

**PREQUALIFICATION DOCUMENT**

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**KARACHI WATER AND SEWERAGE BOARD  
LOCAL GOVERNMENT & HOUSING TOWN PLANNING DEPARTMENT  
GOVERNMENT OF SINDH**

**TP1 WASTEWATER RECYCLING PROJECT**

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**DATED  
14<sup>TH</sup> MARCH 2022**

## **IMPORTANT NOTICE/DISCLAIMER**

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*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 Authority, supported by the Government of Sindh, solely for use by Prospective Bidders in considering the Project. This Prequalification Document has been prepared with the assistance of ADB as a Transaction Advisor on 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 was determined by the Authority and approved by the Technical and Financial Evaluation Committee. Neither of these entities or bodies, nor the Government nor their consultants, advisors (including the Transaction Advisor and its employees, personnel, agents, consultants, advisors and contractors etc.), employees, personnel, agents, make any representations (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 RFQ 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 RFQ Stage, the RFP Stage or the Project as contemplated herein.*

*The Prequalification Application 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 Application 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, the Authority, and the Transaction Adviser (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 Authority or the Government that the Project will be awarded. The Authority and the Government reserves its right, in its full discretion, to modify the Prequalification Document, the RFQ 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 Authority may, in its sole and absolute discretion, cancel, suspend and/ or otherwise terminate the RFQ process at any time in accordance with the applicable laws.*

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

## GLOSSARY

<b>ADB</b>	Asian Development Bank.
<b>AFFILIATE</b>	In relation to (i) a Prospective Bidder; (ii) a Consortium Member; (iii) Financial Nominee; or (iv) Lead Member, a person who Controls or is Controlled by, or under the common Control with, such Prospective Bidder, Consortium Member, Financial Nominee or Lead Member.
<b>ANNEXURE</b>	The term shall mean an annexure to this Prequalification Document.
<b>ANTI-CORRUPTION PRACTICES</b>	Means one or more of: Coercive Practice, Corrupt Practice, Fraudulent Practice, Obstructive Practice, Money Laundering and Terrorist Activities, Restrictive Practice, Collusive Practice and Undesirable Practice.
<b>AUTHORITY</b>	The 'KARACHI WATER AND SEWERAGE BOARD'.
<b>BOARD OF DIRECTORS</b>	The board of directors (or equivalent body) of an entity.
<b>COERCIVE PRACTICE</b>	The term shall bear the meaning ascribed thereto in Section 3.2.7.
<b>CONCESSION AGREEMENT</b>	The term shall bear the meaning ascribed thereto in Section 2.2.2.
<b>CONCESSIONAIRE</b>	The special purpose vehicle/company to be incorporated under the applicable laws of Pakistan for the purposes of the Project by the Prequalified Bidder that is awarded the Project.
<b>CONFLICT OF INTEREST</b>	The term shall bear the meaning ascribed thereto in Section 3.2.3.
<b>CONNECTED PERSON</b>	Any Affiliate of a Prospective Bidder or Consortium Member or Financial Nominee or Parent Company, any director, senior executive or manager (or positions of similar rank and authority) of such Prospective Bidder, Consortium Member or Financial Nominee or Parent Company or an 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 Parent Company or Affiliate of a Prospective Bidder, a Consortium Member, Financial Nominee or Parent Company.
<b>CONSORTIUM</b>	The term shall bear the meaning ascribed thereto in Section 3.1.1.
<b>CONSORTIUM MEMBERS</b>	The members of a Consortium and includes the Lead Member and all Non-Lead Members.
<b>CONSTITUTIONAL</b>	The constitutional documents of an entity being the

<b>DOCUMENTS</b>	memorandum of association, articles of association or equivalent charter documents.
<b>CONTROL OR CONTROLLED</b>	Having the right to appoint, approve or remove a majority of the Board of Directors of an entity by virtue of directly or indirectly holding a majority of the voting securities of such entity, or the ability or right, including a contractual right, (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.
<b>CORRUPT PRACTICE</b>	The term shall bear the meaning ascribed thereto in Section 3.2.7.
<b>DFBOMT</b>	Design, finance, build, operate, maintain and transfer.
<b>ELIGIBLE PROJECT</b>	Means a project that is:  (a) in the infrastructure sector including but not limited to rail, water, roads, bridges, ports and similar projects;  (b) in the power sector, including but not limited to generation and transmission projects; or  (c) the industrial sector including but not limited to cement, logistics, manufacturing or similar projects.
<b>ESTIMATED TIMETABLE</b>	The term shall bear the meaning ascribed thereto in Section 4.8.1.
<b>FINANCE DEPARTMENT</b>	'THE FINANCE DEPARTMENT,' Government of Sindh.
<b>FINANCIAL CRITERIA</b>	The Financial Criterion 1 & Financial Criterion 2 ascribed in Section 4.3.
<b>FINANCIAL CRITERION 1</b>	The term shall bear the meaning ascribed thereto in Section 4.3.
<b>FINANCIAL CRITERION 2</b>	The term shall bear the meaning ascribed thereto in Section 4.3.
<b>FINANCIAL NOMINEE</b>	Means 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.
<b>FRAUDULENT PRACTICE</b>	The term shall bear the meaning ascribed thereto Section 3.2.7.

<b>GOVERNMENT AGENCY</b>	The term shall bear the meaning ascribed to the term 'Agency' under the PPP Act.
<b>GOVERNMENT/GOVERNMENT OF SINDH</b>	The term shall bear the meaning ascribed to the term 'Government' under the PPP Act, the same being the 'Government of Sindh'.
<b>INDEPENDENT AUDITOR</b>	Any one of the 'Big Four' (4) accounting firms or a reputable national accounting firm in Pakistan.
<b>INDEPENDENT TECHNICAL ADVISER</b>	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> ).
<b>INVITATION FOR PREQUALIFICATION</b>	The term shall bear the meaning ascribed thereto in Section 2.3.3.
<b>LEAD MEMBER</b>	The term shall bear the meaning ascribed thereto in Section 3.1.3.
<b>MIGD</b>	Million Imperial Gallons per Day and for the purposes of this Prequalification Document, one (1) imperial gallon = 4.546 litres = 0.004546 cubic meters.
<b>MONEY LAUNDERING OR TERRORIST ACTIVITIES</b>	The term shall bear the meaning ascribed thereto in Section 3.2.7.
<b>NON-DISCLOSURE AGREEMENT OR NDA</b>	The non-disclosure agreement signed by each Prospective Bidder in respect of the Project and the Prequalification Application, and which is in the form set out in <b>ANNEXURE I (NON-DISCLOSURE AGREEMENT)</b> of this Prequalification Document that governs confidentiality and access to the Virtual Data Room.
<b>NON-LEAD MEMBER</b>	A Consortium Member that is not the Lead Member.
<b>NON-PREQUALIFIED BIDDER</b>	The term shall bear the meaning ascribed thereto in Section 6.2.4.
<b>OBSTRUCTIVE PRACTICE</b>	The term shall bear the meaning ascribed thereto in Section 3.2.7.
<b>ORIGINAL PROPONENT</b>	The original proponent that has lodged an Unsolicited Proposal with the Authority in respect of the Project and which Original Proponent is automatically a Prequalified Bidder in respect of the Project.
<b>PKR</b>	Pakistani Rupees, being the lawful currency of Pakistan.
<b>PAKISTAN</b>	The Islamic Republic of Pakistan.
<b>PARENT COMPANY</b>	A corporate entity that exercises Parent Company Control over a Prospective Bidder, or if the Prospective Bidder is a

	Consortium, the Lead Member.
<b>PARENT COMPANY CONTROL</b>	In relation to a Prospective Bidder, or if the Prospective Bidder is a Consortium, the Lead Member:  (a) the right to appoint, approve or remove a majority of the Board of Directors of the Prospective Bidder, or if the Prospective Bidder is a Consortium, the Lead Member; or  (b) holding at least fifty-one percent (51%) of the voting securities of the Prospective Bidder or if the Prospective Bidder is a Consortium, the Lead Member.
<b>POWER OF ATTORNEY</b>	The Power of Attorney to be provided by the Prospective Bidder in the form prescribed in <b>ANNEXURE D (POWER OF ATTORNEY)</b> .
<b>PPP</b>	Public Private Partnership.
<b>PPP ACT</b>	The Sindh Public Private Partnership Act, 2010 (as amended from time to time).
<b>PPP UNIT</b>	The term shall bear the meaning ascribed to the term 'Unit' under the PPP Act, the same being the Public-Private Partnership Unit established under Section 6 of the PPP Act.
<b>PREQUALIFICATION APPLICATION</b>	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.
<b>PREQUALIFICATION APPLICATION FORM</b>	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 <b>ANNEXURE B (PREQUALIFICATION APPLICATION FORM)</b> .
<b>PREQUALIFICATION APPLICATION SUBMISSION DEADLINE</b>	The term shall bear the meaning ascribed thereto in Section 5.3.1.
<b>PREQUALIFIED BIDDER</b>	The term shall bear the meaning ascribed thereto in Section 6.2.3 and the Prequalified Bidder shall include the Original Proponent.
<b>PREQUALIFICATION CRITERIA</b>	The term shall bear the meaning ascribed thereto in Section 4.3 ( <i>Part I – Prequalification Criteria</i> ).
<b>PREQUALIFICATION DOCUMENT OR RFQ</b>	This ' <i>Prequalification Document</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 RFQ.
<b>PROJECT</b>	The 'TP1 WASTEWATER RECYCLING PROJECT,' as described in Section 2.1 ( <i>General</i> ).
<b>PROJECT COST</b>	The total of the debt and equity investment in the Project.
<b>PROSPECTIVE BIDDER</b>	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.
<b>PSF</b>	The term shall bear the meaning ascribed thereto in Section 2.2.4.
<b>RESPONSE TO QUESTIONS DOCUMENT</b>	The term shall bear the meaning ascribed thereto in Section 4.7.2.
<b>RESTRICTIVE PRACTICE</b>	The term shall bear the meaning ascribed thereto in Section 3.2.7.
<b>REQUEST FOR PROPOSAL OR RFP</b>	The request for proposal issued by the Authority which shall be provided to Prequalified Bidders during the RFP Stage.
<b>RFP STAGE</b>	The stage of the bidding process for the Project where the Prequalified Bidders submit their proposals in response to the RFP.
<b>RFQ STAGE</b>	This stage of the bidding process for the Project where the Prospective Bidder submits its Prequalification Application and which commences on the issue of this Prequalification Document and ends upon identification by the Authority of the Prequalified Bidders.
<b>SECTION</b>	Any section of this Prequalification Document.
<b>S.I.T.E.</b>	The Sindh Industrial Trading Estate, being the entity responsible for the industrial site at which the consumers to whom the industrial water from the Project shall be sold are located.
<b>SPP RULES</b>	The Sindh Public Procurement Rules, 2010 ( <i>as amended from time to time</i> ).
<b>SUBSIDIARY COMPANY</b>	A company that is under the Control of the Prospective Bidder, Financial Nominee, Lead Member or Consortium Member, as relevant.
<b>TECHNICAL CRITERION</b>	The technical criterion prescribed in Section 4.3 ( <i>Part I – Prequalification Criteria</i> ).
<b>TECHNICAL AND FINANCIAL EVALUATION COMMITTEE</b>	The 'TECHNICAL AND FINANCIAL EVALUATION COMMITTEE' duly constituted in accordance with the applicable laws of Pakistan in respect of the Project.

<b>TOTAL DISSOLVED SOLIDS OR TDS</b>	A measure of the salinity of water or wastewater.
<b>TRANSACTION ADVISOR</b>	The Asian Development Bank through the Office of Public-Private Partnership.
<b>UNDESIRABLE PRACTICE</b>	The term shall bear the meaning ascribed thereto in Section 3.2.7.
<b>UNSOLICITED PROPOSAL</b>	The unsolicited proposal received by the Authority in respect of the Project from the Original Proponent in accordance with Section 2.3.1.
<b>VIRTUAL DATA ROOM</b>	The online virtual data room located at the <a href="#">web link<sup>1</sup></a> and providing certain information and documents relevant to the Project and this RFQ.
<b>VIRTUAL DATA ROOM UNDERTAKING</b>	The agreement regulating the rules of access to the Virtual Data Room to be executed by the Prospective Bidder and the Authority.

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<sup>1</sup> <https://urlzs.com/XdGh8>



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# **1 INTRODUCTION**

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## **1.1 INTRODUCTION**

- 1.1.1 The Authority, supported by the Government of Sindh, invites Prequalification Applications from Prospective Bidders for the execution, delivery and completion of the Project for which it has received an Unsolicited Proposal.
- 1.1.2 The Project has been launched pursuant to the Unsolicited Proposal received by the Authority, to DFBO MT the Project under PPP mode. As per Rule 15(A) of the SPP Rules and applicable laws of Pakistan, the Original Proponent is entitled to certain advantages including exemption from the Prequalification Application.

## 2 PROJECT DESCRIPTION

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### 2.1 GENERAL

2.1.1 Karachi, the business and economic hub of Pakistan, is also one of the most water-stressed cities in the world. Presently, industries in an industrial area managed by S.I.T.E. are either using potable water or treated brackish water, although their current and future demand could easily be met with recycled water. The brackish water which the industry is currently using is not sustainable and has potential environmental impacts. Despite using brackish water in addition to the available potable water, the S.I.T.E. consumers are facing acute water shortages. This has impacted industrial activity and has restricted various planned expansions. A sustainable supply of industrial grade water would enhance industrial production and ultimately increase revenue for the industries and taxes for the Government. Moreover, since the majority of the industries are export oriented, the exports would also increase resulting in an improved balance of trade for the country.

2.1.2 The ultimate design capacity of wastewater treatment facilities on TP1 site is 100 MIGD and the Government is currently financing 65 MIGD capacity with construction in progress. The Project is to provide through the PPP modality the remaining 35 MIGD of municipal wastewater treatment and a recycling plant with desalination to utilize the 35 MIGD effluent and distribute high grade industrial water to consumers in S.I.T.E.

2.1.3 The scope of the Project entails:

On a DFBOMT basis:

- (a) Complete partially constructed inlet civil works (coarse screen, wastewater pumping station and common inlet chamber) for 100 MIGD design capacity;
- (b) Inspect and install inlet pumps, screens and other mechanical equipment already delivered to site for the 100 MIGD inlet works and procure and install any additional mechanical equipment required for commissioning;
- (c) Design, procure and install new electrical equipment for commissioning of the 100 MIGD inlet works and integration with the Project power supply system;
- (d) Design and implement 35 MIGD WWTP incorporating biological nutrient removal (BNR);
- (e) Design and implement treated effluent recycling facility incorporating any additional processing and desalination necessary to supply not less than 28 MIGD of high-grade industrial water, *inter alia*, with TDS not exceeding 1000 mg/L to consumers in S.I.T.E.;
- (f) Design and implement on-site bypass to the WWTP;
- (g) Design and implement reverse osmosis (RO) concentrate discharge pipeline to Lyari river with TDS dilution for regulatory compliance;
- (h) Design and implement recycled water pumping station(s), storage (if required), distribution network and smart consumer meters within SITE for 50 MIGD industrial water demand;

- (i) Metering, billing and collection of payment for water supplied to S.I.T.E. industries; and
- (j) O&M of the entire system comprising inlet works, WWTP, recycling facility, on-site bypass, RO concentrate discharge, distribution network and consumer meters.

2.1.4 The Project is an important part of the Government's strategy towards developing Sindh's water infrastructure and amenities.

2.1.5 The Authority's key objectives for the Project include:

- a) to conserve potable water resources in Karachi by providing industries with an alternative supply of recycled water;
- b) to produce industrial grade water from the wastewater flowing to the inlet works and supply the recycled water to the industrial consumers of S.I.T.E;
- c) to reduce the environmental impact of effluent discharged to water bodies;
- d) to regulate and control development and management of recycled water from wastewater resources;
- e) to promote the re-use of water through recycling and treatment of wastewater;
- f) to ensure provision of reliable and sustainable long-term supply of industrial grade water; and
- g) to attract private capital investment in the water treatment and bulk supply projects.

2.1.6 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;
- d) affordability of tariff and value for money for the Authority; and
- e) Government support which may be provided in the form and the amount of the PSF as set out in Section 2.2.4.

## **2.2 PROJECT STRUCTURE**

- 2.2.1 The Authority's objective is to implement the Project for not less than 28 MIGD of recycled water to be delivered to S.I.T.E consumers.
- 2.2.2 The Project shall be structured and documented as a twenty-seven (27) year DFBOMT contract which includes, *inter alia*, a construction period of up to two (2) years (a "**Concession Agreement**"). At the end of the term under the Concession Agreement, ownership of the Project shall transfer to the Authority/Government from the Concessionaire, who will have no further obligations to the Authority/Government, unless the Concession Agreement is extended on mutually agreed terms.
- 2.2.3 For the duration of the Concession Agreement, the Concessionaire will be responsible for the DFBOMT of the Project. Further details on the technical parameters, including the performance specifications to be met by the Concessionaire, shall be provided to Prequalified Bidders at the RFP Stage.
- 2.2.4 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 contributing towards the Project Cost of the Concessionaire from its Project Support Facility (the "**PSF**"). Details of the possible PSF contribution, as well as any other credit enhancement mechanisms to be made available under the Project shall be communicated to Prequalified Bidders at the RFP Stage.

## **2.3 BID PROCESS**

- 2.3.1 The Authority received an Unsolicited Proposal from the Original Proponent, which was subsequently evaluated and accepted in accordance with applicable laws of Pakistan. In accordance with SPP Rules, the Authority and the Government have initiated the RFQ Stage in respect of the Project to identify Prospective Bidders for the Project and to select Prequalified Bidders.
- 2.3.2 The Authority has engaged ADB as the Transaction Advisor for the Project which shall advise the Authority on an international competitive bidding process for the Project comprising the RFQ Stage and the RFP Stage until financial close for the Project.
- 2.3.3 The Authority has published an '*Invitation for Prequalification of Bidders*' dated 06<sup>th</sup> March 2022 (the "**Invitation for Prequalification**") in newspapers and on the websites of the Authority <http://www.kwsb.gos.pk>, Sindh PPP Unit, <http://www.pppunitsindh.gov.pk> and Sindh Public Procurement Regulatory Authority, <https://ppms.pprasindh.gov.pk/PPMS/>. This Prequalification Document has been prepared in accordance with the Invitation for Prequalification.
- 2.3.4 The Prospective Bidder shall prepare a Prequalification Application in response to this Prequalification Document. The Prequalification Application shall include the completed Annexures including a signed NDA and shall be submitted in accordance with this Prequalification Document.
- 2.3.5 The Prequalification Applications shall be assessed by the Authority on the basis of the Prequalification Criteria and the requirements of this Prequalification Document. If the Prospective Bidder is determined by the Authority to be a Prequalified Bidder, then such Prospective Bidder shall proceed to the RFP Stage.

- 2.3.6 During the RFP Stage, Prequalified Bidders shall 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 methodology for the evaluation of the proposals.
- 2.3.7 The Project is being procured in response to an Unsolicited Proposal. The Original Proponent shall benefit from rights set out in the SPP Rules and other applicable laws of Pakistan, including rule 15(A) of the SPP Rules. These laws contemplate the following benefits for the Original Proponent as part of the RFQ Stage and RFP Stage:
- a) the right of the Original Proponent to automatically qualify as a Prospective Bidder;
  - b) if the Original Proponent is not the best evaluated bidder, the right of first refusal to match the bid set out in a proposal from another Prequalified Bidder; and
  - c) the Original Proponent shall be given five percent additional weightage over the combined score attained in respect of the technical and financial parts of their proposal,

and rights of the Original Proponent vis-à-vis award of the Project will be set out in more detail in the RFP in accordance with the applicable laws of Pakistan.

## **2.4 NDA, REGISTRATION AND VIRTUAL DATA ROOM**

- 2.4.1 All interested parties are required to execute an NDA and to register via the Virtual Data Room to participate in the bidding process. Registration shall be performed in accordance with the instructions set out in the NDA.
- 2.4.2 The Authority has set up a Virtual Data Room for the Project to share documents and communicate with the Prospective Bidders. During the RFQ Stage, only registered entities shall be given access to the Virtual Data Room subject to execution of a Virtual Data Room Undertaking. The Virtual Data Room will contain this RFQ, any addenda or corrigenda, and any other relevant information for the RFQ Stage of the bidding process.
- 2.4.3 Access to the Virtual Data Room for Non-Prequalified Bidders will be terminated at the end of the RFQ Stage. Prequalified Bidders will continue using the same Virtual Data Room for information sharing at the RFP Stage and will be notified of the publication of the RFP in the Virtual Data Room. The Authority shall publicize the mandatory information relating to the bidding process in a manner prescribed under the applicable laws of Pakistan.

### **3 PROSPECTIVE BIDDERS**

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#### **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, firms, corporate bodies or other legal entities as defined and registered under applicable laws of the respective country.
- 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 RFQ 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 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 / Parent Company) must be an experienced owner and developer of Eligible Project(s) 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 undertake that during the period set out in Section 7.2.1, that:
- a) the Lead Member, shall directly or indirectly hold an interest in the Concessionaire of above fifty percent (50%) and the Lead Member’s 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;
  - e) there shall not be a change of Control of each Subsidiary Company that is evaluated as part of the Prequalification Criteria; and
  - f) there shall not be a change of Parent Company Control of the Parent Company in case the Parent Company is evaluated as part of the Prequalification Criteria.
- 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, the Parent 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) has, either directly or indirectly, the right to direct any other 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 Authority in the preparation of any documents, design or technical specifications of the Project, except that for the avoidance of doubt, this requirement in Section 3.2.3 (d) shall not apply to the Original Proponent;
  - 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 Authority for matters related to or incidental to the Project, the RFQ 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 Authority in relation to the Project for matters related to or incidental to the Project, the RFP Stage, the RFQ 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 RFQ Stage and the RFP Stage or determination as a Non-Prequalified Bidder in accordance with Section 6.2.4.
- 3.2.5 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 RFQ Stage and RFP Stage and in respect of the Prequalification Application. Notwithstanding anything to the contrary contained herein, the 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.
- 3.2.6 Furthermore, a Prospective Bidder (and where the Prospective Bidder is a Consortium, each Consortium Member of that Consortium) understands and acknowledges that it shall not be eligible to participate in any request for prequalification or request for proposal for any other project of the Government or 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 Authority to have directly or indirectly or through an agent, engaged or indulged in or breached Anti-Corruption Practices.
- 3.2.7 For the purposes of this RFQ, 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 RFQ Stage or RFP Stage or the Prequalification Application for or on behalf of the Government or 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 RFQ Stage or RFP Stage or the Prequalification Application;
  - c) “**Collusive Practice**” means an arrangement between two or more persons involved in the RFQ 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 RFQ 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) Harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in a procurement process or affect the execution of a contract or deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements 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 Authority and their respective representatives or financiers of the Project including any development partner of the financiers; 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 RFQ Stage or RFP Stage;
- g) **“Undesirable Practice”** means (i) establishing contact with any member of the Authority or Government or any person connected with or employed or engaged by the Government or Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the RFQ Stage or RFP Stage or the Prequalification Application; or (ii) having a Conflict of Interest; and
- h) **“Money Laundering or Terrorist Activities”** means engaging in or facilitating any form of money laundering or terrorist financing.

3.2.8 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:
  - (1) has breached any Anti-Corruption Practices; and
  - (2) in the period of three (3) years prior to the date of this Prequalification Application has breached any obligations substantially similar to the Anti-Corruption Practices in respect of a project that is not the Project.
- b) it shall not breach, and shall not cause any Connected Person to breach, any Anti-Corruption Practices;
- c) 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;

- d) neither it nor anyone engaged by it in connection with this RFQ 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;
- e) 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, Asian Development Bank, 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; or
  - (2) an adverse order in any judgment, award, decree by any court, tribunal or judicial forum, or enforcement proceedings (as the case may be) by any government authority with regard to any breach of any obligations substantially similar to the Anti-Corruption Practices.

3.2.9 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 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 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 or the Government or Authority; or
  - (3) a Conflict of Interest;
- c) in the event of a breach of the provisions under Section 3.2 or 3.3, provide full details of such breach.

3.2.10 The Prospective Bidder (and where the Prospective Bidder is a Consortium each Consortium Member) shall:

- a) use its best endeavours to incorporate the Anti-Corruption Practices set out in Sections 3.2.7 to 3.2.10 (inclusive) 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; and

- b) use reasonable endeavours to procure that any third party contracted for the purpose of implementing any portion of the Project incorporates the Anti-Corruption Practices set out in Sections 3.2.7 to 3.2.10 (inclusive) into any contract that third party enters with any other third party for the purpose of implementing any portion of the Project.

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

### **3.3 INELIGIBILITY OF A PROSPECTIVE BIDDER**

3.3.1 Without prejudice to the Prospective Bidder's obligations under Section 3.1 and 3.2, 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 (including World Bank or Asian Development Bank), from participating in any project on a private participation basis and the bar subsists as on the Prequalification Application Submission Deadline;
- b) is from or is incorporated in a country with which, as a matter of law or official regulations, commercial relations are prohibited by the federal government;
- c) is a person listed on, or owned or controlled by, or acting on behalf of, a person on any Sanctions List or a Connected Person is listed on, or owned or controlled by, or acting on behalf of a person on any Sanctions List. For the purposes of this Section 3.3.1 Sanctions List means any list issued or maintained by any Sanctions Authority from time to time including, without limitation, the Specially Designated Nationals and Blocked Persons list maintained by the Office of Foreign Assets Control of the US Department of Treasury, the Denied Persons List maintained by the US Department of Commerce, the Consolidated List of Financial Sanctions Targets maintained by Her Majesty's Treasury in the UK and Sanctions Authority means any governmental or other institution or agency with responsibility for the imposition of financial or economic sanctions or trade embargoes (or related restrictions) from time to time including, without limitation, the United Nations Security Council, the US government, the UK government, the European Union, the Pakistan government, and their respective institutions or agencies; or
- d) is subject to an adverse order in any judgment, award, decree by any court, tribunal or judicial forum, or enforcement proceedings (as the case may be) for any act of fraud, corruption, collusion or money laundering or 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, 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) been required to pay a penalty, compensation or damages by an arbitral or judicial authority or under a judicial pronouncement or decision, or arbitration award in connection with any contract it has entered with the Government, the 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 Authority may, at its sole discretion and at any stage, refuse to consider and completely withdraw from the RFQ Stage; or decide to terminate the entire bidding process, in accordance with the applicable laws of Pakistan; 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 Authority, is incomplete or irregular, contains exceptions or deviations that are unacceptable to the 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 Authority's decision with respect to the compliance or non-compliance of a Prequalification Application shall be final and binding, in accordance with the applicable laws of Pakistan and that the 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 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. Without limitation and notwithstanding anything else in this RFQ, this Section 3.6.1 shall expressly apply to the MIGD figures in Sections 2.1.2, 2.1.3 and 2.2 (*Project Structure*) of this Prequalification Document. Any addendum shall be issued by the Authority in writing by publishing the same in newspapers, as prescribed, and uploaded on Sindh Public Procurement Regulatory Authority's website: <https://ppms.pprasindh.gov.pk/PPMS/>, 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)**. In case any document / information furnished by the Prospective Bidder is in a language other than English, it will need to be accompanied by an English translation (duly notarized by Notary Public and attested by Pakistan Embassy / Consulate and Ministry of Foreign Affairs, Pakistan in the country of origin) of its pertinent passages for the purposes of interpretation of the Prequalification Application. In case of any discrepancy, the English translation shall prevail.

### **4.2 DOCUMENTS COMPRISING THE PREQUALIFICATION APPLICATION**

4.2.1 The Prequalification Applications submitted by Prospective Bidders 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 Parent Company, the Lead Member, Non-Lead Members and the Financial Nominee, as relevant) meets the prequalification criteria set out below (the “**Prequalification Criteria**”).

<b>Qualification Criteria<sup>2</sup></b>	<b>Required Documents/Forms</b>
<b>QC1: Technical Criterion</b>  The Prospective Bidder, or if the Prospective Bidder is a Consortium, the Lead Member, (together with their Subsidiary Companies and / or the Parent Company) shall have	<b>DQC1: Experience</b>  The Prospective Bidder, or if the Prospective Bidder is a Consortium, the Lead Member shall complete Form DQC1 in <b>ANNEXURE E (TECHNICAL DATA FORM)</b> for each project.  The Prospective Bidder and the Lead Member

<sup>2</sup> To be further discussed and developed



Qualification Criteria <sup>2</sup>	Required Documents/Forms
<p>experience of development, financing, commissioning, owning and successful operation of at least one (1) Eligible Project that meets the following criteria:</p> <p>a) the minimum Project Cost of PKR 5 billion;</p> <p>b) the Lead Member/Prospective Bidder/Subsidiary Company/Parent Company must have minimum ownership of more than twenty five percent (25%) of the issued capital of the project company that developed and owned the project; and</p> <p>c) commercial operation for the project must have been achieved within the last ten (10) years prior to the Prequalification Application Submission Deadline.</p> <p>In all cases the Prospective Bidder/ Lead Member/ Subsidiary Company/Parent Company must also Control the project company that developed and owned each project that is submitted in satisfaction of Technical Criterion.</p>	<p>shall also include supporting documentation in the form of a confirmation letter issued to the Authority on a non-reliance basis from an Independent Technical Adviser confirming that the experience submitted by the Prospective Bidder/ Lead Member meets the Technical Criterion.</p>
<p><b>QC2: Financial Criterion 1 (Financial Criterion 1)</b></p> <p>The Prospective Bidder (or if the Prospective Bidder is a Consortium, the Lead Member), shall together with their Subsidiary Companies have a Net Worth<sup>3</sup> of at least PKR 4</p>	<p><b>DQC2: Audited Financial Statements</b></p> <p>The Prospective Bidder, or if the Prospective Bidder is a Consortium, the Lead Member shall provide the required financial data in the forms presented in <b>ANNEXURE F (FINANCIAL DATA FORM)</b>, along with:</p> <p>(i) audited financial statements, duly certified by a</p>

<sup>3</sup> "Net Worth" means the value of total assets less total liabilities of the entity (and Subsidiary Companies) concerned at the end of a financial year, which will be assessed on a consolidated basis so that it includes the Prospective Bidder or Lead Member and each Subsidiary Company of that Prospective Bidder or Lead Member.

Qualification Criteria <sup>2</sup>	Required Documents/Forms
<p>billion and have assets of at least PKR 12 billion at the end of each of the last three (3) full financial years.</p> <p>Note that the Prospective Bidder/ Lead Member can select a Financial Nominee to satisfy the Financial Criterion 1 in accordance with Section 4.3.2.</p>	<p>certified chartered accountant, for the most recent three (3) full financial years, including the consolidated group balance sheet, income statement, statement of cash flows and the accompanying notes; and</p> <p>(ii) a confirmation letter from an Independent Auditor, to demonstrate that it satisfies the relevant Financial Criterion 1.</p>
<p><b>QC2: Financial Criterion 2 (Financial Criterion 2)</b></p> <p>If the Prospective Bidder is a Consortium then each Non-Lead Member shall, together with their Subsidiary Companies, have a Net Worth of at least PKR 1 billion and assets of at least PKR 3 billion at the end of each of the last three (03) full financial years.</p>	<p>The Lead Member shall provide the required financial data for each Non-Lead Member and their Subsidiary Companies in the forms presented in <b>ANNEXURE F (FINANCIAL DATA FORM)</b>, along with:</p> <p>(i) audited financial statements, duly certified by a certified chartered accountant, for the most recent three (3) full financial years, including the consolidated group balance sheet, income statement, statement of cash flows and the accompanying notes; and</p> <p>(ii) a confirmation letter from an Independent Auditor, to demonstrate that each Non-Lead Member satisfies the relevant Financial Criterion 2.</p> <p>In the event: (A) the Prospective Bidder (or in case of a Consortium, the relevant Consortium Member) is incorporated in a jurisdiction which does not require the auditing of financial statements; and / or (B) such Prospective Bidder (or in case of a Consortium, the relevant Consortium Member) has not in fact had its financial statements audited, on such Prospective Bidder's (or in case of a Consortium, the relevant Consortium Member's) non-audited consolidated financial statements, accompanied by a written opinion issued by an independent certified public accountant or auditor certifying the relevant Prospective Bidder's (or in case of a Consortium, the relevant Consortium Member's) Net Worth for the three (3) most recent full financial years for which such financial statements are available at the Prequalification Application Submission Deadline, provided that, the non-audited financial statements submitted by an entity, which by applicable law is required to prepare audited financial statements, shall not be accepted for the</p>

Qualification Criteria <sup>2</sup>	Required Documents/Forms
	purposes of evaluation.

4.3.1 TECHNICAL CRITERION – SUBMISSION OF EVIDENCE FROM SUBSIDIARY COMPANIES

The Prospective Bidder shall provide evidence of project(s) to satisfy the Technical Criterion.

The Prospective Bidder may also include evidence of Eligible Projects undertaken by one or more Subsidiary Companies / Parent Company to satisfy the Technical Criterion. In each case the evidence shall clearly set out whether the Eligible Projects involved the Prospective Bidder, the Lead Member, the Parent Company 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 or the Parent Company 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 Eligible Projects undertaken by one or more Subsidiary Companies or the Parent Company, 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 or the Parent 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 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 G (FINANCIAL NOMINEE LETTER OF COMFORT)**. The Financial Nominee shall provide an executed letter of support in the form attached in **ANNEXURE G (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 B (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 C (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;
  - 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);
  - d) a valid registration certificate from the income tax authority;
  - e) in case a Prospective Bidder (including a Consortium Member) is a government owned legal enterprise or institution, to the extent that the same is not a procuring agency, such entity shall submit an affidavit as set out in **ANNEXURE H/1 (AFFIDAVIT FROM GOVERNMENT OWNED ENTERPRISES)** to establish that it is legally and financially autonomous and operating under commercial law; and
  - f) details of litigation in the format attached as **ANNEXURE J (LITIGATION HISTORY)**.
- 4.4.3 An Affidavit, in the form of **ANNEXURE H (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 3.3 (*Ineligibility of a Prospective Bidder*).

- 4.4.4 An NDA signed by the Prospective Bidder, or if a Prospective Bidder is a Consortium each Consortium Member in the form of **ANNEXURE I (NON-DISCLOSURE AGREEMENT)**.

#### **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 shall undertake to and confirm to the Authority:
- a) to provide 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) to identify 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 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 RFQ 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 D (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 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 at least five (5) calendar days prior to the date of opening of the Prequalification Application.
- 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 posted on the website of the Authority (<http://www.kwsb.gos.pk> and/ or <http://www.pppunitsindh.gov.pk>) and the same will be sent to all Prospective Bidders who have requested or obtained 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 RFQ Stage and RFP Stage is as follows (the “**Estimated Timetable**”):

##### **Indicative Transaction Timetable\***

<b>Activity</b>	<b>Target Date</b>
ISSUANCE OF THE PREQUALIFICATION DOCUMENT	14 <sup>TH</sup> MARCH 2022 TO 09 <sup>TH</sup> MAY 2022
CLARIFICATION REQUESTS SUBMISSION DEADLINE	05 <sup>TH</sup> MAY 2022
PREQUALIFICATION APPLICATIONS SUBMISSION DEADLINE	10 <sup>TH</sup> MAY 2022
ANNOUNCEMENT OF PREQUALIFIED BIDDERS	15 <sup>TH</sup> JUNE 2022
LAUNCH OF RFP	24 <sup>TH</sup> JUNE 2022

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

The 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 Authority and Government shall not incur any liability whatsoever arising out of amendments to the Estimated Timetable. The Authority shall notify the Prospective Bidders of changes to the Estimated Timetable In accordance with the SPP Rules.

## **5 PREQUALIFICATION APPLICATION: SUBMISSION**

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### **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 two (2) electronic copies (**USB drives**) 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 numbering, indexing and binding the relevant Prequalification Application.
- 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 drives requested shall include a table of contents, shall be free of any virus and shall contain non-compressed and nonprotected 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 Authority at the following address:  
**ATTENTION:** SPECIAL SECRETARY (TECHNICAL)  
LOCAL GOVERNMENT & HOUSING TOWN PLANNING DEPARTMENT  
(ON BEHALF OF THE PROJECT DIRECTOR, MUNICIPAL WASTEWATER RECYCLING PROJECT AT TP1, KARACHI WATER & SEWERAGE BOARD)  
**ADDRESS:** GROUND FLOOR, SINDH SECRETARIAT BUILDING NO. 5 ANNEXE TUGHLAQ HOUSE, KAMAL ATATURK ROAD, KARACHI – SINDH, PAKISTAN  
**TELEPHONE:** +92 21 99245154 – 6; and
  - b) bear the words: “**TP1 WASTEWATER RECYCLING PROJECT. DO NOT OPEN BEFORE 15:00 HRS. PAKISTAN TIME, TUESDAY 10<sup>TH</sup> MAY 2022**”

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 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 Authority will not guarantee the anonymity of the submission, but this disclosure will not constitute grounds for rejection.

- 5.2.2 The USB drives 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 Authority at the address specified above no later than 14:00 HRS. PAKISTAN TIME, TUESDAY 10<sup>TH</sup> MAY 2022 (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](http://www.sbp.org.pk) and which shall be calculated as at the date of the Invitation for Prequalification.

- 5.4.3 The Authority reserves the right to dismiss any Prequalification Application 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 RFQ Stage and the RFP Stage and this Prequalification Document shall be governed by the applicable laws of Pakistan. The Parties agree to submit to the exclusive jurisdiction of the courts of Karachi, Pakistan.



## **6 PREQUALIFICATION APPLICATION: OPENING AND EVALUATION**

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### **6.1 PRELIMINARY EXAMINATION OF PREQUALIFICATION APPLICATIONS**

- 6.1.1 The Authority (acting upon the instructions of the Technical and Financial Evaluation Committee) and the Transaction Advisor 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 Authority (acting upon the instructions of the Technical and Financial 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 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 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 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 Authority and the Transaction Advisor 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 Authority and the Transaction Advisor 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) a Prospective Bidder whose Prequalification Application, is determined by the 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; and

(b) the Original Proponent of the Unsolicited Proposal;

a “**Prequalified Bidder**”.

6.2.4 A Prospective Bidder whose Prequalification Application is determined by the 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**

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### **7.1 INVITATION**

7.1.1 At the end of the evaluation of the Prequalification Applications, the Authority will announce the results in the form of a report, which will be posted on the website of the Authority and Sindh Public Procurement Regulatory Authority. The Authority will also communicate the results to all Prospective Bidders at least seven (7) days prior to the launch of the RFP, wherein the 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 Subject to Section 7.2.1, the Prospective Bidder (and where the Prospective Bidder is a Consortium each Consortium Member) undertakes that without the prior written consent of the Authority 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;
- (f) where a Subsidiary Company is evaluated as part of the Evaluation Criteria there shall be no change of Control of that Subsidiary Company; and
- (g) where a Parent Company is evaluated as part of the Evaluation Criteria there shall be no change of Parent Company Control of that Parent Company

provided that if the Authority consents to a change in Sections (a), (b), (c), (d), (e), (f) or (g) then following such Authority consent the Prospective Bidder (and where the Prospective Bidder is Consortium each Consortium Member), Financial Nominee and Subsidiary Company or the Parent 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 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 the Concession Agreement becomes unconditional, any change set out in Section 7.1.2(a), (b), (c), (d), (e), (f) or (g) shall be subject to:
    - (i) the prior written consent of the 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 during the RFQ Stage and RFP Stage until the Concession Agreement becomes unconditional comply with Section 7.1.2(a), (b), (c), (d), (e), (f) or (g).

## ANNEXURE A – DATA SHEET

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

<b>1</b>	<b>PROJECT NAME</b>	<b>TP1 WASTEWATER RECYCLING PROJECT</b>
<b>2</b>	<b>ADDRESS AND CONTACT PERSON OF CONTRACTING AUTHORITY</b>	<b>Karachi Water and Sewerage Board</b>  <b>Attention:</b> Project Director Municipal Wastewater Recycling Project Karachi Water & Sewerage Board <b>Address:</b> Room No. 7, Block-C, 9th Mile Karsaz, Shahrah-e-Faisal, Karachi – Sindh, Pakistan <b>Telephone:</b> +92 21 99245133 <b>Fax:</b> +92 21 99211537 <b>Email:</b> <a href="mailto:ppp.fsta@gmail.com">ppp.fsta@gmail.com</a>
<b>4</b>	<b>TRANSACTION ADVISER</b>	<b>Attention:</b> Director OPA1, Office of Public-Private Partnership <b>Address:</b> 6 ADB Avenue, Mandaluyong City 1550, Metro Manila, Philippines <b>Telephone:</b> +63 2 86324444 <b>Email:</b> <a href="mailto:KarachiTP1@adb.org">KarachiTP1@adb.org</a>
<b>5</b>	<b>ADDRESS FOR SUBMISSION OF THE PREQUALIFICATION APPLICATION<sup>s</sup></b>	<b>Attention:</b> Special Secretary (Technical), Local Government & Housing Town Planning Department (on behalf of the Project Director, Municipal Wastewater Recycling Project at TP1, Karachi Water & Sewerage Board) <b>Address:</b> Ground Floor, Sindh Secretariat Building No. 5 Annexe Tughlaq House, Kamal Ataturk Road, Karachi – Sindh, Pakistan <b>Telephone:</b> +92 21 99245154 – 6
<b>6</b>	<b>PREQUALIFICATION APPLICATION SUBMISSION DEADLINE</b>	14:00 Hrs. Pakistan Time, Tuesday 10 <sup>th</sup> May 2022
<b>7</b>	<b>OPENING OF PREQUALIFICATION APPLICATION</b>	<b>Venue:</b> Committee Room of Planning & Development Department, 2 <sup>nd</sup> Floor, Tughlaq House, Kamal Ataturk Road, Karachi – Sindh, Pakistan. <b>Date:</b> 10 <sup>th</sup> May 2022 <b>Time:</b> 15:00 Hrs., Pakistan Time
<b>8</b>	<b>LANGUAGE OF PREQUALIFICATION APPLICATION</b>	English
<b>9</b>	<b>NUMBER OF COPIES OF PREQUALIFICATION APPLICATION</b>	<b>For the Authority:</b> - one (1) printed original together with two (2) electronic copies (DVD or USB drive); and - two (2) printed copies.

## ANNEXURE B - PREQUALIFICATION APPLICATION FORM

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DATED  
[●]

**TO: KARACHI WATER AND SEWERAGE BOARD**  
(INSERT ADDRESS)

**RE: DFBOMT OF TP1 WASTEWATER RECYCLING PROJECT IN THE PROVINCE OF SINDH (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 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 Sindh and the jurisdiction of the courts of Karachi, 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 C)
- (b) Power of Attorney (ANNEXURE D);
- (c) Technical Data Form (ANNEXURE E);
- (d) Financial Data Form (ANNEXURE F);
- (e) Financial Nominee Letter of Comfort (if relevant) (ANNEXURE G),
- (f) Affidavit (ANNEXURE H);
- (g) Non-Disclosure Agreement (ANNEXURE I);
- (i) Litigation History (Annexure-J); 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 RFQ 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 C - BASIC INFORMATION FORM

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**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 D - POWER OF ATTORNEY

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[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 TP1 Wastewater Recycling 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 Authority, any other Government entity or any person, in connection with the Project and thereafter for the execution of relevant Project documents with 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.

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.

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 E – TECHNICAL DATA FORM (DQC1)

The Prospective Bidder, or if the Prospective Bidder is a Consortium, the Lead Member, should provide sufficient detail in Form DQC1 of the experience in Eligible Project. The experience entered in a separate form for each project shall enable the Authority to evaluate fulfilment of Technical Criterion as described in Section 4.3 (*Part I – Prequalification Criteria*) of this Prequalification Document.

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

## ANNEXURE F - FINANCIAL DATA FORM (DQC2)

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>

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

## ANNEXURE G – FINANCIAL NOMINEE LETTER OF COMFORT

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DATED  
[●]

To: **KARACHI WATER AND SEWERAGE BOARD**  
(INSERT ADDRESS)

RE: **DFBOMT OF TP1 WASTEWATER RECYCLING PROJECT IN THE PROVINCE OF SINDH (THE  
“PROJECT”)**

Dear [Sir/Madam],

We refer to the prequalification document issued by the Karachi Water and Sewerage Development, dated [●] (“**Prequalification Document**”), inviting prequalification applications from Prospective Bidders for the execution and completion of a Concession Agreement involving the DFBOMT of TP1 Wastewater Recycling Project, Sindh (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 in QC2. 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 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 RFQ 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 H – AFFIDAVIT

---

DATED  
[●]

**TO: KARACHI WATER AND SEWERAGE BOARD**  
(INSERT ADDRESS)

**RE: DFBOMT OF TP1 WASTEWATER RECYCLING PROJECT IN THE PROVINCE OF SINDH (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*<sup>4</sup>] 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*)]<sup>5</sup>:

- (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) is not aware of any Conflict of Interest;
- (c) 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;
- (d) is not ineligible / blacklisted to participate in, bid for or undertake any contract or project through any form of public tender (due to reasons, including but not limited to breach of practices similar to the Anti-Corruption Practices) by any federal or provincial governmental or non-governmental department/ agency in Pakistan;
- (e) 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 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;
- (f) 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

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<sup>4</sup> In case of a Consortium, the Affidavit is to be executed by each Consortium Member separately;

<sup>5</sup> To be included only in case of a Consortium;



each case to the extent that it has made suitable accounting provision for such liabilities in accordance with applicable accounting regulations;

- (g) has made full disclosure of and has not concealed any information in respect to compliance with Sections 3.2 and 3.3;
- (h) has not failed to sign a contract for a project with the Government or Authority following it being awarded that project;
- (i) 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](http://www.crossdebarment.org));
- (j) is not a person listed on, or owned or controlled by, or acting on behalf of, a person on any Sanctions List. For the purposes of this Section 3.3.1 Sanctions List means any list issued or maintained by any Sanctions Authority from time to time including, without limitation, the Specially Designated Nationals and Blocked Persons list maintained by the Office of Foreign Assets Control of the US Department of Treasury, the Denied Persons List maintained by the US Department of Commerce, the Consolidated List of Financial Sanctions Targets maintained by Her Majesty's Treasury in the UK and Sanctions Authority means any governmental or other institution or agency with responsibility for the imposition of financial or economic sanctions or trade embargoes (or related restrictions) from time to time including, without limitation, the United Nations Security Council, the US government, the UK government, the European Union, or the Pakistan government and their respective institutions or agencies.
- (k) has not been included on the list of companies debarred by the National Procurement Authority (<https://ageops.net/en/companies/debarment/debarred-vendors>) or on the list of companies currently facing debarment proceedings by the National Procurement Authority (<https://ageops.net/en/companies/debarment/under-process>); and
- (l) 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: [●]

## ANNEXURE H/1 – AFFIDAVIT FROM GOVERNMENT OWNED ENTERPRISES<sup>6</sup>

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DATED  
[●]

**TO: KARACHI WATER AND SEWERAGE BOARD**  
(INSERT ADDRESS)

**RE: DFBOMT OF TP1 WASTEWATER RECYCLING PROJECT IN THE PROVINCE OF SINDH** (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*<sup>7</sup>] hereby duly issues this affidavit (this "**Affidavit**") and hereby represents and warrants that that the [*Name of Prospective Bidder(s)/ Member(s) of Consortium*], [and each member of our Consortium (*if applicable*)] , a Government Owned Enterprise, is:

- (a) legally and financially autonomous; and
- (b) operating under commercial law.

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: [●]

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<sup>6</sup> Only relevant for the Government Owned Enterprise

<sup>7</sup> To be executed in case Prospective Bidder/ Consortium Member(s) is a Government Owned Enterprise. In case of a Consortium, the Affidavit is to be executed by each Consortium Member separately, where applicable.

## ANNEXURE I – NON-DISCLOSURE AGREEMENT

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### NON-DISCLOSURE AGREEMENT<sup>8</sup>

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THIS NON-DISCLOSURE AGREEMENT (hereinafter referred to as the “**Agreement**”) is made in Karachi, Pakistan, on this day of \_\_\_\_\_ 2022 by and between:

- I. [●], a company duly existing under the applicable laws of Pakistan, having its registered office at [●] through its authorized representative [●] (the “**Prospective Bidder**”);
- II. Karachi Water and Sewerage Board as the designated public partner through its authorized representative [●] (hereinafter the “**Authority**”, which expression shall be deemed to include its successors-in-interest and permitted assigns).

The Prospective Bidder and the Authority are hereinafter collectively referred to as the “**Parties**” and each individually as a “**Party**”.

#### WHEREAS:

- (A) The Prospective Bidder is desirous of participating in the procurement process (including Request for Prequalification (the “**RFQ**”) and Request for Proposal (the “**RFP**”) stages) for the TP1 Wastewater Recycling public-private partnership (“**PPP**”) project (the “**Project**”).
- (B) The Parties will upload to a designated website-based virtual data room (the “**VDR**”) and share sensitive financial or proprietary information of confidential or non-confidential nature to review, evaluate or consider while pursuing business opportunities to be granted under the Project.
- (C) The Parties wish to enter into this Agreement to provide for the conditions of disclosure of such information and the rules governing use and the protection thereof by the Parties.
- (D) In consideration of the Authority agreeing to grant access to the VDR, the Prospective Bidder hereby agrees to comply with this Agreement.

NOW, THEREFORE, the Parties have now agreed on the following:

#### 1 Definitions

- 1.1. Unless otherwise defined herein, all capitalized terms used in this Agreement shall bear the meaning ascribed thereto in the RFQ.

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<sup>8</sup> **Note to Prospective Bidder:** For communication in relation to the execution of the NDA, please use the ID: ppp.fsta@gmail.com

## 2 General

- 2.1 This Agreement shall take effect on the date of execution and delivery of this Agreement by all Parties (the "**Effective Date**"). Any use of the uploaded information by the Prospective Bidder shall be construed as a consent, acceptance, execution and delivery of this Agreement regardless of its signature.
- 2.2 Any information, documents or data in any form that contains proprietary, operational, financial, legal, corporate, technical, commercial or other publicly unavailable information pertaining to the subject matter of the Project as disclosed in the VDR or otherwise, including any information added at any time, information provided directly in response to questions and any other information, materials or data: (a) disclosed to the Prospective Bidder by or on behalf of the Authority in any form or by any means or through any medium; or (b) disclosed to the Authority by or on behalf of the Prospective Bidder in connection with the Project, in each case whether it is disclosed on the Effective Date (the "**Confidential Information**") is being made available subject to, and on the terms and conditions of, this Agreement.
- 2.3 This Agreement sets out the obligations, rules and procedures governing the confidentiality undertaking and use of the VDR to be made available to: (a) any ministry, department or political subdivision thereof, any municipality, any other governmental entity, instrumentality, agency, authority, committee or commission, under the direct or indirect control of the Government of Sindh, or any department or political subdivision thereof, or any independent regulatory authority relating thereto, having jurisdiction under the applicable laws of Pakistan over the Project (together referred to as the "**Competent Authorities**") and their respective associates, officers, statutory facilitation agency and appointed consultants and advisors (the "**Associates**"); (b) professional advisers appointed by the Authority including Asian Development Bank's (**ADB**) Office of PPP, advisors and consultants appointed by ADB (the "**Advisors**"); (c) the Prospective Bidder and its respective affiliates, employees, consultants and professional advisers (including, but not limited to: technical, financial, tax, accountant, legal) (the "**Authorized Users**") who need to know such information for the purpose of considering the Project; and (d) the Prospective Bidder's prospective contractors, co-sponsors or lenders, and their respective employees, consultants and professional advisers (each "**Permitted Users**" – who, together with Authorized Users, shall be referred to as "**Authorized Persons**").
- 2.4 The Authority shall make appropriate arrangements to ensure that any Competent Authority shall agree to be bound by the confidentiality obligations of the Authority with respect to Confidential Information. Each Party shall make appropriate arrangements to ensure that any Associates, Advisors or Authorized Persons (as the case may be) agree to be bound by the confidentiality obligations of the relevant Party with respect to the Confidential Information.

- 2.5 The signing of this Agreement by the Prospective Bidder's Representative (as defined below) shall be deemed to be on behalf of all Authorized Users and Permitted Users with access to the VDR.
- 2.6 The Parties shall comply and cause their respective Associates, Advisors and Authorized Persons (as the case may be) to comply with any obligation imposed by this Agreement as if such persons were itself a signatory to this Agreement. Each Party shall be liable for any breach committed by any of said persons. Any breach of confidentiality by the Authorized Persons may result in rejection of the Prospective Bidder's application for the Project, without any further consideration and termination of the Prospective Bidder's right to continue in the bidding process in accordance with Section 10.1(a) of the RFQ.
- 2.7 This Agreement shall expire upon successful award of the Project to a winning bidder, unless terminated earlier in accordance with the terms and conditions of this Agreement. Subject to the terms and conditions set forth in Clause 2, the Parties shall keep the Confidential Information confidential for a further two (2) years following the earlier to occur of termination or expiry of the Agreement.

### **3 Confidentiality**

- 3.1 Subject to Clause 3.2, the Parties shall treat the Confidential Information as strictly confidential and shall use the Confidential Information solely for the purpose of considering, evaluating, advising on, designing, building, financing, operating or furthering the Project and shall not disclose the Confidential Information other than to their respective Associates, Advisors and Authorized Persons on the terms set forth herein.
- 3.2 The term "Confidential Information" under this Agreement shall be deemed **not** to include information which the receiving Party can prove:
- 3.2.1 is or has come into the public domain prior to, or after the disclosure thereof and in such case through no wrongful act of the receiving Party; or
  - 3.2.2 is already known to or in the possession of the receiving Party, as evidenced by written documentation in the files of the receiving Party; or
  - 3.2.3 has been lawfully received from a third party without restrictions or breach of this Agreement; or
  - 3.2.4 has been or is published without violation of this Agreement; or
  - 3.2.5 is approved for the release or use in question by written authorization of the disclosing Party; or

3.2.6 is required to be publicly disclosed by law, order or demand of a court of competent jurisdiction or the requirement of any relevant stock exchange or other regulatory government or official body.

3.3 Each receiving Party undertakes:

3.3.1 to keep the Confidential Information and any copies of it secure and in such a way as to prevent unauthorized access by any third party and not to disclose, alter, modify, disassemble, or decompile, copy, reproduce or distribute any Confidential Information or otherwise make it available to any person other than its respective Associates, Advisors and Authorized Persons;

3.3.2 to use the Confidential Information solely for purposes of undertaking the Project;

3.3.3 to inform other Parties immediately if it becomes aware that any Confidential Information has been disclosed to or come to the knowledge of an unauthorized third party;

3.3.4 with respect to Prospective Bidder only and at its own expense, within seven (7) days of withdrawing from the bidding process, or of being notified that it has been disqualified, its proposal has been rejected, or it not been declared as having won the Project and in any event on receipt of a written demand from the Authority:

(a) to return or destroy all hard copies of Confidential Information that has been made available to it by or on behalf of the Authority which is in its possession or under its custody and control without keeping any copies;

(b) to destroy all hard copies of Confidential Information prepared by it to the extent that the same contains, reflects or derives from information that has been made available to it by or on behalf of the Authority, except for the copies of Confidential Information contained in management presentations and/or board minutes related to the Prospective Bidder's internal evaluation of the Project and any related transaction, provided that such Confidential Information is kept only when needed to comply with applicable laws;

(c) to the extent practicable, to expunge all Confidential Information from any computer, word processor or other device in its possession or under its custody or control;

(d) to confirm to the Authority in writing that the above actions have been taken; and

3.3.5 the Authority shall be entitled to retain copies of any document of Confidential Information for internal compliance purposes.

#### **4 VDR**

4.1 No representation or warranty (whether express or implied) is given and no responsibility or liability is accepted by the Authority (or its Associates and Advisors) as to the accuracy or completeness of the information disclosed in the VDR or otherwise.

4.2 The Prospective Bidder hereby: (i) acknowledges that in relation to the Project, the Authority is represented by Advisors, and (ii) consents to such representation, notwithstanding that such Advisors may be engaged in other matters involving such Prospective Bidder.

4.3 The Prospective Bidder hereby waives any liability to which ADB and its Advisors might be subject in connection with the Project and consents to the use and disclosure of any Confidential Information provided to or created by ADB or its Advisors in connection with the Project within only such departments of ADB (and the officers and employees working therein) as is necessary for the development and/or financing of the Project.

4.4 Information disclosed in the VDR or otherwise, or any part thereof, does not constitute an offer or proposal by or on behalf of the Authority.

4.5 Additional documents may be added to, and documents may be removed from, the VDR from time to time by or on behalf of, and at the discretion of the Authority. The Prospective Bidder shall be responsible to check the VDR for such additions and / or deletions from time to time. However, no obligation is undertaken or accepted by the Authority (or its Associates and Advisors) to provide any additional or updated information or to correct any inaccuracies or discrepancies in the information.

#### **5 Access to the VDR**

5.1 The VDR service shall be provided by the Authority, and accordingly the Parties shall: (a) allocate adequate time for processing of information; and (b) follow the instructions of the Authority necessary for registration, access, use and compliance with security measures.

5.2 The Prospective Bidder shall ensure at all times that:

5.2.1 only Authorized Persons shall seek access to the VDR; and

5.2.2 the number of Authorized Persons who shall seek such access is limited only to those for whom it is strictly necessary for the purposes of, or in connection with, undertaking the Project.

- 5.3 Access to the VDR by any Authorized Persons is subject to:
- 5.3.1 acceptance of VDR rules of the Authority; and
  - 5.3.2 an authorized representative of the Prospective Bidder, being the individual duly authorized under a corporate resolution, power of attorney or otherwise by the Prospective Bidder and the signatory of this Agreement, (the “**Representative**”) having:
    - (a) signed and returned a copy of this Agreement; and
    - (b) if available, countersigned and returned copies of any non-reliance letters issued by Advisors whose reports are included in the VDR, in each case as identified to the Representative by the Authority or ADB.
- 5.4 The Authority reserves the right to refuse, terminate or withdraw access to the VDR (either in general or by any Authorized Persons) at any time at their own discretion without giving any reason. In particular, if the Prospective Bidder withdraws from the tender process (whether formally or informally), or it is disqualified, or its proposal is rejected, access to the VDR will be withdrawn.
- 5.5 Subject to VDR rules related to scheduled downtime and communications, the VDR is expected to be open twenty-four (24) hours per day, seven (7) days per week from the date of its opening until the deadline for responding to the RFQ, or such other dates as notified by the Authority to the Prospective Bidder. The information may subsequently be reopened to the successful Prequalified Bidders to respond to the RFP.
- 5.6 The Prospective Bidder acknowledges and accept that neither the Authority, nor their respective Associates and Advisors, or other representatives, nor any of their respective officers, employees or agents accept responsibility for or make any representation, express or implied, nor gives any warranty with respect to the accuracy or completeness of the information provided in the VDR or accept any responsibility or liability for technical issues affecting the VDR service.

## **6 Use of the Information**

- 6.1 The Confidential Information may not be forwarded or shared other than in accordance with this Agreement.
- 6.2 If any information is printed or downloaded, it shall be deemed to have been printed and/or downloaded on, and shall remain subject to, the terms of this Agreement (including, for the avoidance of doubt, the obligation to return or destroy the information).
- 6.3 No attempt may be made to circumvent any of the security features of the VDR.



## **7 Intellectual Property**

Nothing in this Agreement or the disclosure of information or data hereunder is intended to grant or shall be construed as granting to the receiving Party any title, rights or licenses in or under any patent, copyright or any other intellectual property right whatsoever of the other Party, other than the right to use such information or data for the Purpose strictly authorized herein.

## **8 Security**

8.1 The Prospective Bidder and its Authorized Persons shall strictly adhere to the security rules of the Authority. Authorized Persons shall not reveal their user name or password to anyone for any reason whatsoever.

8.2 When accessing the VDR, Authorized Persons must:

8.2.1 take all necessary steps to ensure that none of the Confidential Information contained therein is visible to, or capable of being overlooked by, other persons;

8.2.2 not leave their computer (or other communications device through which they have logged on to the VDR) unattended whilst they are logged on to the VDR; and

8.2.3 ensure that they log-out of the VDR when they have finished using it, by closing down their Internet browser program.

8.3 The Parties hereby acknowledge that the VDR system keeps a record of which user names have been used, and at what time, to access particular documents.

## **9 Questions & Answers Procedure**

9.1 The Authority shall advise Prequalified Bidders as regards the procedure for submitting questions and requests for clarification, either via the VDR itself or separately.

## **10 Technical Support**

10.1 Authorized Persons who experience technical difficulties in accessing or using the VDR should contact the Authority via email addressed to [ppp.fsta@gmail.com](mailto:ppp.fsta@gmail.com).

## **11 Disclaimer and damages**

11.1 No liability is accepted by the Authority or its Associates and Advisors for any damage of any sort which may be caused to any computer, computer system or other

communications device through which the VDR has been accessed, or any information stored on any such computer, computer system or other communications device, in any way resulting from the use of or the downloading of any information from the VDR. Use of the VDR is entirely at the user's own risk.

- 11.2 The liability of the Parties to each other for breach of this Agreement shall be limited to direct actual damages only. Such direct actual damages shall be the sole and exclusive remedy, and all other remedies or damages at law or in equity are waived by each Party. In no event shall the Parties be liable to each other for any other damages, including loss or deferment of revenue or profits (regardless of it being whether direct or indirect loss) or loss of opportunity or any incidental, indirect, consequential, special, or punitive damages, regardless of negligence or fault.

## **12 Miscellaneous**

- 12.1 No variation, amendment or modification of this Agreement shall be effective unless it is in writing and signed by the Parties.
- 12.2 Save as expressly mandated by this Agreement with respect to Associates, Advisors, Authorized Users and Permitted Users, neither Party may transfer its rights or obligations under this Agreement in full or in part without the prior written consent of the other Party.
- 12.3 Neither Party shall be liable, whether in contract, tort or otherwise, for any indirect, consequential or special losses, damages or expenses of any kind directly or indirectly arising out of or in any way connected with the performance of this Agreement.

## **13 Governing Law and Disputes**

- 13.1 This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed in accordance with the laws of Pakistan.
- 13.2 The courts of the Islamic Republic of Pakistan shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with this Agreement.

**SIGNATURE PAGE**

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**IN WITNESS WHEREOF** the parties hereto have caused this Agreement to be executed by their duly authorised representatives as of the day, month and year first above written.

**ON BEHALF OF THE PROSPECTIVE BIDDER**

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For and on behalf of **THE PROSPECTIVE BIDDER** through its authorised signatory



SIGNATURE

Name:  
Designation:

.....

in the presence of:  
signature of **WITNESSES**

SIGNATURE

1- Name:  
Address:  
NIC No:

.....

2- Name:  
Address:  
NIC No:

.....

**ON BEHALF OF KARACHI WATER AND SEWERAGE BOARD**

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For and on behalf of **KWSB** through  
its authorised signatory



SIGNATURE

Name:  
Designation:

.....

in the presence of:  
signature of **WITNESSES**

SIGNATURE

1- Name:  
Address:  
NIC No:

.....

2- Name:  
Address:  
NIC No:

.....

## ANNEXURE J – LITIGATION HISTORY

PENDING LITIGATION			
<p><b>Pending litigation</b> - All pending litigation shall in total not represent more than fifty percent (50%) of the Prospective Bidder's/ Consortium Member's net worth and shall be treated as resolved against the Prospective Bidder/ Consortium Member.</p>			
YEAR	OUTCOME AS PERCENT OF TOTAL ASSETS	OUTCOME AS PERCENT OF TOTAL ASSETS	TOTAL CONTRACT AMOUNT (PKR)
		Contract Identification: Name of Employer: Address of Employer: Matter in dispute:	