prospective Bidder Lead Member*] hereby represents and warrants that as of the date of this letter:

- (a) all of the information submitted in this Prequalification Application, including the enclosed forms and documents, is true accurate and complete in all respects;
- (b) [*Name of Prospective Bidder/Lead Member*], [*and each Consortium Member*], is currently solvent and is able to pay their debts as and when they fall due and have not



been subject to any voluntary or involuntary bankruptcy or insolvency or similar proceeding during the last three (3) years; and

- (c) *[Name of Prospective Bidder Lead Member]*, [and each Consortium Member], has(ve) paid all taxes due, except those which are being contested in good faith by appropriate proceedings and for which adequate reserves have been established.

Attached herewith to this Prequalification Application are the following documents, as appropriate:

- (a) Basic Information Form (ANNEXURE D)
- (b) Power of Attorney (ANNEXURE E);
- (c) Technical Data Form (ANNEXURE F);
- (d) Financial Data Form (ANNEXURE G);
- (e) Financial Nominee Letter of Comfort (if relevant) (ANNEXURE H),
- (f) Affidavit (ANNEXURE I); and
- (h) Other documents required in Section 4 (*Prequalification: Preparation*) of the Prequalification Document.

[Name of Prospective Bidder Lead Member] hereby designates [●] as its representative to receive notices in respect of the prequalification and the RFP Stage and Prequalification Stage at the following address, telephone and facsimile numbers:

[Representative's address, telephone and facsimile numbers.]

[signature]

In the capacity of *[position]*

Authorized to sign this Prequalification Application for *[Name of Prospective Bidder]*



ANNEXURE D – BASIC INFORMATION FORM

PROSPECTIVE BIDDER INFORMATION:

NAME:

TYPE: (*Corporation, Partnership, etc.*)

COMPANY INCORPORATION NO:

DOMICILE:

ADDRESS OF PRINCIPAL OFFICE:

TELEPHONE NUMBER:

FAX NUMBER:

E-MAIL ADDRESS:

PRIMARY AREAS OF BUSINESS:

SHAREHOLDER CERTIFICATE (*attach separately*)

CONSORTIUM MEMBERS INFORMATION: (*if applicable, fill in details for all members, identifying the Lead Member and/or the member(s) to be evaluated for each of the Prequalification Criteria set forth in Section 4.3 (Part I – Prequalification Criteria)*)

NAME:

TYPE: (*Corporation, Partnership, etc.*)

COMPANY INCORPORATION NO:

DOMICILE:

ADDRESS OF PRINCIPAL OFFICE:

TELEPHONE NUMBER:

FAX NUMBER:

E-MAIL ADDRESS:

PRIMARY AREAS OF BUSINESS:

SHAREHOLDER CERTIFICATE (*ATTACH SEPARATELY*)



ANNEXURE E – POWER OF ATTORNEY

[On Stamp Paper]
[To be notarized]

Know all men by these presents, we, _____ [***name and address of the registered office***] do hereby constitute, appoint and authorize Mr./ Ms. _____ [***name and residential address***] who is presently employed with [***us or the Lead Member of our Consortium***] and holding the position of _____ as our Attorney, to do in our name and on our behalf, all or any of the acts, deeds or things necessary or incidental to our bid for the Project for the development, construction, operation and management of [●] Integrated Tourism Zone Project (the **Project**), including submission of application / proposal (including Prequalification Application), participating in conferences, responding to queries, submission of information / documents and generally to represent us in all its dealings with Contracting Authority, any other Government entity or any person, in connection with the Project and thereafter for the execution of relevant Project documents with Contracting Authority as mandated by the Prequalification Document.

We hereby agree to ratify all acts, deeds and things lawfully done by our said attorney pursuant to this Power of Attorney and that all acts, deeds and things done by our aforesaid attorney shall and shall always be deemed to have been done by us.

For and on behalf of [insert name of each Consortium Member]

Signature [●]

Name, Title and: [●]

Address: [●]

Signature of the Attorney _____

Name, Title and: [●]

Address of the Attorney: [●]

Witnesses

1. Signature: _____

Name: [●]

2. Signature: _____



Name: [●]

Note:

- i) In case of a Consortium, to be executed by all Consortium Members in favor of the attorney.
- ii) The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the party executing and the execution clause should be amended to provide for this. Where required to bind the entity, execution should be under seal affixed in accordance with the required procedure.
- iii) For a power of attorney executed and issued overseas, the same will also have to be legalized by the Pakistan Embassy and notarized in the jurisdiction where the power of attorney is being issued.

ANNEXURE F – TECHNICAL DATA FORM

The Prospective Bidder, or if the Prospective Bidder is a Consortium, the Lead Member, should provide sufficient detail of experience in projects. The experience entered in a separate form for each project shall enable the Contracting Authority to evaluate fulfilment of Technical Criterion as described in Section 4.3 (*Part I – Prequalification Criteria*) of this Prequalification Document.

FORM DQC 1: EXPERIENCE	
COMPANY	<i>[Prospective Bidder, or if the Prospective Bidder is a Consortium, the Lead Member, (together with their Subsidiary Companies)]</i>
RELATIONSHIP TO PROSPECTIVE BIDDER	<i>[if applicable]</i>
NAME OF PROJECT	<i>[•]</i>
LOCATION OF PROJECT	<i>[town and country]</i>
ENGINEERING SECTOR OF PROJECT	<i>[•]</i>
DESCRIPTION OF PROJECT	<i>[description of scope of work including design capacity]</i>
DESCRIPTION OF PARTICIPATION OF COMPANY IN PROJECT	<i>[services undertaken by the Company]</i>
PROJECT OWNER/CLIENT	<i>[•]</i>
NAME(S) OF PARTNERS IN PROJECT (IF COMPANY WAS MEMBER OF A CONSORTIUM)	<i>[•]</i>
PROJECT COST FOR THE PROJECT	<i>[•]</i>
COMPANY INVESTMENT IN PROJECT	<i>[PKR equivalent]</i>
COMPANY OWNERSHIP IN PROJECT	<i>[•%]</i>
COMMERCIAL OPERATION DATE	<i>[month and year]</i>
DATE SERVICES ENDED	<i>[month and year that services ended or, if services are ongoing, the end of current services contract]</i>
INDEPENDENT TECHNICAL ADVISER REPORT	<i>[name, company and email address of an Independent Technical Adviser confirming that the experience meets Technical Criterion]</i>

ANNEXURE G - FINANCIAL DATA FORM

The information set out in the tables below shall be used to assess compliance with Financial Criterion 1 and Financial Criterion 2. Information should be provided for the three previous financial years. In respect to Financial Criterion 1 information should be provided for the Prospective Bidder, Lead Member or Financial Nominee (as relevant) on a consolidated basis together with all Subsidiary Companies. In respect of Financial Criterion 2 information should be provided by each Non Lead Member on a consolidated basis together with all Subsidiary Companies of the Non-Lead Member.

(a) **ASSETS AND NET WORTH**

a) Financial Year End [insert the date and year]

PROSPECTIVE BIDDER/LEAD MEMBER/FINANCIAL NOMINEE (OR IF THE PROSPECTIVE BIDDER IS A CONSORTIUM, THE LEAD MEMBER)		
Value of Total Assets	Total Liabilities	Net Worth
<i>[insert the amount in PKR]</i>	<i>[insert the amount in PKR]</i>	<i>[insert the amount in PKR]</i>

EACH NON LEAD MEMBER		
Value of Total Assets	Total Liabilities	Net Worth
<i>[insert the amount in PKR]</i>	<i>[insert the amount in PKR]</i>	<i>[insert the amount in PKR]</i>

b) Financial Year End [insert the date and year]

PROSPECTIVE BIDDER/LEAD MEMBER/FINANCIAL NOMINEE (OR IF THE PROSPECTIVE BIDDER IS A CONSORTIUM, THE LEAD MEMBER)		
Value of Total Assets	Total Liabilities	Net Worth
<i>[insert the amount in PKR]</i>	<i>[insert the amount in PKR]</i>	<i>[insert the amount in PKR]</i>

EACH NON LEAD MEMBER		
Value of Total Assets	Total Liabilities	Net Worth
<i>[insert the amount in PKR]</i>	<i>[insert the amount in PKR]</i>	<i>[insert the amount in PKR]</i>

c) Financial Year End [insert the date and year]

PROSPECTIVE BIDDER/LEAD MEMBER/FINANCIAL NOMINEE (OR IF THE PROSPECTIVE BIDDER IS A CONSORTIUM, THE LEAD MEMBER)		
Value of Total Assets	Total Liabilities	Net Worth
<i>[insert the amount in PKR]</i>	<i>[insert the amount in PKR]</i>	<i>[insert the amount in PKR]</i>

EACH NON LEAD MEMBER		
Value of Total Assets	Total Liabilities	Net Worth
<i>[insert the amount in PKR]</i>	<i>[insert the amount in PKR]</i>	<i>[insert the amount in PKR]</i>

ANNEXURE H – FINANCIAL NOMINEE LETTER OF COMFORT

DATED
[•]

To: [•]
(INSERT ADDRESS)

RE: DESIGN, CONSTRUCTION, OPERATION AND MAINTENANCE OF [•] INTEGRATED TOURISM ZONE PROJECT IN THE PROVINCE OF KHYBER PAKHTUNKHWA (THE PROJECT)

Dear [Sir/Madam],

We refer to the prequalification document issued by the [•], dated [•] (the **Prequalification Document**), inviting prequalification applications from Prospective Bidders for the execution and completion of a Concession Agreement involving the design, financing, construction, operation and maintenance of [•] Integrated Tourism Zone Project (the **Project**).

According to the Section 4.3.2 of the Prequalification Document (*Financial Criteria - Submission of Evidence from Financial Nominee*), the Prospective Bidder, or if the Prospective Bidder is a Consortium, the Lead Member, may choose to present financial statements from a Financial Nominee to satisfy Financial Criteria 1. For this purpose, the definition of Financial Nominee is set out in the Prequalification Document.

In consideration of the above, we the Financial Nominee hereby confirm warrant and undertake that:

- (i) we are the Financial Nominee of [name of Prospective Bidder/Lead Member] which is seeking to prequalify for the Project as [Prospective Bidder/Lead Member] and we are a company duly incorporated under the laws of [•];
- (ii) all statements made and information supplied in this Prequalification Application are true, complete and correct as at the date as at the date given;
- (iii) we have not directly or indirectly engaged in, indulged in or breached any Anti-Corruption Practices and are not subject to any of the restrictions set out in Section 3.2 (*Prospective Bidder Participation Restrictions And Ineligibility*) or the ineligibility requirements in Section 3.3 (*Ineligibility Of A Prospective Bidder*) of the Prequalification Document (on the basis that those sections shall be read as if the word Prospective Bidder was replaced with the word Financial Nominee in each place it appears); and
- (iv) if the [name of Prospective Bidder] is the Prequalified Bidder that is awarded the Project we undertake to make available and contribute sufficient funds and procure that those funds are contributed into the Concessionaire in a timely fashion to enable the Concessionaire to perform its obligations as the Concessionaire as contemplated by this EOI and otherwise act as a prudent, reliable and careful developer of the Project.

Except where the context requires otherwise, capitalized terms used in this letter shall have the meaning ascribed in the Prequalification Document.

Yours faithfully,

[NAME OF FINANCIAL NOMINEE]

BY: [●]

NAME: [●]

TITLE: [●]

(AUTHORIZED SIGNATORY)

ANNEXURE I – AFFIDAVIT

DATED:
[•]

To: [•]
(INSERT ADDRESS)

RE: DESIGN, CONSTRUCTION, OPERATION AND MAINTENANCE OF [•] INTEGRATED TOURISM ZONE PROJECT IN THE PROVINCE OF KHYBER PAKHTUNKHWA (the PROJECT).

Pursuant to the Prequalification Document dated [*Please insert the Date*] (as amended, supplemented and or modified from time to time) (the **Prequalification Document**) in respect of the Project, [*Name of Prospective Bidder(s)/ Member(s) of Consortium*¹] hereby duly issues this affidavit (this **Affidavit**) and hereby represents and warrants that, as of the date of this Affidavit, the [*Name of Prospective Bidder(s)/ Member(s) of Consortium*], [and each member of our Consortium (*if applicable*)]²:

- (a) is solvent and able to pay its debts as and when they fall due and is not in bankruptcy or liquidation proceedings or receivership, or wound up, or their affairs are not being administered by a court or a judicial officer, or their business activities have not been suspended or they are not the subject of legal proceedings of any of the foregoing and have a reasonable expectation of being able to discharge all financial liabilities as they fall due;
- (b) has not been convicted of, fraud, corruption, collusion or collusive practices or money laundering;
- (c) is not aware of any Conflict of Interest or any conflict of interest or potential conflict of interest arising from prior or existing contracts or relationships which could materially affect its capability to comply with the obligations in the Prequalification Stage and RFP Stage and in respect of the Concession Agreement and that satisfies the requirements of Section 3.2 (*Prospective Bidder Participation Restrictions And Ineligibility*) of the Prequalification Documentation;
- (d) does not fall within any of the circumstances for ineligibility listed in Section 3.2 (*Prospective Bidder Participation Restrictions And Ineligibility*) or Section 3.3 (*Ineligibility of a Prospective Bidder*) of the Prequalification Document;
- (e) is not ineligible / blacklisted to participate in, bid for or undertake any contract or project (including the upgradation / revamping of the Project) through any form of public tender (due to reasons, including but not limited to corrupt practices and poor performance or practices similar to the Anti-Corruption Practices) by any federal or provincial governmental or non-governmental department/ agency in Pakistan, or any other provincial government / governments of any foreign countries or their governmental bodies and / or international organizations (e.g. World Bank, Asian Development Bank, United Nations, International Monetary Fund etc.);
- (f) has not been declared ineligible by any court of law or convicted of fraud, corruption, collusion or money laundering or for a criminal act involving dishonesty, physical violence or harm to human life, or for any criminal offence related to their professional

¹ In case of a Consortium, the Affidavit is to be executed by each Consortium Member separately;

² To be included only in case of a Consortium;

conduct in the period of three (3) years prior to the date of this Affidavit, nor is the subject of credible and/or persistent allegations related to, or is under investigation for, such criminal activities;

- (g) has no action, suit or other legal proceeding or governmental investigation pending against it or any of its respective officers, directors or employees, or that any of the foregoing has received any notice thereof, which questions the validity and execution of this Affidavit and/or the Prequalification Application or the representations provided in this Affidavit and the Prequalification Application; has no tax liabilities or liabilities in respect of judgements awarded by any court or similar proceedings in the period of [three (3) years] prior to the date of this Affidavit, save in each case to the extent that it has made suitable accounting provision for such liabilities in accordance with applicable accounting regulations;
- (h) has not and the Connected Persons have not directly or through an agent, engaged in, indulged in or breached any Anti-Corruption Practices or engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the award of any contract, project or transaction;
- (i) has not concealed any information that might hinder the prequalification or bidding process (as applicable) to be conducted for the Project;
- (j) has not failed to sign a contract with any procuring authority following award;
- (k) has not been included as a debarred person pursuant to the public sanctions list of any multilateral development bank that is party to the Agreement on Mutual Enforcement of Debarment Decisions of 9 April 2010 (www.crossdebarment.org);
- (l) has not been included on any sanctions list promulgated by the UN Security Council or its Committees, or any other recognized international sanctions list; or
- (m) has not been included on the list of companies debarred by the National Procurement Contracting Authority (<https://ageops.net/en/companies/debarment/debarred-vendors>) or on the list of companies currently facing debarment proceedings by the National Procurement Contracting Authority (<https://ageops.net/en/companies/debarment/under-process>); and
- (n) has no operations (directly or through any subsidiary) or carries out transactions that are not in compliance with the sanctions promulgated by the UN Security Council or its Committees or national sanctions in Afghanistan.

Unless expressly provided otherwise or the context requires to the contrary, all capitalized terms used herein shall bear the meaning ascribed thereto in the Prequalification Document.

YOURS SINCERELY,

AUTHORIZED SIGNATURE

NAME AND TITLE OF SIGNATORY: [●]

NAME OF FIRM: [●]

ADDRESS: [●]