

Tourism Council of Bhutan

Request for Proposal

Title: Outsourcing operation and management of the restrooms (To be piloted from Phajoding and Taktshang)

[September 5, 2022]

Table of Contents

1 INTRODUCTION.....	3
A. Purpose of Issuing the RFP	3
B. Project Background	3
C. Agreement	3
D. Financing Provisions.....	3
E. Overview of the Bidding Process	4
2 INSTRUCTIONS TO BIDDERS.....	6
A. General Provisions	6
B. Formats and Procedures.....	12
3 EVALUATIONS OF BIDS	19
A. Bid Register and Compliance Check	19
B. Opening and Evaluation of Technical and Financial Proposals.....	19
C. Award and Signing of the Agreement.....	21
D. Miscellaneous.....	21
4 SCHEDULES	23
B. Schedule 2: Updated Bidding Process Timelines	23
C. Schedule 3: Bid Letter	24
D. Schedule 4: Updated Bidder Information.....	26
E Schedule 5: Updated Consortium Member Information (<i>If only applicable</i>)	27
F Schedule 6: Bank Guarantee for Bid Security	28
G. Schedule 7: Power of Attorney for Signing of Bid	29
H. Schedule 8: Power of Attorney for Lead Member of Consortium (<i>If only applicable</i>)	30
I Schedule 9: Updated Consortium Agreement (<i>If only applicable</i>)	31
J Schedule 10: Anti-Collusion Certificate ¹⁰	35
K. Schedule 11: Format and Evaluation of Technical and Financial Proposal.....	36
L Schedule 12: Format of Financial Proposal	37
M. Schedule 13: Declaration of Undertaking.....	38

1 INTRODUCTION

A. Purpose of Issuing the RFP

- 1.1. The RFP is prepared in terms of the Royal Government of Bhutan Public Private Partnership Rules and Regulations, 2017, as amended. Where a conflict exists the Rules and Regulations shall prevail.
- 1.2. The purpose of issuing the RFP is to enable the Tourism Council of Bhutan to select the successful bidder for the project, by evaluating which among the Bidders presents the best Bid that offers the most value for money for the public in undertaking the Project as set out in the technical and financial criteria in this RFP.
- 1.3. It is intended that the Bidding Process be conducted in a competitive and transparent manner in order to ensure that the Tourism Council of Bhutan's objectives for initiating the are achieved and value for money objectives are met.

B. Project Background

- 1.4. The Tourism Council of Bhutan is seeking a private partner or partners for the Project as described below [**Refer the attached Terms of Reference**]
Further/specific details on the Project may be found in the **Terms of Reference** in the section 5].

C. Agreement

- 1.5. The Tourism Council of Bhutan shall enter into the operation and management agreement (hereinafter called "the agreement") with the selected successful bidder.
- 1.6. The Term shall be three [*3*] years from the start date of operation and management of the facility area of RBP.
- 1.7. The agreement is attached to this RFP and includes provisions regarding access to, use of, or treatment of facility area.

D. Financing Provisions

- 1.8. The assumptions, provisions, rights and responsibilities for financing, revenues and cost streams of the Project, as well as the payment mechanism/s, are elaborated in the Updated Project Information attached to this RFP.
- 1.9. The following provisions regarding financing are highlighted, namely:
[**Refer ToR**]

E. Overview of the Bidding Process

- 1.10. The Tourism Council of Bhutan has adopted a one-stage process (collectively referred to as the “Bidding Process”) for selection of the successful Bidder for award of the Project. The Bidding Process comprises the bidding process detailed in this RFP and is open to all the Bidders. Bidders are called upon to submit their proposals (the “Bids”) in respect of the project, in accordance with the RFP and other documents herein provided by the Tourism Council of Bhutan.
- 1.11. This RFP includes a schedule with a Bidding Timeline. The Tourism Council of Bhutan will strive to adhere to the specified timeline, but may vary the timeline if required and shall then notify Bidders in writing and by issuance of an Updated Bidding Timeline.
- 1.13. Bidders may submit questions, seek clarifications or address remarks to the Tourism Council of Bhutan regarding the project or the RFP, including ToR by submitting these in writing to the Tourism Council of Bhutan. The Tourism Council of Bhutan will prepare and maintain a register of any such written submissions received by Bidders.
- 1.14. The Tourism Council of Bhutan may amend the RFP including the ToR through issuance of public notices, addenda or by the issue of a revised RFP. The Tourism Council of Bhutan will notify interested parties of the final version of the RFP on which their Bids shall be based.
- 1.15. Bidders shall submit Bids that meet the requirements of this RFP before the Bid Due Date, and following the submission requirements and procedures.
- 1.16. Bidders may be required to deposit, along with its Bid, a refundable Bid Security as specified in this RFP.
- 1.17. The Tourism Council of Bhutan will record all Bids received by the Bid Due Date and will assess these for compliance and responsiveness to the Bid submission requirements. The Tourism Council of Bhutan will establish a Tender Evaluation Committee which will undertake the Evaluation of Compliant and Responsive Bids according to the process and criteria set out in this RFP, and will determine the first ranked Bid.
- 1.18. The Tender Evaluation Committee and Tourism Council of Bhutan cannot negotiate with any of the bidders, except for the following:
 - a. The first ranked Bidder withdraws or is not selected for any reason, the tender Committee shall decide and recommend whether to undertake negotiation with the second ranked Bidder or to retender; or
 - b. Where all bid prices substantially are substantially low or high, the Tourism Council of Bhutan may, instead of calling for new bids, after consultation with the tender

Committee, call for best and final offer from the eligible Bidders, and negotiate with such bidder for a reduction of the bid price; or

- c. The bid price quoted by the Bidder shall be analysed with respect to internal benchmark, and if found abnormally high or low, as the case may be, recommendation from the tender Committee shall be sought for accepting or rejecting the bid from the first ranked Bidder or if first ranked bidder is rejected, then for negotiating with the second ranked Bidder or for retendering.

1.19. At the end of the limited final negotiations, the Tourism Council of Bhutan will, with approval of the tender committee, issue a Letter of Award to the successful Bidder stating the intention to sign the agreement with the successful Bidder and the related terms, and stating any conditions to be met by the successful Bidder within a set period as a condition precedent to signing of the agreement.

1.20. The selected Bidder to whom the project is awarded may be required to submit a Performance Security equivalent to two months' rent amount and retain with the lessor as security deposit as required by the Tenancy Act until the completion/termination of the agreement

1.21. The Tourism Council of Bhutan will sign the agreement with the successful Bidder, and may engage in further actions and/or enter agreements as part of the Financial Close of the project.

2 INSTRUCTIONS TO BIDDERS

A. General Provisions

2.1. Eligibility of Bidders

- 2.1.1. *Any interested national Bidders (individual, groups, business companies and CSOs, etc.) are eligible to participate in the bidding process. The bidders without having the business license shall also be allowed to participate in the bidding but the bidder shall mandatorily apply and process the management business license, if declared as the successful bidder.*
- 2.1.2. A Bidder shall submit only 1 (one) Bid either individually or as a Member of a Consortium. A Bidder submitting a Bid individually or as a member of a Consortium shall not be entitled to submit another Bid either individually or as a member of any Consortium, as the case may be.
- 2.1.3. An Applicant may be a natural person, legal entity, or any combination of them with a formal intent to enter into an agreement or under an existing agreement in the form of a Consortium. A Consortium shall be eligible for consideration subject to the conditions set out in this RFP.
- 2.1.4. The Bid should be furnished in the formats specified in this RFP and signed by the Bidder's authorized signatory. The Bidder should note that the formats specified in the RFP have been provided for the convenience of the Bidders and may not exhaustively enumerate or describe various information required to be provided by the Applicants under this RFP. The Applicants should ensure that all the information required to be provided by them under this RFP is included in their Bid whether or not a particular format specified herein makes provision for submission of such information and/or whether or not a format for submission of such information is incorporated in this RFP.
- 2.1.5. The Bidder should submit a Power of Attorney in accordance with Schedule 7 of this RFP, authorizing the signatory of the Bid to commit the Bidder.
- 2.1.6. In case the Bidder is a Consortium, the Members thereof should furnish a Power of Attorney in favour of the Lead Member in accordance with Schedule 8 of this RFP.

- 2.1.7. Any condition or qualification or any other stipulation contained in the Bid which is inconsistent with the terms of this RFP may render the Bidder liable to rejection as a non-responsive Bid.
- 2.1.8. The Bid and all communications in relation to or concerning this RFP shall be in the English language. Supporting documents and printed literature furnished by the Bidder with the Bid may be in any other language provided that they are accompanied by appropriate translations of the pertinent passages in the English language, duly authenticated and certified by the Bidder. Supporting materials which are not translated into English may not be considered. For the purpose of interpretation and evaluation of the Bid, the English language translation shall prevail.
- 2.1.9. This RFP and all attached or other documents, are and shall remain the property of the Tourism Council of Bhutan and are made available to the Bidders solely for the purpose of preparation and submission of a Bid. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparing and submitting their Bid.
- 2.1.10. Change in the composition of a Consortium will not be permitted by the Tourism Council of Bhutan after the Submission of the Bid Due Date.
- 2.1.11. A Consortium shall submit a Power of Attorney and a Consortium Agreement in conformance with this RFP along with the Bid on or before the Submission of Bid Due Date.
- 2.1.12. The Consortium Agreement shall, inter alia:
- a. convey the intent to form a Project Company with shareholding/ownership equity commitments in accordance with this RFQ;
 - b. clearly outline the proposed roles and responsibilities of each Member and the Lead Member; and
 - c. specify the shareholding ratio of the different parties involved in the consortium.

2.2. Verification of Information of Bidder

- 2.2.1. It shall be deemed that by submitting the Bid, the Bidder has:
- a. made a complete and careful examination of the RFP;
 - b. agreed to be bound by the undertakings provided by it under and in terms hereof; and

c. Acknowledged that it does not have a Conflict of Interest.

2.2.2. The Tourism Council of Bhutan shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to the RFP or the Bidding Process, including any error or mistake therein or in any information or data given by or on behalf of the Tourism Council of Bhutan.

2.3. Cost of bidding

2.3.1. The Bidders shall be responsible for all of the costs associated with the preparation of their Bid and their participation in the Bidding Process. The Tourism Council of Bhutan will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.

2.4. Conflict of Interest

2.4.1. The Conflict-of-Interest requirements set in the RFP shall continue to apply. A Bidder shall not have a Conflict of Interest that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the Tourism Council of Bhutan shall be entitled to forfeit and appropriate the Bid Security, as the case may be, without prejudice to any other right or remedy that may be available to the Tourism Council of Bhutan under the Bidding Documents or otherwise. Determining the presence of Conflict of Interest shall be the prerogative of the Tourism Council of Bhutan. A Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:

- a. such Bidder (or any constituent thereof) and any other Bidder (or any constituent thereof) have common controlling shareholders or other ownership interest; or
- b. a consortium member or any constituent of such Bidder is also a consortium member or constituent of another Bidder; or
- c. such Bidder (or any constituent thereof) receives or has received any direct or indirect subsidy from any other Bidder (or any constituent thereof), or has provided any such subsidy to any other Bidder (or any constituent thereof); or
- d. such Bidder (or any constituent thereof) thereof has the same legal representative for purposes of this Bid as any other Bidder (or any constituent thereof); or
- e. such Bidder (or any constituent thereof) has a relationship with another Bidder (or any constituent thereof), directly or through common third parties, that

- puts either or both of them in a position to have access to each other's information about, or to influence the Bid of either or each other; or
- f. such Bidder (or any constituent thereof) has participated as a consultant to the Tourism Council of Bhutan in the preparation of any documents, design or technical specifications of the Project, or
- g. any legal, financial or technical adviser of the Tourism Council of Bhutan in relation to the Project is engaged by the Bidder (or any constituent thereof) in any manner for matters related to or incidental to the Project.

2.5. Site visit and Verification of Information by Bidders

2.5.1. Bidders are encouraged to submit their respective Bids after visiting the Project Site[s] and ascertaining for themselves the sites' conditions, traffic, location, surroundings, climate, availability of power, water and other utilities for operation and management, access to sites, handling and storage of materials, weather data, applicable laws and regulations, and any other matter considered relevant by them.

2.5.2. It shall be deemed that by submitting a Bid, the Bidder has:

- a. made a complete and careful examination of the Bidding Documents;
- b. accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of the Tourism Council of Bhutan relating to any of the matters referred to in the RFP;
- c. satisfied itself about all matters, things and information including matters referred to in the RFP necessary and required for submitting an informed Bid, execution of the Project in accordance with the Bidding Documents and performance of all of its obligations thereunder;
- d. acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in the RFP shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits, or a ground for termination of the agreement by the successful bidder; and
- e. Acknowledged that it does not have a Conflict of Interest.

2.5.3. The Tourism Council of Bhutan shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising

out of or concerning or relating to the RFP, the Bidding Documents or the Bidding Process, including any error or mistake therein or in any information or data given by or on behalf of the Tourism Council of Bhutan.

- 2.5.4. Notwithstanding anything to the contrary contained in this RFP, the detailed terms specified in the agreement shall have overriding effect; provided, however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under the agreement.

2.6. Verification and Disqualification

2.6.1. The Tourism Council of Bhutan reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFP or the Bidding Documents and the Bidder shall, when so required by the Tourism Council of Bhutan, make available all such information, evidence and documents as may be necessary for such verification. Any such verification or lack of such verification by the Tourism Council of Bhutan shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Tourism Council of Bhutan thereunder.

2.6.2. The Tourism Council of Bhutan reserves the right to reject any Bid and appropriate the Bid Security if:

- a. Refer to the Clause 2.10;
- b. at any time, a material misrepresentation is made or uncovered; or
- c. the Bidder does not provide, within the time specified by the Tourism Council of Bhutan, the supplemental information sought by the Tourism Council of Bhutan for evaluation of the Bid, or
- d. a Conflict of Interest persists.

2.6.3. Such misrepresentation/ improper response shall lead to the disqualification of the Bidder. If the Bidder is a Consortium, then the entire Consortium and each Member shall be disqualified/ rejected. If such disqualification/ rejection occurs after the Bids have been opened and the successful Bidder gets disqualified/ rejected, then the Tourism Council of Bhutan reserves the right to select the Bidder which proposed the second-best Bid as Preferred Bidder or cancel the Bidding Process.

2.7. Amendment

- 2.7.1. At any time prior to the Bid Submission Deadline, the Tourism Council of Bhutan may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP by the issuance of addenda.
- 2.7.2. Any addendum issued hereunder will be uploaded in the website of the Tourism Council of Bhutan. The Tourism Council of Bhutan may notify Bidders about the issuance of an Addendum by public notification.
- 2.7.3. In order to afford the Bidders a reasonable time for taking an addendum into account, or for any other reason, the Tourism Council of Bhutan may, at its sole discretion, extend the Bid Submission Deadline.

2.8. Correspondence with the Bidders

- 2.8.1. Save and except as provided for in this RFP, the Tourism Council of Bhutan shall not entertain any correspondence with any Bidder in relation to the RFP including the project and process, and/or the acceptance or rejection of any Bid.

2.9. Fraudulent and Corrupt Practices

- 2.9.1. The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the Letter of Award and during the subsistence of the agreement.
- 2.9.2. The Tourism Council of Bhutan may reject a Bid, withdraw the Letter of Award, or terminate the agreement, as the case may be, without being liable in any manner whatsoever to the Bidder, as the case may be, if it determines that the Bidder or Service Provider, as the case may be, has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process.
- 2.9.3. In such an event, the Tourism Council of Bhutan shall be entitled to forfeit and appropriate the Bid Security, as the case may be, without prejudice to any other right or remedy that may be available to the Tourism Council of Bhutan under the Bidding Documents and/or the Agreement or otherwise.
- 2.9.4. In pursuit of this policy, the Government defines, for the purposes of this provision, the terms set forth below as follows:
 - a. “corrupt practice” means the offering, giving, receiving, or soliciting, of anything of value to influence the action of a public official in the Bidding Process (for the avoidance of doubt, offering of employment to or employing

or engaging in any manner whatsoever, directly or indirectly, any official of the Tourism Council of Bhutan who is or has been associated in any manner with the Bidding Process, at any time during the Bidding Process and within one year from the date of the conclusion of such process, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process), and includes inter alia, bribery, extortion or coercion, which involves threats of injury to person, property or reputation;

- b. “fraudulent practice” means a misrepresentation, omission, or suppression of facts, or disclosure of incomplete facts, in order to influence the Bidding Process;
- c. “coercive practice” means impairing or harming or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bidding Process; and
- d. “undesirable practice” means (i) establishing contact with any person connected with or employed or engaged by the Tourism Council of Bhutan or member of the Tender Committee with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest.

2.9.5. Government reserves the right, where the Bidder has been found by a national or international entity to have engaged in corrupt or fraudulent practices, to declare such Bidder ineligible, for a period of ten years, to be awarded a contract or any publicly funded contract.

B. Formats and Procedures

2.11. This RFP comprises the Disclaimer, the contents of the RFP and any appendixes, and any amendments, addendums, corrections, clarifications or interpretations issued in writing by the Tourism Council of Bhutan to Bidders.

2.12. Clarifications

2.12.1. Bidders wishing to address questions, request clarification or submit comments to the Tourism Council of Bhutan regarding the RFP must do so in writing, before the deadlines indicated by the Tourism Council of Bhutan , and following the submission method indicated by the Tourism Council of Bhutan (**Address:** Dorji

Dhradhul, Director General, Tourism Council of Bhutan; **Email for submission of clarification: [and dwangdi@tcb.gov.bt](mailto:dwangdi@tcb.gov.bt) / 17700780)**

- 2.12.2. The Tourism Council of Bhutan will provide answers, clarification or comments public ally and in writing in the method indicated by the Tourism Council of Bhutan, and where the identity of the requestor is kept anonymous.
- 2.12.3. The Tourism Council of Bhutan may also on its own initiative, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by the Tourism Council of Bhutan shall be deemed to be part of the Bidding Documents. Verbal clarifications and information given by the Tourism Council of Bhutan or its employees or representatives shall not be binding on the Tourism Council of Bhutan.
- 2.12.4. Should the Tourism Council of Bhutan deem it necessary to amend the RFP as a result of a clarification, it shall do so in writing publicly and following the communication method being followed.
- 2.12.5. In order to afford the Bidders a reasonable time for taking an addendum into account, or for any other reason, the Tourism Council of Bhutan may, at its sole discretion, extend the Bid Submission Deadline.

2.13. Format, Signing and Submission of Bids

- 2.13.1. The Bidder shall provide in its Bid all the information sought under the RFP. The Tourism Council of Bhutan will evaluate only those Bids that are received in the required formats and complete in all respects. Incomplete and /or conditional Bids shall be rejected.
- 2.13.2. The Bidder shall prepare and submit one original set of its Bid clearly marked “ORIGINAL”, and one copy of its Bid clearly marked “COPY”. In the event of any discrepancy between the original and the copy, the original shall prevail.
- 2.13.3. The Bid shall be signed by the authorized signatory of the Bidder who shall also initial each page. In case of printed and published documents, only the cover shall be initialled. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialled by the person signing the Bid. The Bid shall contain page numbers.

2.14. Contents of the Bid

2.14.1. The “Bid” shall be comprised of three separately sealed envelopes: (1) the Compliance Documents, (2) Technical Proposal, and (3) the Financial Proposal, each containing the respective “ORIGINAL” and “COPY”.

2.14.2. Each envelope shall be marked as follows:

“BID FOR THE [NAME OF PROJECT]” “COMPLIANCE DOCUMENTS” or “TECHNICAL PROPOSAL” or “FINANCIAL PROPOSAL” NAME AND ADDRESS OF BIDDER

The separately sealed compliance, technical and financial envelopes shall be placed in a sealed outer envelope marked as follows:

ATTENTION: [Name of Tourism Council of Bhutan ’s Designated Recipient for Project Proposals]

ADDRESS: [Address of Tourism Council of Bhutan]

BID FOR THE [Name of Project]

“COMPLIANCE DOCUMENTS, TECHNICAL PROPOSAL AND FINANCIAL PROPOSAL”

NAME AND ADDRESS OF BIDDER

2.14.3. **Envelope 1: Compliance Documents:** This envelope should clearly be marked as Compliance Documents and shall contain the compliance submission documents requested and substantially in the format required by this RFP, including the:

- a. Bid Letter;
- b. Bank/Bid Security;
- c. Power of Attorney for Signing of Bid;
- d. Company Information Form;
- e. If relevant, Consortium Identification Form;
- f. If relevant, Consortium Agreement;
- g. Anti-Collusion Certificate;
- h. Declaration of Undertaking, and
- i. Valid trade license and tax clearance, *only for the bidders bearing the existing organization (historical documents)*

2.14.4. **Envelope 2: Technical Proposal:** This envelope should clearly be marked as Technical Proposal and shall contain the Technical Proposal and any attachments meeting the requirements and substantially in the format set out in **ToR**.

2.14.5. **Envelope 3: Financial Proposal (To be submitted for ONLY Phajoding and Taktshang):** This envelope should clearly be marked as Financial Proposal and any attachments meeting the requirements and substantially in the format set out in the RFP/ToR, i.e., financial proposal form as per the format attached under schedule **12 (L) of RFP** and supported by the following break downs.

A. Breakdown of Renumeration of the key professionals

Sl. No	Name	Position	Home/field	Monthly remuneration rate in Ngultrum
1	E.g., Operational Manager			
2	E.g., Cleaner 1			
3				
			Total in Ngultrum	

B. Breakdown of reimbursable expenses (eg. Travel, office accommodation, rental, printing, telephones, site assessment and investigation, toiletries and other items (mopping sticks, hard brooms, liquid soaps, detergents, tissue papers, SS push waste bins, hand towels, gumboots and sickles) and other administrative and miscellaneous expenses, etc.).

Sl. No.	Types of reimbursable expenses	Unit	Quantity	Unit price/month	Total amount in

					Ngultrum
1	E.g., Toiletries	E.g., Lumpsum			
2	E.g., Travel/printing/accommodations /rental, etc. (if applicable)	E.g., Lumpsum/each/ Nos.			
3					
		Total in Ngultrum			

Grand total: Total A+ Total B

2.15. Bid and Performance Security

2.15.1. The Bidder shall furnish as part of its Bid a Bid Security having validity at least 30 days after the expiry of bid validity period. The amount of the Bid Security shall be Nu. **[2% of the bid price/value]**.

2.15.2. The selected Bidder to whom the project is awarded shall furnish a Performance Security valid for a period during which the obligation of the developer exists under the agreement. ***The amount of the Performance Security (hereinafter called “the security deposit” shall be equivalent to two months’ agreed bid price or monthly amount.*** The security deposit shall be valid until the termination and completion of successful operation and management of the project. It shall serve as a guarantee that the successful bidder will perform his contractual obligations under the agreement. The performance security shall be discharged and returned to the successful bidder within thirty (30) days after the completion of the management term or to be renewed if the contract is renewed. The security deposit shall be forfeited during the events/conditions set out in the agreement.

2.15.3. The Bid security and the security deposit shall be in the following forms:

- a. Unconditional guarantee issued by a reputed financial institution acceptable to the Tourism Council of Bhutan in the form provided in the RFP or any other form satisfactory to the Tourism Council of Bhutan;
- b. Banker’s cheque or Cash warrant; or

- c. Demand draft.
- 2.15.4. The Bid Security of the unsuccessful Bidders shall be discharged or returned to them as promptly as possible upon award of the Contract or in event of cancellation of the Bid Process, but in any event not later than thirty days after the expiration of the period of bid validity prescribed by the Tourism Council of Bhutan.
- 2.15.5. The Bid Security may be forfeited:
 - a. If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in this RFP;
 - b. If a Bidder withdraws its bid during the period of bid validity specified by the Bidder;
 - c. If a Bidder does not accept the arithmetical corrections of its bid price; or
 - d. In the case of a successful Bidder, if the Bidder fails:
 - i. To sign the Contract within the prescribed time; or
 - ii. To furnish the security deposit within the prescribed time.
- 2.15.6. ***Any Bid not accompanied by a Bid Security shall be summarily rejected by the Tourism Council of Bhutan as non-responsive.***

2.16. Bid Submission

- 2.16.1. Bids must be received by the Tourism Council of Bhutan in the manner and form specified in the RFP no later than the Bid Submission Deadline.
- 2.16.2. Bids received by the Tourism Council of Bhutan after the specified Bid Submission Deadline shall be declared late and shall not be eligible for consideration and shall be summarily rejected.

2.17. Modifications / Substitution / Withdrawal of Bid

- 2.17.1. The Bidder may modify, substitute or withdraw its Bid after submission and prior to the Bid Submission Deadline, provided that the written notice of the modification, substitution or withdrawal is received by the Tourism Council of Bhutan prior to the Bid Submission Deadline. No Bid shall be modified, substituted or withdrawn by the Bidder on or after the Bid Submission Deadline.
- 2.17.2. The modification, substitution or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with the RFP, with the envelopes being

additionally marked “MODIFICATION”, “SUBSTITUTION” or “WITHDRAWAL”, as appropriate.

2.18. Rejection of Bids

2.18.1. Notwithstanding anything contained in this RFP, the Tourism Council of Bhutan reserves the right to reject any Bid and to annul the Bidding Process and reject all Bids at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons therefore.

2.18.2. In the event that the Tourism Council of Bhutan rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids under this RFP.

2.19. Validity of Bids

2.19.1. The Bids shall be valid for a period of not less than [90 days] days from the Bid Submission Deadline.

2.19.2. The validity of Bids may be extended by mutual consent of the respective Bidders and the Tourism Council of Bhutan.

2.20. Confidentiality

2.20.1. Information relating to the examination, clarification, evaluation and recommendation for the Bidders shall not be disclosed to any person who is not officially concerned with the Bidding Process or is not a retained professional advisor advising the Tourism Council of Bhutan in relation to or matters arising out of, or concerning the Bidding Process.

2.20.2. The Tourism Council of Bhutan will treat all information, submitted as part of the Bid, in confidence and will require all those who have access to such material to treat the same in confidence.

2.20.3. The Tourism Council of Bhutan may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/or the Tourism Council of Bhutan.

3 EVALUATIONS OF BIDS

A. Bid Register and Compliance Check

- 3.1. The Member Secretary of Tender Evaluation Committee shall prepare a Bid Register in which is recorded the serial number of each Bid received, the date and time of each Bid received.
- 3.2. Exactly one hour after the Bid Submission Deadline, the Tender Evaluation Committee at the place specified in the RFP and in the presence of Bidders who choose to attend will review the Bid Register and identify any Bids for which a Notice of Withdrawal has been received prior to the submission deadline. Such Bids shall be labelled in the Bid Register as Withdrawn and shall be returned unopened to the Bidder.
- 3.3. The Tender Evaluation Committee shall open the outer envelope of any remaining Bids on the Bid Register received prior to the Bid Submission Deadline and verify that all requested documents and envelopes are included and in the correct format and form. Any Bid which does not materially meet the requirements will be marked as Unresponsive and returned unopened to the Bidder. The Tender Evaluation Committee will open the Envelope 1: Compliance Documents of each remaining Bid and verify that all compliance documents requested in the RFP are included. The Bids that materially meet the requirements will be marked as Responsive, and any Bid which does not materially meet the requirements will be marked as Unresponsive and returned unopened to the Bidder. *The absence of historical documents will not be considered unresponsive.* The Bid Register will be updated accordingly and finalised.
- 3.4. The Tender Evaluation Committee members will each sign the Bid Register, a copy of which will be provided to all Bidders who submitted Bids.

B. Opening and Evaluation of Technical and Financial Proposals

- 3.5. The Tender Evaluation Committee will convene in private one or more times at the date and place agreed to open and evaluate the Technical Proposal envelopes of Responsive Bids. The Tender Evaluation Committee may be supported in the evaluation by

appointed transaction advisors who shall act in an impartial manner and who shall be bound to confidentiality.

- 3.6. The Tender Evaluation Committee will evaluate the Technical Proposals received and will score or otherwise assess these in terms of the Technical Evaluation Criteria set out in this RFP. The Tender Evaluation Committee may at its discretion in writing request a Bidder to clarify a matter regarding its Technical Proposal which shall be made in writing by the Bidder. Such clarification requests and any written responses of Bidders shall not result in a material change to the Technical Proposal as originally submitted. The Tender Evaluation Committee will maintain a record of any clarification requests made, and responses received.
- 3.7. The Tender Evaluation Committee will prepare a table in which the technical evaluation of the Responsive Bids is recorded following the criteria set in this RFP, and a summary table with the resulting total technical scores and/or ranking of Bids, both of which will be signed by all members of the Technical Evaluation Committee. A copy of the summary table shall be provided to all the Bidders whose Technical Proposals were opened and evaluated.
- 3.8. The Tender Evaluation Committee shall schedule the opening of Financial Proposals which may be attended by Bidders. The Tender Evaluation Committee will open the Financial Proposal of Responsive Bids according to the criteria for determining the opening of Financial Proposals as set out in this RFP. The Tender Evaluation Committee will record the financial amount of the principal financial bid criteria as set out in this RFP of the opened Financial Proposal or Proposals.
- 3.9. The Tender Evaluation Committee will meet one or more times to verify the compliance, comprehensiveness and accuracy (including calculations) of the Financial Proposal or Proposals in meeting the requirements set out in the RFP. If necessary, the Tender Evaluation Committee may in writing request clarification from Bidders of any matters regarding their Financial Proposal, provided that written responses from Bidders to clarifications may not materially change the amount/s of the financial criteria submitted or comprise conditions. The Tender Evaluation Committee will maintain a record of any clarifications requested, and the written responses of Bidders.
- 3.10. After verifying and finalising the appropriate financial proposals (bid price), neither abnormally high nor low, the Tender Evaluation Committee will combine technical and financial evaluations according to the method and calculation set out in this RFP. The

Technical Evaluation Committee will determine the successful Bidder which is generally the first ranked Bidder, and the further ranking of Bid.

- 3.11. The Tender Evaluation Committee will prepare an evaluation report detailing the procurement process followed, including the technical and financial evaluation process and results, the recommendation of the successful Bidder, and the further ranking of Bids.

C. Award and Signing of the Agreement

- 3.12. The TCB will submit the Tender Evaluation Committee's evaluation report to the tender Committee. After confirmation by the tender Committee, the Tourism Council of Bhutan will indicate to Tender Committee its intention to enter into the agreement with the successful Bidder and provide the agreement to the Tender Committee including all terms and amounts, and any conditions to be met by the successful Bidder as condition of signing of the agreement. After confirmation by the Tender Committee, the Tourism Council of Bhutan will issue a Letter of Award to the successful Bidder indicating any conditions to be met by the Bidder and the timeframes thereof as condition precedent to signing of the agreement.
- 3.13. After the successful Bidder has met all and any conditions set in the Letter of Award and within the timeframes set, the Tourism Council of Bhutan and the successful Bidder or Project Company if so, stipulated will sign the agreement/s. The Tourism Council of Bhutan will as appropriate support the successful Bidder to conclude the financing agreement for the project, and may itself or through other Ministries sign pre-approved agreements in support of the project financing, such as Direct Agreements with lenders.

D. Miscellaneous

- 3.14. The Bidding Process shall be governed by, and construed in accordance with, the laws of Bhutan and the Courts of Bhutan shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with the Bidding Documents and/or the Bidding Process.
- 3.15. The Tourism Council of Bhutan, in its sole discretion and without incurring any obligation or liability or assigning any reason, reserves the right, at any time, to:

- a. suspend, withdraw and/or cancel the Bidding Process and/or amend and/or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
- b. consult with any Bidder in order to receive clarification or further information;
- c. retain any information and/or evidence submitted to the Tourism Council of Bhutan by, on behalf of, and/or in relation to any Bidder;
- d. independently verify, disqualify, reject and/or accept any and all submissions or other information and/or evidence submitted by or on behalf of any Bidder;
- e. amend, modify or reissue the Bidding Documents or any part thereof; and/or
- f. accept or reject any or all of the Bids.

3.16. It shall be deemed that by submitting the Bid, the Bidder agrees and releases the Tourism Council of Bhutan , its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder, pursuant hereto and/ or in connection herewith and waives any and all rights and/or claims it may have in this respect, whether actual or contingent, whether present or future.

4 SCHEDULES

B. Schedule 2: Updated Bidding Process Timelines

The Tourism Council of Bhutan shall endeavour to adhere to the following timelines:

Event Description	Estimated Date, Time and Location (If applicable)
RFP/Tender document publication date and time	September 6, 2022 and 09:00 am
Last date for receipt of queries/clarifications	September 12, 2022
Pre-bid conference/orientation	N/A
Tourism Council of Bhutan 's response to Queries/clarifications	September 13, 2022
Bid Submission Deadline	September 14, 2022 on or before 03:00 pm
Opening of Envelope Technical Proposal	September 15, 2022
Announcement of Technical Proposal Short List	September 16, 2022
Last date for receipt of queries/clarifications on the technical proposal	September 17, 2022
Debriefing: Tourism Council of Bhutan 's response to Queries/clarifications	September 17, 2022
Opening of Financial Proposal Envelope	September 18, 2022
Selection, approval from the tender committee	September 18, 2022
Announcement of the successful Bidder (issuance of letter of intent)	September 19, 2022
Issuance of letter of award	September 21, 2022
Finalisation and negotiation of matters to permit signing of the agreement	September 22, 2022

C. Schedule 3: Bid Letter

[On the letterhead of the Bidder / Lead Member]

Original or Copy number: Date:

To: [Director General]

[Tourism Council of Bhutan]

Re: Submission of Bid for the [Outsourcing the operation and management of the facility area of Royal Botanical Park (RBP)]

Dear Sir,

With reference to your RFP dated [DATE], I/we, having examined the document and understood its contents, hereby submit my/our Bid for the aforesaid Project. We hereby confirm that we/our members in the Consortium satisfy the terms and conditions laid out in the Bidding Documents. We have agreed that _____ [*insert member's name*] will act as the Lead Member of our consortium, and that _____ [*insert individual's name*] will act as our representative/will act as the representative of the consortium on its behalf* and has been duly authorized to submit the Bid.

The Bid is being submitted for the express purpose of qualifying as a Preferred Bidder for the aforesaid Project. The Bid is unconditional and unqualified.

I/We hereby certify/declare that:

1. all the required accompanying documents are complete and are all included in this Bid;
2. all information provided in the Bid are true and correct;
3. nothing has been omitted which renders such information misleading;
4. all documents accompanying such Bid are true copies of their respective originals;
5. I/we shall make available to the Tourism Council of Bhutan any additional information it may find necessary or require to supplement or authenticate the submissions;
6. I/we will abide by all the terms and conditions of the RFP;
7. I/We have examined and have no reservations to the Bidding Documents, including any addendum issued by the Tourism Council of Bhutan ;
8. in the last 3 years, I/we/any of the Members have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach by [us/any of the Members];
9. I/we are not barred by the Government, or any public agencies from participating in similar projects as of [Bid Submission Deadline];
10. I/We do not have any Conflict of Interest;
11. I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in this RFP, in respect of any tender or request for proposal issued by or any agreement entered into with the Tourism Council of Bhutan or any other public sector enterprise or any government, at central or state level;

12. I/we have taken steps to ensure that in conformity with the provisions of this RFP, no person acting for me/us or on my/our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice;
 13. you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive, without incurring any liability to the Bidders;
 14. I/we/any Member, am/are not a member of a/any other Consortium applying for the Project;
 15. I/we or any Member of our consortium have not been convicted by a court of law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community;
 16. in regard to matters relating to security and integrity of the country, I/ we have not been charged by any government agency or convicted by a court of law;
 17. no investigation by a regulatory authority is pending either against me/ us/any Member or against our chief executive officer or any of my/our directors/managers/employees;
- I/We believe that I/we satisfy(s) and meet(s) all the requirements as specified in the RFP and are/is qualified to submit a Bid.
- I/We understand that the successful Bidder shall be required to incorporate and capitalize a Project Company in accordance with the Bidding Documents prior to execution of the agreement.
- I/We agree and undertake to be jointly and severally liable for all our obligations under the Agreement as per the provisions set out therein.

Yours faithfully,

(Name, designation, and signature of the authorised representative)

For and on behalf of: (name and seal of the Bidder / Lead Member of the Consortium)

D. Schedule 4: Updated Bidder Information

Bidder Information	
Applicant's legal name	
In case of Consortium, legal name of each member	
Applicant's actual or intended country of constitution	
Applicant's actual or intended year of constitution	
Applicant's legal address in country of constitution	
Applicant's authorized representative information (name, designation, address, Telephone/Fax numbers, E-mail)	
<p>Attached are copies of original documents of:</p> <ul style="list-style-type: none"> <input type="checkbox"/> 1. Notarized documents of constitution of the legal entity named above (<i>Only for existing organization/company</i>) <input type="checkbox"/> 2. Letter of authorization to represent the applicant <input type="checkbox"/> 3. Letter of intent to form Consortium or Consortium agreement. 	

E Schedule 5: Updated Consortium Member Information (If only applicable)

Consortium Member Information	
Consortium member's legal name	
Consortium member's actual or intended country of constitution	
Consortium member's actual or intended year of constitution	
Consortium member's legal address in country of constitution	
Consortium member's authorized representative information (name, designation, address, Telephone/ Fax numbers, E-mail)	
<p>Attached are copies of original documents of:</p> <ul style="list-style-type: none"> <input type="checkbox"/> 1. Notarized documents of constitution of the legal entity named above <input type="checkbox"/> 2. Letter of authorization to represent consortium member <input type="checkbox"/> 3. Letter of intent to form Consortium or Consortium agreement. 	

F Schedule 6: Bank Guarantee for Bid Security

Address of the guarantor bank: [•]

Address of the beneficiary: [•]

We, the undersigned [•] (the “Guarantor”), in order to enable [Name of Bidder] to bid for the [Outsourcing the operation and management of the facility area of Royal Botanical Park (RBP)], hereby irrevocably and independently guarantee to pay to you an amount up to a total of [•] waiving all objections and defences.

We shall effect payments under this guarantee on your first written demand, which must be accompanied by your confirmation that you have accepted the above-mentioned bid and that the firm [Name of Bidder] is no longer prepared to abide by this bid.

This guarantee shall remain in full force for a period of 120 days from the Bid Submission Deadline (as defined in the RFP).

By this date we must have received any claims for payment by letter or encoded telecommunication.

It is understood that you will return this guarantee to us on expiry or after payment of the total amount to be claimed hereunder.

This guarantee is governed by the laws of [LOCATION] and shall be subject to the exclusive jurisdiction of the Courts of [LOCATION].

Date Guarantor

G. Schedule 7: Power of Attorney for Signing of Bid

I (name of the company) incorporated under applicable laws and having its registered office at [] “Company”, do hereby irrevocably constitute, nominate, appoint and authorize Mr. /Ms (name), presently residing at [indicate business address], who is presently employed with us and holding the position of [designated position], as our true and lawful attorney (hereinafter referred to as the “Attorney”) to do in our name and on our behalf, all such acts, deeds, matters and things as are necessary or required in connection with or incidental to submission of our Bid and for our selection as Preferred Bidder for the [Outsourcing the operation and management of the facility area of Royal Botanical Park (RBP)] (the ‘Project’) proposed or being developed by the Tourism Council of Bhutan including but not limited to signing and submission of our Bid and other documents and writings, participate in pre-bid conferences and other conferences and providing information/responses to the Tourism Council of Bhutan , representing us in all matters before the Tourism Council of Bhutan , signing and execution of all contracts including the agreement and undertakings consequent to acceptance of our Bid, and generally dealing with the Tourism Council of Bhutan in all matters in connection with or relating to or arising out of our Bid for the said Project and/or upon award thereof to us and/or till the entering into of the rental/ Agreement with the Tourism Council of Bhutan .

We hereby agree to ratify and confirm all acts, deed, matters and things lawfully done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

Capitalised terms not defined herein shall have the meaning assigned to them under the RFP.

IN WITNESS WHEREOF,, THE ABOVE NAMED
PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS
..... DAY OF, 20*

For

(Signature)

(Name, Title and Address)

Witnesses:

(Notarised)

Accepted

..... (Signature)

(Name, Title and Address of the Attorney)

H. Schedule 8: Power of Attorney for Lead Member of Consortium (If only applicable)

Whereas, the members of the Consortium are interested in bidding for the Project and implementing the [Outsourcing the operation and management of the facility area of Royal Botanical Park (RBP)] (the ‘Project’) in accordance with the terms and conditions of the Bidding Documents and other connected documents in respect of the Project.

Whereas, it is necessary for the members of the Consortium to designate the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium’s bid for the Project and its execution. who, acting jointly, would have all necessary power and authority to do all acts, deeds and things on behalf of the Consortium, as may be necessary in connection with the Consortium’s bid for the Project.

NOW THIS POWER OF ATTORNEY WITNESSETH THAT;

We, M/s. _____(Lead Member) and M/s _____ (the respective names and addresses of the registered office) do hereby designate M/s. _____ being one of the members of the Consortium, as the Lead

Member of the Consortium, to do on behalf of the Consortium, all or any of the acts, deeds or things necessary or incidental to the Consortium’s bid and submission of its proposal for the Project, including but not limited to signing and submission of relevant documents and writings, participating in pre-bid and other conferences, responding to queries, and generally to represent the Consortium in all its dealings with the Tourism Council of Bhutan or any person in connection with the Project until the agreement is entered into between the Concessionaire and the Tourism Council of Bhutan . We hereby agree to ratify all acts, deeds and things lawfully done by Lead Member, 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/Consortium.

Dated this the ____ day of _____, 20**

(Executors)

I Schedule 9: Updated Consortium Agreement (If only applicable)

THIS CONSORTIUM AGREEMENT is entered into on this [•] day of [•] 20[•] (the “Agreement”) AMONGST

1. [Name of entity], a company incorporated under [legislation] and having its registered office at [business address] (hereinafter referred to as the “First Part” which expression shall, unless repugnant to the context include its successors and permitted assigns);

AND

2. [Name of entity], a company incorporated under [legislation] and having its registered office at [business address] (hereinafter referred to as the “Second Part” which expression shall, unless repugnant to the context include its successors and permitted assigns);

AND

3. [Name of entity], a company incorporated under [legislation] and having its registered office at [business address] (hereinafter referred to as the “Third Part” which expression shall, unless repugnant to the context include its successors and permitted assigns).

The above-mentioned parties of the FIRST, SECOND and, THIRD PARTY are collectively referred to as the “Parties” and each is individually referred to as a “Party”.

WHEREAS,

1. The Tourism Council of Bhutan has invited Bids by its Request for Proposal No. [•] dated [•] (the “RFP”) for selecting the Preferred Bidder for the [Title of the Project] through Public Private Partnership;
2. The Parties are interested in jointly bidding for the Project as members of a Consortium (as defined below) and in accordance with the terms and conditions of the Bidding Documents including this RFP; an
3. It is a necessary condition under the RFP that the members of the Consortium shall enter into a concession agreement and furnish a copy thereof with the Bid.

NOW IT IS HEREBY AGREED as follows:

Definitions and Interpretations

In this Agreement, the capitalised terms shall, unless the context otherwise requires, have the meaning ascribed thereto under the RFP.

Consortium

1.1 The Parties do hereby irrevocably constitute a consortium (the “Consortium”) for the purposes of jointly participating in the Bidding Process for the Project.

1.2 The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/or through any other consortium constituted for the Project, either directly or indirectly.

Covenants

The Parties hereby undertake that in the event the Consortium is declared the Preferred Bidder and awarded the Project, it shall incorporate the Project Company under [legislation] as required by and in accordance with the Bidding Documents for performing all its obligations as the Concessionaire in terms of the Agreement for the Project.

Role of the Parties

The Parties hereby undertake to perform the roles and responsibilities as described below.

Party of the First Part shall be the Lead Member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding Process;

{Party of the Second Part shall be [•]; and}

{Party of the Third Part shall be [•]}

Joint and Several Liability

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project in accordance with the terms of the RFP, and for the performance of the Service Providers obligations under the agreement.

Shareholding in the Project Company

The Parties agree that the proportion of shareholding among the Parties in the Project Company shall be as follows:

First Party:

Second Party:

Third Party:

Representation of the Parties

Each Party represents to the other Parties as of the date of this Agreement that:

1.1 such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;

- 1.2 the execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Member of Consortium is annexed to this Agreement, and will not, to the best of its knowledge:
- 1.3 require any consent or approval not already obtained;
- 1.4 violate any applicable law presently in effect and having applicability to it;
- 1.5 violate the memorandum of association and articles of association, by-laws or other applicable organizational documents thereof;
- 1.6 violate any clearance, permit, concession, grant, license or other governmental authorization, approval, judgment, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; and
- 1.7 create or impose any liens, mortgages, pledges, claims, security interests, charges or any other encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;
- 1.8 this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- 1.9 there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfilment of its obligations under this Agreement.

Termination

This Agreement shall be effective from the date hereof and shall continue in full force and effect till the full and final satisfaction of all obligations under the agreement in accordance with the terms thereof, in case the Project is awarded to the Consortium. However, in case the Consortium is either not qualified for the Project or does not get selected for award of the Project as the Preferred Bidder, the Agreement will stand terminated, in accordance with the mutual agreement of the Parties.

Miscellaneous

This Consortium Agreement shall be governed by laws of kingdom of Bhutan.

The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Tourism Council of Bhutan.

IN WITNESS WHEREOF THE PARTIES ABOVE NAMED HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

SIGNED, SEALED AND DELIVERED

For and on behalf of LEAD MEMBER by:

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of SECOND PART

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of THIRD PART

(Signature)

(Name)

(Designation)

(Address)

J Schedule 10: Anti-Collusion Certificate¹⁰

We undertake that, in competing for (and, if the award is made to us, in executing) the Project, we will strictly observe the laws against fraud and corruption in force in [RBP, Lampelri].

We hereby certify and confirm that in the preparation and submission of our Bid, we have not acted in concert or in collusion with any other Bidder or other person(s) and also not done any act, deed or thing which is or could be regarded as anti-competitive.

We further confirm that we have not offered nor will offer any illegal gratification in cash or kind to any person or agency in connection with this Bid.

Dated thisday of, 20**

.....
(Name of the Bidder)

.....
(Signature of the Bidder / Authorised Person)

.....
(Name of the Authorised Person)

K. Schedule 11: Format and Evaluation of Technical and Financial Proposal

The **Quality and cost-based method of selection** shall be adopted in selecting the preferred bidder. The Bidders shall prepare a Technical Proposal based on the requirements given in the RFP/ToR, setting out the proposed plan for implementation of the project.

The Bidders shall submit their Technical Proposal in line with the contents provided in the ToR. The Technical Proposals shall be evaluated against the criteria outlined for each of the parameters mentioned in the ToR, with Bidder getting marks for each parameter based on the predefined scoring scale.

In order to promote fairness and transparency in the evaluation process the lowest and the highest points accorded by the committee will be discarded as widely practiced in selection processes and only the average of the middle points of the evaluators will be taken for consideration to determine the technical score.

The marks would be summed up for all evaluation parameters for each individual bidder to determine the total technical score.

Bidders receiving less than 70 %/marks score would not be eligible for the evaluation of their financial proposals. Financial proposals of all such bidders would be returned unopened.

The scores from evaluation of the Technical Proposal would be used for calculation of the weighted average score, along with the score from the evaluation of the Financial Proposal (*bid price is appropriate: neither abnormally high nor low*), as described below.

The lowest evaluated Financial Proposal, i.e., the lowest appropriate bid value (Fl) is given the maximum financial score (Sf) of 100.

$Sf = 100 \times Fl / F$, in which “Sf” is the financial score, “Fl” is the lowest bid value, and “F” the price of the proposal under consideration.

The weights given to the Technical (T) and Financial (P) Proposals are:

T = 50 and

P = 50

Proposals are ranked according to their combined technical (St) and financial (Sf) scores using the weights (T = the weight given to the Technical Proposal; P = the weight given to the Financial Proposal; T + P = 1) as following: $S = St \times T\% + Sf \times P\%$.

L Schedule 12: Format of Financial Proposal

[On the letterhead of the Applicant / Lead Member]

Original or Copy number:

Date:

To: [Director General]

[The Secretariat for Tourism Council of Bhutan]

Re: Financial Proposal for the [Operation and management of the restroom along Phajoding and Taktshang trail]

Dear/Sir,

Please find below our Financial Proposal for the [Operation and management of the restroom along Phajoding and Taktshang trail] (the “Project”) in response to the Request for Proposal (“RFP”) issued by [Tourism Council of Bhutan] [DATE].

We hereby confirm the following:

- This Financial Proposal is being submitted by [name of Bidder] in accordance with the conditions stipulated in the RFP;
- We have examined in detail and understand and agree to abide by all terms and conditions stipulated in the Bidding Documents issued by the Tourism Council of Bhutan , as amended, and in any subsequent communication sent by the Tourism Council of Bhutan ;
- Our Financial Proposal is consistent with all requirements of submission stated in the RFP and in any subsequent communication sent by the Tourism Council of Bhutan

Our Bid Value (*Monthly amount*) is as follows:

[Grant/ Fee]	[amount in Ngultrum]
--------------	----------------------

We are solely responsible for any errors or omissions in our Financial Proposal.

Respectfully,

(Name, designation, and signature of the authorised representative)

For and on behalf of: (name and seal of the Applicant / Lead Member of the Consortium)

M. Schedule 13: Declaration of Undertaking

We underscore the importance of a free, fair and competitive procurement process that precludes abusive practices. In this respect we have neither offered nor granted directly or indirectly any inadmissible advantages to any public servant or other person nor accepted such advantages in connection with our application, nor will we offer or grant or accept any such incentives or conditions in this Bidding Process or, in the event that we are awarded the contract, in the subsequent execution of the contract.

We also declare that our company/all members of the consortium has/ have not been included in the list of sanctions of the United Nations nor in any other list of sanctions and affirm that our company/all members of the consortium will immediately inform the client if this situation should occur at a later stage.

We acknowledge that, in the event that our company (or a member of the consortium) is added to a list of sanctions that is legally binding for the client, the client is entitled to exclude our company/ the consortium from the Bidding Process and, if the contract is awarded to our company/ the consortium, to terminate the contract immediately if the statements made in the Declaration of Undertaking were objectively false or the reason for exclusion occurs after the Declaration of Undertaking has been issued.

Place, date

Authorized Representative of the Bidder

