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# **MINISTRY OF TOURISM, CULTURE AND WILDLIFE**

## **REQUEST FOR PROPOSAL**

### **FOR THE DEVELOPMENT AND MANAGEMENT OF ECO-TOURISM FACILITIES IN LAKE MALAWI NATIONAL PARK**

**SEPTEMBER 2022**

**REF. No.: PPPC/CNS/60/08-2021A**

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## DISCLAIMER

The information contained in this Request for Proposal document (“**RFP**”) or subsequently provided to Applicant(s), whether verbally or in documentary or any other form by or on behalf of the Ministry of Tourism, Culture and Wildlife (the Ministry) or any of its employees or advisors, is provided to Bidder(s) on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.

This RFP is not an agreement and is neither an offer nor invitation by the Ministry to the prospective Bidders or any other person. The purpose of this RFP is to provide interested parties with information that may be useful to them in making their financial offers pursuant to this RFP. This RFP contains salient information pertaining to the subject PPP project for purposes of providing background information and the broad historical, technical and operational context to the shortlisted bidders. The RFP does not purport to contain all the information that each Bidder may require. This RFP may not be responsive to the needs of all investors and in any event, it is not possible for the Ministry, its employees or advisors to address the specific circumstances, investment objectives, financial situation and particular needs of each investor. While every effort has been made to ensure accuracy of the facts, the RFP has been prepared on the basis that each bidder will undertake their own detailed financial and technical due diligence reviews of the project in order to arrive at a decision to invest. The Ministry and its agents are therefore unable to guarantee the accuracy of assumptions, assessments, statements and information contained in the Bidding Documents, especially in RFP and Draft PPP Agreement. Each Bidder should, therefore, conduct its own investigations and analysis of information for purposes of supporting a decision to invest. For this purpose, the bidders are encouraged to engage independent professional specialists to provide professional advice and come up with accurate and reliable information and assumptions to support the technical and financial proposals expected.

Information provided in this RFP to the Bidder(s) is on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. The Ministry accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

The Ministry, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Bidder under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way for participation in this Bid Process. The Ministry also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this RFP.

The Ministry may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this RFP. The issue of this RFP does not imply that the Ministry is bound to select a Bidder or to appoint the Selected Bidder, as the case may be, for the Project and the Ministry reserves the right to reject all or any of the Bidders or Bids without assigning any reason whatsoever.

The Bidder shall bear all its costs associated with or relating to the preparation and submission of its Bid including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Ministry or any other costs incurred in connection with or relating to its Bid. All such costs and expenses will remain with the Bidder and the Ministry shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in preparation for submission of the Bid, regardless of the conduct or outcome of the Bidding Process.

# **1 PROJECT INFORMATION MEMORANDUM**

## **1.1 INTRODUCTION**

Government acknowledges the fact that appropriate management of wildlife resources requires adequate investments. Realising that funds from Central Government are limited due to many competing needs, the Ministry of Tourism, Culture and Wildlife through the Department of National Parks and Wildlife (DNPW), a state agency mandated to manage and regulate wildlife related issues, is committed to working with the private sector in order to achieve conservation objectives which encompass socio-economic development. The private sector is now running almost all ecotourism lodges including the development and management of the protected areas.

The Government of Malawi identifies the Tourism sector as a key driver for sustainable economic growth and development in the country (Malawi Growth Development Strategy III and Malawi 2063). The policy and legal framework provide an enabling environment for the involvement of the private sector and other stakeholders in the conservation and management of wildlife. However, the management of country's wildlife estates requires a significant cost in terms infrastructure development and maintenance for protected area management and ecotourism to Improve service delivery.

Overall, there is paradigm shift in the way conservation is now viewed, from the traditional preservation sort of approach to a new view approach where wildlife conservation has to contribute to overall socio-economic development and improvement of livelihoods for the adjacent surrounding communities. The Malawi Growth and Development Strategy (MGDS) has taken wildlife conservation and management as a growth sector that can contribute towards the GDP.

## **1.2 BACKGROUND**

Malawi currently has some private sector investments in eco-tourism and protected area management through concessions with the Government. The eco-tourism and protected areas in Malawi include Nyika National Park, Vwaza Marsh Wildlife Reserve, Kasungu National Park, Nkhosha Wildlife Reserve, Lake Malawi National Park, Liwonde National Park, Majete Wildlife Reserve, Lengwe National Park and Mwabvi Wildlife Reserve. Some of the existing concessions have improved service delivery and revenue generation for the eco-tourist sites and protected areas. In addition, collaboration with partners has stepped up the efforts in the fight against wildlife crime that is bearing positive results for wildlife conservation and management with increasing animal populations in some protected areas.

There have been some strides in the growth and expansion of these eco-tourist sites and protected areas at various levels of the Ministry. However, challenges remain that need to be addressed if tourism is to improve in Malawi. The management of the country's protected areas and wildlife estates requires significant cost in terms of infrastructure development and maintenance for protected area management and ecotourism to improve service delivery, law enforcement including anti-poaching, human wildlife conflicts, surrounding communities' collaborative management as well as research and monitoring

programs. In addition, with continued limited traditional government funding, there is need to identify other innovative ventures such as ecotourism and protected area management concessions, research centers among others in order to secure the long-term viability and financial sustainability of protected areas.

The following are some other challenges faced in the tourism sector that hinder development:

- **Current COVID 19 pandemic.** The current local and international travel restrictions have negatively affected the local tourism industry due to the abrupt decline in international tourist arrivals, patronization of tourism facilities and general economic activities. This is expected to affect the sectors contribution to foreign exchange earnings, GDP and employment
- **Lack of Land for Tourism Investment and Limited Tourism Investment Incentives.** Despite an increasing the number of investors willing to invest in Malawi especially in districts along the Lakeshore and in other areas with tourism potential, there is lack of land to cater for such investments
- **Inadequate Tourism Information Base.** Currently, the Tourism sector in Malawi faces a huge challenge in terms of limitations in data gathering, analytical and storage capacity to support and inform decision-making in the sector. This greatly affects policy and investment decisions in the sector
- **Low Service Quality and Underdeveloped Product.** The tourism sector in Malawi is largely characterized by low service quality as a result of limited supply of skilled labour, lack of high-quality training institutions and outdated curriculum, low literacy levels, limited number of specialist investors and unattractive conditions of service leading to unmotivated labour force

It is therefore important to consider further developments in the tourism sector and in this case, the development of eco-tourist sites and management of protected areas which will help in improving infrastructure and service delivery in the tourism sector of Malawi.

One of the keyways for improving tourism in the country is the development, construction and management of existing eco-tourist sites and protected areas in the country through public private partnership arrangement. It is expected that once developed, the areas will aid in unlocking the untapped potential and secure long-term viability and financial sustainability of protected areas in the country. Furthermore, it envisaged that PPPs would improve performance of the tourism sector in the country and will aim at gradually achieving the long-term objectives of the Government of Malawi as indicated in the Malawi Growth and Development Strategy (MGDS) III. Development and construction of eco-tourist sites under PPP arrangement could be considered as the key action to leverage on the effect of eco-tourist sites.

The private sector partner should therefore be engaged to develop and construct eco-tourist sites in Lake Malawi National Park to promote investments that will enhance ecotourism for improved revenue generation and community livelihoods.

### **1.3 SITE LOCATION, ACCESSIBILITY AND SURROUNDING**

Malawi's gazetted Protected Wildlife Areas comprise the five National Parks, four Wildlife Reserves and three urban based Nature sanctuaries with a total area of slightly over 10,000sq km. The Department of National Parks and Wildlife (DNPW) in the Ministry of

Tourism, Culture and Wildlife, holds overall responsibility for wildlife conservation and management of wildlife throughout the country. The DNPW's responsibility is complemented by other stakeholders including government institutions, local communities, Non-Governmental Organisations (NGOs) and the private sector.

### **1.3.1 LAKE MALAWI PARK**

Lake Malawi National Park was established in 1980 under the National Parks and Wildlife Act, (Cap. 66:07) through the National Park Establishment Order of 24th November 1980 published as Government Notice No.205 of 1980. The definition of the boundaries was clearly described and gazetted and is adequate for the conservation of both aquatic and terrestrial ecosystems. In most cases, the boundaries of terrestrial components of the National Park correspond to the pre-existing Forest Reserve boundaries, which had been gazetted as such from about 1935.

The Park was created as a National Park to preserve a sample of Lake Malawi biome, with particular reference to the rocky lake shore and its specialist cichlids communities, and to develop the tourist industry in a manner consistent with the preservation of biological and aesthetic features of the area.

The Park lies at the Southern end of Lake Malawi between the eastern and western arms of the lake in Mangochi District. Terrestrially the Park is situated mainly on the northern end of the Nankumba Peninsula, commonly referred to as Cape Maclear, and includes thirteen islands scattered in the lake where three islands are in Salima District.

The park has a total area of 94.1  $Km^2$  where 87.1 $Km^2$  is the terrestrial area which is under Nankumba Peninsula and 7 $Km^2$  is water that include the 13 islands. The Park is 250 Km from Blantyre, 230 Km from Lilongwe and 170 Km from Zomba.

There are four enclave villages within the National Park, these are: Chembe, Msaka, Mvunguti and Zambo which falls in the Nankumba Peninsula. The presence of these villages makes the park to be more unique as people stay with nature.

Due to the nature of the Park, the only roads are those from Monkey Bay to Cape Maclear, Msaka area and Pumulani Lodge, enclaved within the park. Otherwise, access to the beautiful islands is by boat.

## **2 PROJECT POTENTIAL**

In 1984, The Park was proclaimed a Natural World Heritage Site after the recommendation of the World Heritage Committee. In the original nomination, it was stated that Lake Malawi National Park is inhabited by fascinating and diverse rock-dwelling cichlids (locally known as “mbuna”), many of which are endemic to Lake Malawi National Park and its spectacular rugged landscape is of exceptional natural beauty. The lake waters are remarkably clear, and the national park is the only lacustrine park in Africa. The diverse of fish species that are endemic to Lake Malawi and its outstanding natural beauty are the outstanding Universal



Values of the site according to the World Heritage Committee Guidelines for declaring a site to be a World Heritage Site (WHS).

The park consists of Nankumba Peninsula, islands and hills, it is dominated by steep rocky slopes. The highest point in the park is 1,140 meters above mean sea level at Nkhunguni Hill on the peninsula. In contrast, Nkhudzi spit is a flat tract of sand and marsh extending into the lake.

The aquatic zone contains representatives' samples of typical habitat found in the lake. These are broken into six major habitat units; the rocky zone, the sandy zone, the weedy zone, the rock-sand interface, the intermediate zone and reed bed zone. Lake Malawi National Park aquatic zone extends 100 meters from the normal low water mark around all terrestrial park components. Fishing is not permitted within this zone in an effort to protect the breeding territories, habitat and fish species existing in the area.

The Park is mainly covered by *Brachystegia* woodland and granite rocks. The hilltops are covered by the outstanding view of the lake and Domwe Islands. In the past most of the park was well wooded with the exception of the smallest islands, the Nkhudzi Spit and the enclave village areas. These wooded areas are experiencing increasing deforestation due to human activities resulting in the conversion of mature woodlands into shrubby growth. Few exotic species of trees are found within the park boundaries. The primary exotics are mango trees located at the old Golden Sands Rest Camp and in the enclave villages. At the main entry gate of the park there are few blue gum trees which gives a different view to the scenery on the opposite direction where there are indigenous trees.

Underwater plants occur where headlands or islands protect the shoreline from erosion and sand movement. The most common weeds found in the park are an eel-grass, *Vallisneria*, and the bulkier *Potamogeton*. This underwater vegetation is important because it provides cover for young fish and habitat for other aquatic organisms.

More than 250 species of fish have been identified in the waters of Lake Malawi National Park, which is more than half of the described species in the lake. These fish are representative of the described species in the lake. However, the Park is commonly famous because of the presence of cichlids species which was one reason for its establishment to protect these species which is endemic to Lake Malawi.

On mainland, mammal and reptile life is present and these include klipspringer, bushbuck, bush pig, hyrax, otter, blue monkey, velvet monkey, baboon, hyena, duiker, civet and leopard. Hippopotamus are found along major rivers that feed the lake within the Park. Birdlife is also a significant feature for the park, especially on Boadzulu (also known as Bird Island).

## **2.1. Ecotourism Potentials**

History indicates that the initial interest in developing Cape Maclear for tourism began in 1941 when an officer in the British Royal Air Force began looking for areas to develop along the lake. In September, 1945 the company signed a lease with the Government for 150 acres at Cape Maclear. Construction began immediately and in April, 1948 the Cape Maclear Hotel opened. The first road to the site was built by government and original hotel developer but the road was often impassable during rainy season. This necessitated boat or aircraft travel to the hotel. In 1949 twice, weekly flights by the British Overseas Airways Corporation touched down on the lake in front of the hotel. The short Solet airplanes, called flying boats, carried

passengers between Johannesburg, South Africa and Southampton, England (Grenfell, S.A 1993, Lake Malawi National Park, Management and Development Plan).

Cape Maclear entertains 99% of the annual visitation of Lake Malawi National Park which include tourist accommodated in lodges in the enclave villages. Visitor activities at LMNP are centred mainly around aquatic sports that have little impact on the environment in the park. The activities are diverse that people have a choice on what activities to conducted without being restricted ranging from swimming to boat ride on the lake and hiking on the main land. There are a number of potential sites for tourism development within the National Park along the lake. The activity of one site can promote tourism activities of another site as the site are in one tourism destination. The area is well known for tourism in the world which has a trade mark name “Cape Maclear” and it has a long history starting from 1870s when the Missionary from Scotland led by Dr David Livingstone visited the site.

### **3 DEVELOPMENT PLAN**

The objective of this project is to provide quality tourism product with complementary commercial facilities. With this overarching objective, the Project is expected to provide the following minimum facilities and services:

- Adequate lodging facilities catering for various tourist categories such as low budget and high end;
- Uninterrupted quality power supply and such other services required for the project like mobile network, water supply, internal roads, boat transfers etc;
- Diverse Tourist Activities such as: Swimming, Scuba diving, boat cruises, Kayaking, bird watching, hiking, cultural activities including home stays etc;
- Visitors information centre and curios shop;
- Credit/Debit card paying points
- Corporate social responsibilities for the surrounding communities e. g. employment, income generating activities, purchase of local food stuffs and other materials etc.
- High quality facility management and maintenance services

#### **3.1 SERVICE DESCRIPTION**

##### **Lot 1 – Golden Sands**

The envisaged project should be an exclusive, deluxe eco lodge offering a unique and scenic beach environment built utilizing local materials.

The developer should aim to ensure that the design and development of the eco lodge are well integrated within the surrounding lake environment. The facility designed for the ecolodges should be based on an understanding of the ecolodges context and should employ a lot of creativity and innovation based on ecotourism and sustainable infrastructure design.

The development should have minimal impact on the natural surroundings and fits in into the physical environment with particular attention to design and landscaping as well as building materials

The development is envisaged to be a five-star eco lodge with a capacity of 100 beds; Conference facility with a capacity of 100 people. The infrastructure will require green and climate controlling facilities.

The site also provide additional activities that includes Scuba diving, snorkeling, kayaking, swimming, hiking, sport fishing, zipline, glass bottom boat rides, sunset viewing, playground rides (slides, see-saws, swings), photography and cultural activities that primarily integrate community participation (corporate social responsibility of the concessionaire).

## **Lot 2 – Mfula Beach**

A couple of kilometers from Golden Sands, lies a newly discovered beach, awaiting development. The place boasts of a nice sandy beach, some rock outcrops and a beautiful view from the escarpment lying directly above the beaches.

The facility design for the eco lodges should be based on an understanding of the eco lodges context and will blend into the natural environment. The facility designed for the eco-lodges should base on an understanding of the eco-lodges context and should employ a lot of creativity and innovation based on ecotourism and sustainable infrastructure design.

It is expected that the design of the lodge will employ a lot of creativity and innovation based on ecotourism and sustainable infrastructure design. The development will require green and climate controlling facilities.

The proposed development will be a 4-star eco lodge with a capacity of 10 beds.

## **Lot 3 – Ilala Gap**

Ilala gap is a small strip of waters that lies in between Domwe Island and the mainland of Nankumba peninsula. Adjacent to the area lies another undeveloped beach which offers an outstanding view of the Lake and Domwe Island.

The area also provides a view of the historical and touristic MV Ilala the main life line transportation vessel on the Lake that was commissioned in 1947, as it traverses north and South of Lake Malawi.

The facility design for the eco lodges should be based on an understanding of the eco lodges context and will blend into the natural environment. The facility designed for the eco-lodges should be based on an understanding of the eco-lodges context and should employ a lot of creativity and innovation based on ecotourism and sustainable infrastructure design.

It is expected that the design of the lodge will employ a lot of creativity and innovation based on ecotourism and sustainable infrastructure design. The infrastructure will require green and climate controlling facilities.

The proposed development for the area will be a middle market eco-lodge with a capacity of 5 beds.

#### **Lot 4 – Domwe Island**

Domwe Island is a picnic site and other activities include boat cruises, kayaking, swimming, scuba diving, bird watching and photography.

#### **Output specifications**

Based on the sectors vision and the department’s objectives, the Lake Malawi National Park project has to achieve the following outputs:

- Developed Lake Malawi National Park front to attract tourists and to provide provision for resting, viewing of Lake Malawi and enhanced travel activities (water adventure sports, in land activities, children’s playgrounds and souvenir shops) to promote ecotourism in the country
- Developed eco-friendly infrastructure and public utility services
- Constructed eco lodge infrastructure with state-of-the-art facilities in the islands in and around Lake Malawi National Park
- Developed infrastructure to be used for organising cultural events, sports, meetings, workshops and conferences both at national and international level
- Increased visitor’s occupancy rate in all lodging facilities
- Increased revenue generation through in-flow of tourists both domestic and international
- Provided employment opportunities for surrounding local communities
- Increased visibility as a tourist destination for both local and international market
- Improved payments by using internationally recognized credit/debit cards
- Motivated and well-trained staff in ecotourism services

# **INVITATION FOR PROPOSAL**

## 4 INTRODUCTION

### 4.1 Project Background

- 4.1.1 The Department of National Parks and Wildlife in the Ministry of Tourism, Culture and Wildlife (the “**Ministry**”) is engaged in promoting tourism through wildlife conservation in Malawi and as part of this endeavour, the Ministry has decided to undertake “**Development and Management of Lake Malawi National Park** (the “**Project**”) through Public-Private Partnership (the “**PPP**”) arrangement, and has decided to carry out the bidding process for selection of a private investor(s)/operator(s) as the bidder(s) to whom the Project may be awarded. The private party is expected to develop, finance, manage, operate and eventually transfer through a Public Private Partnership agreement. The concession period for each of the Lot shall be as follows:

LOT	Name of project	Description	Concession Period
1	Golden Sands	Develop, Build, finance, operate and transfer the 100 bed 5 star eco lodge facility	20 Years
2	Mfula Beach	Develop, Build, finance, operate and transfer the 10 bed eco lodge facility	10 Years
3	Illala Gap	Develop, Build, finance, operate and transfer the 5 bed eco lodge facility	10 Years
4	Domwe Island	Develop, Build, finance, operate and transfer the picnic site	5 Years

- 4.1.2 The Selected Bidder undertakes to incorporate a Special Purpose Vehicle (“**SPV**”) (the “**Successful bidder/investor**”) and shall be responsible for designing, financing, procurement, construction, operation and maintenance of the Project under and in accordance with the provisions of the PPP Agreement (the “**PPP Agreement**”) to be entered into between the Ministry and the Successful bidder/investor in the form provided by the Ministry as part of the Bidding Documents pursuant hereto.
- 4.1.3 The scope of work will broadly include development of the protected areas to high class tourism destination and the operation and maintenance thereof as per the PPP Agreement.

- 4.1.4 The PPP Agreement sets forth the detailed terms and conditions for grant of the Development, Financing, Management and Operation right to the Successful bidder/investor, including the scope of the Successful bidder/investor's services and obligations (the "**Development & Operation Right**").
- 4.1.5 The statements and explanations contained in this Request For Proposal (the "**RFP**" document) are intended to provide a better understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Successful bidder/investor set forth in the PPP Agreement or the Ministry's rights to amend, alter, change, supplement or clarify the scope of work, the Development and Operation right to be awarded pursuant to this RFP or the terms thereof or herein contained. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this RFP are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by the Ministry.
- 4.1.6 The Ministry shall receive bids pursuant to this RFP in accordance with the terms set forth in this RFP (the "**Bid**") and other documents to be provided by the Ministry pursuant to this RFP, as modified, altered, amended and clarified from time to time by the Ministry (collectively the "**Bidding Documents**"), and all Bid shall be prepared and submitted in accordance with such terms on or before the date specified in Table 1, Schedule of Bidding Process for submission of Bid (the "**Bid Due Date**").
- 4.1.7 The Ministry nor its agents will not facilitate the successful bidder/investor in seeking grants/subsidies from the Government or any other Financial Institutions.

## 4.2 Brief description of bidding Process

- 4.2.1 The Ministry, acting through the Public Private Partnership Commission, has adopted a single stage two envelop bidding process for the selection of the Bidder for award of the Project. The first part (the "**Technical Evaluation**") of the Bidding Process involves assessing interested parties/ consortium on the basis of their Technical and Financial Capacity in accordance with the provisions of Clause 7.1. At the end of the Technical Evaluation, only those Bidders whose Technical Evaluation Score has met the minimum evaluation points shall qualify to have their Financial Bids opened for the financial evaluation (the "**Financial Evaluation**") in accordance with the provisions of Clause 7.2. The Bid shall be valid for a period of not less than 180 days (one hundred and eighty days) from the Bid Due Date as specified in Table 1.

For those bidders that have been invited to submit Bids will have to pay a non-refundable fee of **MK500,000 (Malawi Kwacha Five hundred thousand)**. The payment, through a bank certified cheque, should be made to The Public Private Partnership Commission within seven days of receipt of RFP.

- 4.2.2 For the purpose of Technical Evaluation, Bidders would be required to furnish all the information as specified in this RFP and any other documents provided by the PPP Commission. Only those Bidders declared as qualified at the technical evaluation stage shall be eligible to have their financial bids opened for financial evaluation.
- 4.2.3 During the financial evaluation stage, the financial offer (the “**Financial Offer**”) submitted by the Bidders as hard copy (Appendix-V) as specified in Clause 5.3.3.1 will be evaluated.
- 4.2.4 A Bidder is required to deposit, along with its Bid, a bid security for each Lot, refundable not later than sixty (60) days from the Bid Validity Date, except in the case of the Selected Bidder whose Bid Security shall be retained till it has provided a Performance Security under the PPP Agreement. The Bidders will have to provide Bid Security in the form of a bank guarantee acceptable to the PPP Commission and in such event, the validity period of the bank guarantee, as the case may be, shall not be less than 180 (one hundred and eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the PPP Commission and the Bidder from time to time.

The amount and currency of the Bid Security shall be as follows:

Lot 1: Golden Sands – USD50,000.00  
Lot 2: Mfula Beach – USD10,000.00  
Lot 3: Illala Gap – USD10,000.00  
Lot 4: Domwe Island – USD5,000.00

or equivalent in any freely convertible foreign currency

**Note:**

***Bid Security is required for each lot as per amounts indicated against each lot. Bidders have the option of submitting one Bid Security for all lots (for the combined total amount of all lots) for which Bids have been submitted, however if the amount of Bid Security is less than the total required amount, the Employer will determine for which lot or lots the Bid Security amount shall be applied.***

The Bid shall be summarily rejected if it is not accompanied by the Bid Security.

- 4.2.5 Bids are invited on the basis of **Quality and Cost Based Selection (QCBS)** method where the highest bidder would be adjudged based on a combined technical and financial conforming bid. The concession period is fixed as indicated in Clause 4.1.1 with the provision that the Agreement will be reviewed every five years. After Technical Evaluation Stage and subject to requirements of the RFP, the concession fee, revenue sharing arrangements and the investment shall constitute the sole criteria for evaluation of Bids and the selection of the Successful Bidder.



In this RFP, the term “**Highest Bidder**” shall mean the Bidder who submits the highest evaluated combined technical and financial conforming bid.

- 4.2.6 The Highest Bidder shall be declared the Preferred Bidder. The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in Clause 7.2 of this RFP.
- 4.2.7 As part of the Bidding Documents, the PPP Commission will provide any other information pertaining/ relevant to the Project available with it.
- 4.2.8 Further and other details of the Bidding Process to be followed and the terms thereof are spelt out in the subsequent sections of this RFP.
- 4.2.9 Any queries or request for additional information concerning this RFP shall be submitted in writing or by fax or e-mail to the officer designated in Clause 5.3.3.3. The envelopes/communications shall clearly bear the following identification/title:

Queries/ Request for Additional Information: RFP for “**Development and management of Lake Malawi National Park through a Public Private Partnership Arrangement**”.

**Table 1: Schedule of Bidding Process**

<b>SCHEDULE OF BIDDING PROCESS NO.</b>	<b>EVENT DESCRIPTION</b>	<b>DATE</b>
1	ISSUE OF RFP TO APPLICANTS	23 <sup>rd</sup> SEPTEMBER 2022
2	SITE VISIT	6 <sup>TH</sup> OCTOBER 2022
3	LAST DATE OF RECEIVING QUERIES	13 <sup>TH</sup> OCTOBER 2022
4	PRE-BID CONFERENCE AT MINISTRY OF TOURISM, CULTURE AND WILDLIFE BOARD ROOM IN LILONGWE	5 <sup>TH</sup> OCTOBER 2022 - 10:00 AM LOCAL TIME
5	LAST DATE FOR SUBMISSION OF BID (BID DUE DATE)	27 <sup>TH</sup> OCTOBER 2022 – 14:00 PM LOCAL TIME
6	DATE FOR OPENING OF BIDS AT QUALIFICATION STAGE	27 <sup>TH</sup> OCTOBER 2022 – 14:00 PM LOCAL TIME
7	INFORMING THE QUALIFIED BIDDERS	TO BE INTIMATED LATER
8	DATE OF OPENING OF FINANCIAL OFFER	TO BE INTIMATED LATER
9	ISSUE OF LETTER OF AWARD (LOA)	WITHIN 3 MONTHS OF THE DATE OF OPENING OF FINANCIAL OFFER
10	ACCEPTANCE BY THE SUCCESSFUL BIDDER OF THE LETTER OF AWARD	WITHIN 7 DAYS FROM THE ISSUE OF LOA

<b>SCHEDULE OF BIDDING PROCESS NO.</b>	<b>EVENT DESCRIPTION</b>	<b>DATE</b>
12	SIGNING OF DEVELOPMENT AGREEMENT	WITHIN 45 DAYS FROM THE ISSUE OF LOA

The Ministry will endeavour to adhere to the dates indicated above. However, it reserves the right to effect changes to the above dates, if the need arises. Such change, if any, would be uploaded at PPC's website ([www.pppc.mw](http://www.pppc.mw)) from time to time.

## 5 INSTRUCTIONS TO BIDDERS

### 5.1 GENERAL

#### 5.1.1 *Scope of Bids*

- 5.1.1.1 The Ministry wishes and invites Bids from experienced and capable Bidders in the format and within the specified date and time as described in this RFP. Bidders are free to bid for one protected area or both. However, for those bidding for both, bid for each protected area should be submitted separately.

#### 5.1.2 *Eligibility of Bidders*

- 5.1.2.1 For determining the eligibility of Bidders for their qualification hereunder, the following shall apply:

- (a) The Bidder to qualify may be a single entity or a group of entities (the “**Consortium**”), coming together to develop the Project. However, no Bidder applying individually or as a member of a Consortium, as the case may be, can be member of another Bidder.
- (b) A Bidder should be a private entity, or entities with a formal intent to enter into an agreement or under an existing agreement to form a Consortium. A Consortium shall be eligible for consideration subject to the conditions set out in Clause 5.1.2.6.
- (c) A Bidder shall not have a conflict of interest (the “**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 PPP Commission shall forfeit the value of Bid Security or Performance Security, as the case may be, as damage payable to the Ministry for, *inter alia*, the time, cost and effort of the Ministry, the PPP Commission and its agents, including consideration of such Bidder’s proposal, without prejudice to any other right or remedy that may be available to the Ministry hereunder or otherwise. Without limiting the generality of the above, a Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:
  - (i) the Bidder, its Member or Associate (or any constituent thereof) and any other Bidder, its Member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder, its Member or an Associate thereof (or any shareholder thereof having a shareholding of not more than 25% (twenty five per cent) of the paid up and subscribed share capital of such Bidder, Member or Associate, as the case may be) in the other

Bidder, its Member or Associate, is not more than 25% (twenty five per cent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution. For the purposes of this Clause 5.1.2.1, indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the “**Subject Person**”) shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% (twenty six per cent) of the subscribed and paid up equity shareholding of such intermediary; or

- (ii) a constituent of such Bidder is also a constituent of another Bidder; or
- (iii) such Bidder, its Member or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, its Member or Associate, or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its Member or any Associate thereof; or
- (iv) such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or
- (v) such Bidder, or any Associate thereof has a relationship with another Bidder, or any Associate thereof, directly or through common third party/ 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
- (vi) such Bidder or any Associate thereof has participated as a consultant to the Ministry in the preparation of any documents, design or technical specifications of the Project.

Notwithstanding anything stated herein a conflict of interest situation arising at the Qualification will be considered to subsist only, as between such Applicants attracting conflict of interest provisions on account of shareholdings, who submit bids under this document.

*Explanation:*

In case a Bidder is a Consortium, then the term Bidder as used in this Clause 5.1.2.1, shall include each Member of such Consortium.

For purposes of this RFP, Associate means, in relation to the Bidder/ Consortium Member, a person who controls, is controlled by, or is under the common control

with such Bidder/ Consortium Member (the “**Associate**”). As used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law.

- (d) A Bidder shall be liable for disqualification if any legal, financial or technical adviser of the Ministry and the PPP Commission in relation to the Project is engaged by the Bidder, its Member or any Associate thereof, as the case may be, in any manner for matters related to or incidental to the Project during the Bidding Process or subsequent to the (i) issue of the Letter of Award (LOA) or (ii) execution of the PPP Agreement. In the event any such adviser is engaged by the Successful bidder/investor, as the case may be, after issue of the LOA or execution of the PPP Agreement for matters related or incidental to the Project, then notwithstanding anything to the contrary contained herein or in the LOA or the PPP Agreement and without prejudice to any other right or remedy of the Ministry, including the forfeiture and appropriation of the Bid Security or Performance Security, as the case may be, which the Ministry may have there under or otherwise, the LOA or the PPP Agreement, as the case may be, shall be liable to be terminated without the Ministry being liable in any manner whatsoever to the Successful bidder/investor for the same. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated 6 (six) months prior to the date of issue of this RFP. Nor will this disqualification apply where such adviser is engaged after a period of 1 (one) year from the date of signing of the PPP Agreement.

5.1.2.2 For the Technical Evaluation, the technical bids will be assessed in the following areas:

- (A) **Technical Capacity:** For demonstrating technical capacity and experience (the “**Technical Capacity**”), the Bidder shall, over the past 10 (Ten) financial years preceding the Bid Due Date, have:
  - (i) developed, financed, operated and turned around a wildlife protected area; and
  - (ii) developed, financed and operated an eco-tourism lodge; and
  - (iii) Developed and managed community integration into conservation management inclusive of development and management of community income generating programs
- (B) **Financial Capacity:** The Bidder shall have a minimum Net Worth (the “**Financial Capacity**”) at the close of the preceding financial year for each Lot as follows:

Lot No.	Description of Lot	Net Worth (US\$)
1	Golden Sands	5,000,000
2	Mfula Beach	150,000
3	Illala Gap	150,000
4	Domwe Island	50,000

*(In case an Applicant has issued any fresh Equity Capital during the current financial year, the same shall be permitted to be added to the Applicants assessed Net-Worth.)*

In case of a Consortium, the combined technical capacity and net worth of those Members, who have and shall continue to have an equity share of at least 26% (Twenty Six per cent) each in the SPV, should satisfy the above conditions of eligibility; provided that each such Member shall, for a period of 5 (five) years from the date of commercial operation of the Project, hold equity share capital not less than: (i) 26% (Twenty Six per cent) of the subscribed and paid up equity of the SPV.

- 5.1.2.3 **Operation and Management (O&M) Experience:** The bidder shall demonstrate competence in O&M of wildlife reserves and eco-lodges in conformity with the provisions of the PPP agreement.
- 5.1.2.4 The Bidder shall enclose with its Bid, audited financial statements of the past 5 years in respect of the projects specified in Clause 5.1.2.2 (A) above. In case a particular job/ contract has been jointly executed by the Bidder (as part of a consortium), it should further support its claim for the share in work done for that particular job/ contract by producing a certificate from its client; and
- 5.1.2.5 The Bidder should submit a Power of Attorney as per the format at Appendix-II, authorizing the signatory of the Bid to commit the Bidder. In the case of a Consortium, the Members should submit a Power of Attorney in favour of the Lead Member as per format at Appendix-III.
- 5.1.2.6 Where the Bidder is a single entity, it may be required to form an appropriate Special Purpose Vehicle, incorporated under the Companies Act (the “**SPV**”), to execute the PPP Agreement and implement the Project. In case the Bidder is a Consortium, it shall, in addition to forming an SPV, comply with the following additional requirements:
- (a) Number of members in a consortium shall not exceed 3 (three);
  - (b) Subject to the provisions of sub clause (a) above, the Bid should contain the information required for each member of the Consortium;
  - (c) Members of the consortium shall nominate one member as the Lead Member (the ‘**Lead Member**’) who shall have an equity shareholding of at least 26% (Twenty Six percent) of the paid up and subscribed equity of the SPV. The lead member shall hold such equity at least for five years from the commercial operation date of the project. The nomination(s) shall be supported by a Power of Attorney, as per the

format at Appendix III: Format for Power of Attorney for Lead Member of Consortium signed by all the other members of the Consortium;

- (d) the Bid should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial and technical obligations;
- (e) an individual Bidder cannot at the same time be member of a Consortium applying for the Bid. Further, a member of a particular Bidder Consortium cannot be member of any other Bidder Consortium applying for the Bid;
- (f) the members of a Consortium shall form an appropriate SPV to execute the Project, if awarded to the Consortium;
- (g) members of the Consortium shall enter into a binding Joint Bidding Agreement, substantially in the form specified at Appendix-IV (the “**Joint Bidding Agreement**”), for the purpose of making the Bid. The Jt. Bidding Agreement, to be submitted along with the Bid, shall, *inter alia*:
  - (i) convey the intent to form an SPV with shareholding/ ownership equity commitment(s) in accordance with this RFP, which would enter into the PPP Agreement and subsequently perform all the obligations of the Successful bidder/investor in terms of the PPP Agreement, in case the Development & Operation right to undertake the Project is awarded to the Consortium;
  - (ii) clearly outline the proposed roles and responsibilities, if any, of each member;
  - (iii) commit the minimum equity stake to be held by each member;
  - (iv) commit that each of the members, whose experience will be evaluated for the purposes of this RFF, shall subscribe to 26% (Twenty Six per cent) or more of the paid up and subscribed equity of the SPV and shall further commit that each such member shall, for a period of 5 (Five) years from the date of commercial operation of the Project, hold equity share capital not less than: (i) 26% (Twenty Six per cent) of the subscribed and paid up equity share capital of the SPV; and
  - (v) Members of the consortium undertake that they shall collectively hold at least 51% (fifty one percent) of the subscribed and paid up equity of the SPV at all times until the second anniversary of the commercial operation date of the project
  - (vi) include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all

obligations of the Successful bidder/investor in relation to the Project until the Financial Close of the Project is achieved in accordance with the PPP Agreement; and

- (h) except as provided under this RFP and the Bidding Documents, there shall not be any amendment to the Joint Bidding Agreement without the prior written consent of the Ministry.

5.1.2.7 Any entity which has been barred by the Government of Malawi, or any entity controlled by it, from participating in any project (BOT or otherwise), and the bar subsists as on the date of Bid would not be eligible to submit a Bid, either individually or as member of a Consortium.

5.1.2.8 A Bidder including any Consortium Member or Associate should, in the last 3 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial Ministry or a judicial pronouncement or arbitration award against the Bidder, Consortium Member or Associate, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated by any public entity for breach by such Bidder, Consortium Member or Associate.

5.1.2.9 In computing the Technical Capacity and Net Worth of the Bidder/ Consortium Members under Clauses 5.1.2.2, 5.1.2.4 and 7.1.2, the Technical Capacity and Net Worth of their respective Associates would also be eligible hereunder. It is clarified that a certificate from a qualified external auditor who audits the book of accounts of the Applicant or the Consortium Member shall be provided to demonstrate that a person is an Associate of the Applicant or the Consortium as the case may be.

5.1.2.10 The following conditions shall be adhered to while submitting a Bid:

- (a) Bidders should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Annexes is insufficient. Alternatively, Bidders may format the prescribed forms making due provision for incorporation of the requested information;
- (b) information supplied by a Bidder (or other constituent Member if the Bidder is a Consortium) must apply to the Bidder, Member or Associate named in the Bid and not, unless specifically requested, to other associated companies or firms;
- (c) in responding to the qualification phase, Bidders should demonstrate their capabilities in accordance with Clause 7.1.1; and
- (d) in case the Bidder is a Consortium, each Member should substantially satisfy the qualification requirements to the extent specified herein.

### ***5.1.3 Change in composition of the Consortium***

5.1.3.1 Change in the composition of a Consortium will not be permitted by the Ministry during the Bidding Process.



#### **5.1.4 *Number of Bids and costs thereof***

- 5.1.4.1 No Bidder shall submit more than one Bid for the Project. A Bidder applying 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.
- 5.1.4.2 The Bidders shall be responsible for all of the costs associated with the preparation of their Bids and their participation in the Bid Process. The Ministry, the PPP Commission and its agents will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.

#### **5.1.5 *Site visit and verification of information***

- 5.1.5.1 Bidders are encouraged to visit the Project site(s) and ascertain for themselves the site conditions, construction materials, tourist volume, location, surroundings, climate, availability of power, water and other utilities for construction, access to site, handling and storage of materials, weather data, applicable laws and regulations, and any other matter considered relevant by them before submit their respective Bids.

#### **5.1.6 *Acknowledgement by Bidder***

- 5.1.6.1 It shall be deemed that by submitting the Bid, the Bidder has:
- (a) made a complete and careful examination of the RFP;
  - (b) received all relevant information requested from the Ministry;
  - (c) accepted that they have not had to rely on the RFP or information furnished by or on behalf of the Ministry relating to any of the matters referred to in Clause 5.1.5 above;
  - (d) agreed to be bound by the undertakings provided by it under and in terms hereof;
  - (e) satisfied itself about all matters, things and information including matters referred to in Clause 5.1.5 hereinabove 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 there under; and

#### **5.1.7 *Right to accept or reject any or all Bids***

- 5.1.7.1 Notwithstanding anything contained in this RFP, the PPP Commission reserves the right to accept or 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. In the event that the PPP Commission rejects or annuls all the Bids, it may, in its discretion,

invite all eligible Bidders to submit fresh Bids hereunder. Further, the PPP Commission reserves the right not to proceed with the Bidding Process at any time, without notice or liability, and to reject any Bid without assigning any reasons

5.1.7.2 The PPP Commission reserves the right to reject any Bid if:

- (a) at any time, a material misrepresentation is made or uncovered, or
- (b) the Bidder does not provide, within the time specified by the PPP Commission, the supplemental information sought by the Ministry for evaluation of the Bid.

If the Bidder is a Consortium, then the entire Consortium may be disqualified/ rejected. If such disqualification/ rejection occurs after the Bids have been opened and the Highest Bidder gets disqualified/ rejected, then the Ministry reserves the right to:

- (i) invite the next highest Bidders; or
- (ii) take any such measure as may be deemed fit in the sole discretion of the Ministry, including annulment of the Bidding Process.

5.1.7.3 In case it is found during the evaluation or at any time before signing of the PPP Agreement or after its execution and during the period of subsistence thereof, including the Development & Operation right thereby granted by the PPP Commission, that one or more of the qualification conditions have not been met by the Bidder, or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Successful bidder/investor either by issue of the LOA or entering into of the PPP Agreement, and if the Bidder/SPV has already been issued the LOA or has entered into the PPP Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the Ministry to the Bidder, without the Ministry being liable in any manner whatsoever to the Bidder. In such an event, the PPP Commission shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy which the Ministry may have under this RFP, the Bidding Documents, the PPP Agreement or under applicable law.

5.1.7.4 The PPP Commission reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFP. Any such verification or lack of such verification by the PPP Commission shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Ministry there under.

5.1.7.5 Any condition or qualification or any other stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.

5.1.7.6 The documents including this RFP and all attached documents, provided by the PPP Commission are and shall remain or become the property of the Ministry and are transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance herewith. Bidders are to treat all information as

strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provisions of this Clause 5.1.7.6 shall also apply mutatis mutandis to Bids and all other documents submitted by the Bidders, and the Ministry will not return to the Bidders any Bid, document or any information provided along therewith.

## **5.2 DOCUMENTS**

### **5.2.1 *Contents of the RFP***

- 5.2.1.1 This RFP comprises the disclaimer set forth hereinabove, the contents as listed below, and will additionally include any Addenda issued in accordance with Clause 5.2.3.

#### **Invitation for Bids**

- Section 1. Introduction
- Section 2. Instructions to Bidders
- Section 3. Criteria for Evaluation
- Section 4. Fraud & Corrupt Practices
- Section 5. Pre- Bid Conference
- Section 6. Miscellaneous

#### **Appendices**

- I. Letter comprising the Bid
- II. Power of Attorney for signing of Bid
- III. Power of Attorney for Lead Member of Consortium
- IV. Joint Bidding Agreement for Consortium
- V. Financial Offer
- VI. Bank Guarantee for Bid Security
- VII. Minimum Development Requirements

### **5.2.2 *Clarifications***

- 5.2.2.1 Bidders requiring any clarification on the RFP may notify the PPP Commission in writing or by fax and e-mail in accordance with Clause 4.2.9. They should send in their queries before the date specified in the schedule of Bidding Process contained in Table 1. The PPP Commission shall endeavor to respond to the queries within the period specified therein, but no later than 10 (ten) days prior to the Bid Due Date. The responses will be sent by fax and/or e-mail. The PPP Commission will forward all the queries and its responses thereto, to all purchasers of the RFP without identifying the source of queries.
- 5.2.2.2 The PPP Commission shall endeavor to respond to the questions raised or clarifications sought by the Bidders. However, the PPP Commission reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring the PPP Commission to respond to any question or to provide any clarification.

- 5.2.2.3 The PPP Commission may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by the PPP Commission shall be deemed to be part of the RFP. Verbal clarifications and information given by the Ministry or its employees or representatives shall not in any way or manner be binding on the Ministry.

### **5.2.3 Amendment of RFP**

- 5.2.3.1 At any time prior to the Bid Due Date, the Ministry 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.
- 5.2.3.2 Any Addendum thus issued will be sent in writing to all those who have purchased the RFP. Bidders are advised to keep watch on PPP Commission website ([www.pppc.mw](http://www.pppc.mw)) for any modification in RFP and other updates about the Project.
- 5.2.3.3 In order to afford the Bidders a reasonable time for taking an Addendum into account, or for any other reason, the PPP Commission may, in its sole discretion, extend the Bid Due Date.

## **5.3 PREPARATION AND SUBMISSION OF BID**

### **5.3.1 Language**

- 5.3.1.1 The Bid and all related correspondence and documents in relation to the Bidding Process shall be in 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 translations of all 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.

### **5.3.2 Format and signing of Bid**

- 5.3.2.1 The Bidder shall provide all the information sought under this RFP. The PPP Commission will evaluate only those Bids that are received in the required formats and complete in all respects. Incomplete and /or conditional Bids shall be liable to rejection.
- 5.3.2.2 The Bidder shall prepare 1 (one) original set of the Bid (together with originals/ copies of documents required to be submitted along therewith pursuant to this RFP) and clearly marked "ORIGINAL". In addition, the Bidder shall submit Four (4) copies of the Bid, along with documents required to be submitted along therewith pursuant to this RFP, marked "COPY". The Bidder shall also provide

2 (two) soft copies on Flash Disc. In the event of any discrepancy between the original and the copy, the original shall prevail.

- 5.3.2.3 The Bid and its copy shall be typed or written in indelible ink and signed by the authorised signatory of the Bidder who shall also initial each page in blue ink. In case of printed and published Documents, only the cover shall be initialed. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialed by the person(s) signing the Bid. The Bid shall contain page numbers and shall be submitted in a hard-bound form (hard bound implies binding between two covers through stitching whereby it may not be possible to replace any paper without disturbing the document - spiral bound form, loose form, etc. will be not accepted).

### **5.3.3 Sealing and Marking of Bids**

- 5.3.3.1 The Bidder shall submit the Bid in the format specified at Appendix-I, together with the documents specified in Clause 2.13.2A and seal it in an envelope and mark the envelope as “**Technical Bid**”. The Bidder shall submit the Financial Offer in the format specified at Appendix-V and seal it in another envelope and mark the envelope as “**Financial Bid**”. Both the envelopes of the Technical Bid and the Financial Bid shall then be sealed in an outer envelope and mark the envelope as “**Development and Management of Lake Malawi National Park through a PPP Arrangement**”. The Bidder shall seal the original and the copy of the Bid, together with their respective enclosures, in separate envelopes duly marking the envelopes as “ORIGINAL” and “COPY”. The envelopes shall then be sealed in an outer envelope which shall also be marked in accordance with Clauses 5.3.3.1 and 5.3.3.3.

- 5.3.3.2 (A) Each Technical Bid envelope shall contain:
- (i) Bid in the prescribed format (Appendix-I) along with Annexes and supporting documents;
  - (ii) Power of Attorney for signing the Bid as per the format at Appendix-II;
  - (iii) if applicable, the Power of Attorney for Lead Member of Consortium as per the format at Appendix-III;
  - (iv) copy of the Joint Bidding Agreement, in case of a Consortium, substantially in the format at Appendix-IV;
  - (v) copy of Memorandum and Articles of Association, if the Bidder is a body corporate, and if a partnership then a copy of its partnership deed;
  - (vi) copies of Bidder’s duly audited balance sheet and profit and loss account for the preceding five years;
  - (vii) Payment Receipt towards the cost of the Bidding Documents as specified in Clause 4.2.1;

- (viii) Bid Security as specified in Clause 4.2.4; and
- (ix) A copy of the Instruction to Bidders, Draft PPP Agreement with each page stamped and initialed by the person signing the Bid in pursuance of the Power of Attorney referred to in sub-clause (ii) hereinabove.

(B) Each Financial Bid envelope shall contain:

- (a) Financial Offer in the prescribed format (Appendix-V);

The final outer envelopes having the Original and Copy shall clearly bear the following identification:

Bid for: **“Development and management of Lake Malawi National Park through a Public Private Partnership Arrangement.”** and shall clearly indicate the name and address of the Bidder. In addition, the Bid Due Date should be indicated on the right-hand corner of each of the envelopes.

5.3.3.3 Each of the envelopes shall be addressed to:

ATTN. TO:	The Chief Executive Officer
INSTITUTION:	The Public Private Partnership Commission
ADDRESS:	2 <sup>nd</sup> Floor, Livingstone Towers, Glyn Jones Road, P.O. Box 937, Blantyre, Malawi

E-MAIL ADDRESS:	<a href="mailto:info@pppc.mw">info@pppc.mw</a>
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WEBSITE	<a href="http://www.pppc.mw">www.pppc.mw</a>
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PHONE NO	+265 1 823 655
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FAX NO	+265 1 821 248
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5.3.3.4 If the envelopes are not sealed and marked as instructed above, the Ministry, the PPP Commission and its agents assume no responsibility for the misplacement or premature opening of the contents of the Bid and consequent losses, if any, suffered by the Bidder.

5.3.3.5 Bids submitted by fax, telex, telegram or e-mail shall not be entertained and shall be rejected.

#### ***5.3.4 Bid Due Date***

- 5.3.4.1 Applications should be submitted before 14:00 pm Local Time on the Application Due Date, at the address provided in Clause 5.3.3.3 in the manner and form as detailed in this RFP.
- 5.3.4.2 The PPP Commission may, in its sole discretion, extend the Bid Due Date by issuing an Addendum in accordance with Clause 5.2.3.

### ***5.3.5 Late Bids***

- 5.3.5.1 Bids received by the Ministry after the specified time on the Bid Due Date shall not be eligible for consideration and shall be summarily rejected.

### ***5.3.6 Modifications/ substitution/ withdrawal of Bids***

- 5.3.6.1 The Bidder may modify, substitute or withdraw its Bid after submission, provided that written notice of the modification, substitution or withdrawal is received by the PPP Commission prior to the Bid Due Date. No Bid shall be modified, substituted or withdrawn by the Bidder on or after the Bid Due Date.
- 5.3.6.2 The modification, substitution or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 5.3.3, with the envelopes being additionally marked “MODIFICATION”, “SUBSTITUTION” or “WITHDRAWAL”, as appropriate.
- 5.3.6.3 Any alteration/ modification in the Bid or additional information supplied subsequent to the Bid Due Date, unless the same has been expressly sought for by the PPP Commission, shall be disregarded.

## **5.4 EVALUATION PROCESS**

### ***5.4.1 Opening and Evaluation of Bids***

- 5.4.1.1 The PPP Commission shall open the Technical Bids at 14:00 hours Local Time on the Bid Due Date, at the place specified in Clause 5.3.3.3 and in the presence of the Bidders who choose to attend.
- 5.4.1.2 Bids for which a notice of withdrawal has been submitted in accordance with Clause 5.3.6 shall not be opened.
- 5.4.1.3 The PPP Commission will subsequently examine and evaluate Bids in accordance with the provisions set out in Section 7.
- 5.4.1.4 Bidders are advised that qualification of Bidders will be entirely at the discretion of the PPP Commission. Bidders will be deemed to have understood and agreed that no explanation or justification on any aspect of the Bidding Process or selection will be given.

- 5.4.1.5 Any information contained in the Bid shall not in any way be construed as binding on the Ministry, its agents, successors or assigns, but shall be binding against the Bidder if the Project is subsequently awarded to it on the basis of such information.
- 5.4.1.6 The PPP Commission reserves the right not to proceed with the Bidding Process at any time without notice or liability and to reject any or all Bid(s) without assigning any reasons.
- 5.4.1.7 If any information furnished by the Bidder is found to be incomplete, or contained in formats other than those specified herein, the PPP Commission may, in its sole discretion, exclude the relevant project from computation of the Eligible Score of the Bidder.
- 5.4.1.8 In the event that a Bidder claims credit for an Eligible Project, and such claim is determined by the PPP Commission as incorrect or erroneous, the PPP Commission shall reject such claim and exclude the same from computation of the Eligible Score, and may also, while computing the aggregate Experience Score of the Bidder, make a further deduction equivalent to the claim rejected hereunder. Where any information is found to be patently false or amounting to a material misrepresentation, the PPP Commission reserves the right to reject the Bid in accordance with the provisions of Clauses 5.1.7.2 and 5.1.7.3.

#### ***5.4.2 Confidentiality***

- 5.4.2.1 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 process or is not a retained professional advisor advising the PPP Commission in relation to or matters arising out of, or concerning the Bidding Process. The PPP Commission will treat all information, submitted as part of Bid, in confidence and will require all those who have access to such material to treat the same in confidence. The PPP Commission 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 or as may be required by law or in connection with any legal process.

#### ***5.4.3 Tests of Responsiveness***

- 5.4.3.1 Prior to evaluation of Bids, the PPP Commission shall determine whether each Bid is responsive to the requirements of the RFP. A Bid shall be considered responsive only if:
- (a) it is received as per format at Appendix-I.
  - (b) it is received by the Bid Due Date including any extension thereof pursuant to Clause 5.3.4.2;
  - (c) it is signed, sealed, bound together in hard cover, and marked as stipulated in Clauses 5.3.2 and 5.3.3;



- (d) it is accompanied by the Power of Attorney as specified in Clause 5.1.2.5, and in the case of a Consortium, the Power of Attorney as specified in Clause 5.1.2.6 (c);
- (e) it contains all the information and documents (complete in all respects) as requested in this RFP;
- (f) it contains information in formats same as those specified in this RFP;
- (g) it is accompanied by the Payment Receipt towards the cost of the Bidding Documents as specified in Clause 4.2.1;
- (h) it is accompanied by the Bid Security as specified in Clause 4.2.4; and clause 5.1.2.6
- (i) it is accompanied by the Joint Bidding Agreement (for Consortium), specific to the Project, as stipulated in Clause 5.1.2.6(g);
- (i) it does not contain any condition or qualification; and
- (k) it is not non-responsive in terms hereof;

5.4.3.2 The PPP Commission reserves the right to reject any Bid which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the PPP Commission in respect of such Bid.

#### **5.4.4 Clarifications**

5.4.4.1 To facilitate evaluation of Bids, the PPP Commission may, at its sole discretion, seek clarifications from any Bidder regarding its Bid. Such clarification(s) shall be provided within the time specified by the PPP Commission for this purpose. Any request for clarification(s) and all clarification(s) in response thereto shall be in writing.

5.4.4.2 If a Bidder does not provide clarifications sought under Clause 5.4.4.1 above within the prescribed time, its Bid shall be liable to be rejected. In case the Bid is not rejected, the PPP Commission may proceed to evaluate the Bid by construing the particulars requiring clarification to the best of its understanding, and the Bidder shall be barred from subsequently questioning such interpretation of the Ministry.

## **5.5 QUALIFICATION AND BIDDING**

### **5..5.1    *Technical Evaluation and Notification***

- 5.5.1.1      After the technical evaluation of Bids, the PPP Commission would announce a list of bidders as qualified for the financial evaluation. The PPP Commission will not entertain any query or clarification from Bidders who fail to qualify.

### **5..5.2    *Proprietary Data***

- 5.5.2.1      All documents and other information supplied by the Ministry, the PPP Commission and its agents or submitted by a Bidder to the Ministry and its associates shall remain or become the property of the Ministry. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The Ministry will not return any Bid or any information provided along therewith.

### **5..5.3    *Correspondence with the Bidder***

- 5.5.3.1      Save and except as provided in this RFP, the Ministry and the PPP Commission shall not entertain any correspondence with any Bidder in relation to the acceptance or rejection of any Bid.

### **5..5.4    *Validity of Bids***

- 5.5.4.1      The Bids shall be valid for a period of not less than 180 (one hundred and eighty) days from the Bid Due Date. The validity of Bids may be extended by mutual consent of the respective Bidders and the PPP Commission.

## **6    BID SECURITY**

### **6..1    Bid Security**

- 6.1.2      The Bidder shall deposit a Bid Security as provided for in Clause 4.2.4 in accordance with the provisions of this RFP. The Bidder has to provide the Bid Security in the form of a Bank Guarantee acceptable to the PPP Commission, as per format at Appendix-VI

The validity period of the Bank Guarantee shall not be less than 180 (one hundred and eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days and may be extended as may be mutually agreed between the PPP Commission and the Bidder. The Bid shall be summarily rejected if it is not accompanied by the Bid Security. The Bid Security shall be refundable no later than 60 (sixty) days from the Bid Validity Date except in the case of the Selected Bidder whose Bid Security shall be retained till it has provided a Performance Security under the PPP Agreement.

- 6.1.3      Any Bid not accompanied by the Bid Security shall be summarily rejected by the PPP Commission as non-responsive.

- 6.1.4 Save and except as provided in Clauses 6.1.2 and 6.1.3 above, the Bid Security of unsuccessful Bidders will be returned by the PPP Commission, without any interest, as promptly as possible on acceptance of the Bid of the Selected Bidder or when the Bidding process is cancelled by the PPP Commission, and in any case within 60 (sixty) days from the Bid Validity Date.
- 6.1.5 The Selected Bidder's Bid Security will be returned, without any interest, upon the Successful bidder/investor signing the PPP Agreement and furnishing the Performance Security in accordance with the provisions thereof. The PPP Commission may, at the Selected Bidder's option, adjust the amount of Bid Security in the amount of Performance Security to be provided by him in accordance with the provisions of the PPP Agreement.
- 6.1.6 The PPP Commission shall be entitled to forfeit and appropriate the Bid Security as Damages inter alia in any of the events specified in Clause 6.1.8 herein below. The Bidder, by submitting its Bid pursuant to this RFP, shall be deemed to have acknowledged and confirmed that the Ministry and the PPP Commission suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the period of Bid validity as specified in this RFP. No relaxation of any kind on Bid Security shall be given to any Bidder.
- 6.1.7 The Bid Security shall be forfeited as Damages without prejudice to any other right or remedy that may be available to the Ministry and the PPP Commission under the Bidding Documents and/ or under the PPP Agreement, or otherwise, under the following conditions:
- a) If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Section 8 of this RFP;
  - b) If a Bidder withdraws its Bid during the period of Bid validity as specified in this RFP and as extended by mutual consent of the respective Bidder(s) and the Ministry;
  - c) In the case of Selected Bidder, if it fails within the specified time limit:
    - (i) to sign and return the duplicate copy of LOA;
    - (ii) to sign the PPP Agreement; or
    - (iii) to furnish the Performance Security within the period prescribed therefore in the PPP Agreement; or
  - d) In case the Selected Bidder, having signed the PPP Agreement, commits any breach thereof prior to furnishing the Performance Security.

## **7 CRITERIA FOR EVALUATION**

## 7.1 QUALIFICATION STAGE

### 7.1.1 *Evaluation Parameters*

7.1.1.1 Bidders have to meet the eligibility criteria specified in Clause 5.1.2.2 above and the evaluation would be as per this Section 3. Bids of firms/ consortia who do not meet these criteria shall be rejected.

7.1.1.2 The Bidder's competence and capability is proposed to be established by the following parameters:

(a) Technical Capacity; and

(b) Financial Capacity

### 7.1.2 *Technical Capacity for purposes of Evaluation*

7.1.2.1 Subject to the provisions of Clause 5.1.2, the following categories of experience would be assessed under the Technical Capacity and eligible experience (the “**Eligible Experience**”) in relation to technical experience of the Bidder (***figures shown in the brackets are maximum points eligible for that category***):

- a. Experience in the development, management and operation of eco-lodges **(20%)**
- b. Demonstrate experience in turning around a protected area into a “must see” destination for tourists **(25%)**
- c. Demonstrate experience in successfully sourcing finance for the previous PPP projects **(10%)**
- d. Experience in developing and managing community integration into conservation management inclusive of development of community income generating programs **(10%)**
- e. Experience of the proposed management team in developing and managing eco-lodges **(5%)**
- f. Local participation in the project management team **(5%)**
- h. Soundness of the development concept note. **(10%)**

### 7.1.3 *Financial Information for purposes of Evaluation*

- 7.1.3.1 The Bid must be accompanied by the Audited Annual Reports of the Bidder (of each Member in case of a Consortium) for the last 5 (five) financial years, preceding the year in which the Bid is made.
- 7.1.3.2 In case the annual accounts for the latest financial year are not audited and therefore the Bidder cannot make it available, the Bidder shall give an undertaking to this effect. In such a case, the Bidder shall provide the Audited Annual Reports for 5 (five) years preceding the year for which the Audited Annual Report is not being provided.
- 7.1.3.3 The Bidder must establish the minimum Net Worth specified in Clause 5.1.2.2 (B), and provide details as per format at Annex-III of Appendix-I. **(maximum points 15%)**
- 7.1.3.4 In case of foreign companies, a certificate from a qualified external auditor who audits the book of accounts of the Applicant or the Consortium Member in the formats provided in the country where the project has been executed shall be accepted, provided it contains all the information as required in the prescribed format of the RFP.

#### **7.1.4 Eligibility for Financial Proposal Opening**

- 7.1.4.1 The Bidders who meet the eligibility criteria set forth in above and attain a minimum score of 80% will be eligible for the Financial Proposal Evaluation Phase.

### **7.2 FINANCIAL OPENING**

#### **7.2.1 Opening and Evaluation of Financial Proposal**

- 7.2.1.1 The Bidders who are shortlisted as per Clause 7.1.4 will be informed about the opening date of the Financial Proposal in writing and the Financial Offer shall be opened in the presence of the shortlisted Bidders who choose to attend.
- 7.2.1.2 Financial bids shall be evaluated based on
- a) Revenue sharing scheme expressed as a percentage of the gross revenue (To be shown in a financial projections) *Please note that either a) or b) would be payable depending on which one is higher on due date.*
  - b) Investment levels in the project in the first five years
- 7.2.1.3 To facilitate evaluation of Bids, the PPP Commission may, at its sole discretion, may seek clarifications in writing from any Bidder regarding its Bid.

**Given that the selection method is Quality and Cost Based Selection (QCBS),** the highest evaluated Financial Proposal (Fh) will be given the maximum financial score (Sf) of 100 points. The financial scores (Sf) of the other Financial Proposals will be computed as indicated below and will be 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 indicated below:  $S = St \times T\% + Sf \times P\%$ . The firm achieving the highest combined technical and financial score will be invited for negotiations.

The formula for determining the financial scores is the following:

**$Sf = 100 \times F / Fh$ , in which Sf is the financial score, Fh is the highest evaluated financial proposal and F the financials of the proposal under consideration.**

**The weights given to the Technical and Financial Proposals are:**

**T = 0.8, and**

**P = 0.2**

### **7.2.2 Selection of Bidder**

- 7.2.2.1 The Bidder achieving the highest combined technical and financial score will be invited for negotiations and shall be declared as the preferred bidder (the “**Preferred Bidder**”).
- 7.2.2.2 In the event that the Preferred Bidder withdraws or is not selected for any reason in the first instance, the PPP Commission may invite next highest Bidder to revalidate or extend their respective Bid Security, as necessary, and invited for negotiations.
- 7.2.2.3 After selection and successful negotiations, a Letter of Award (the “**LOA**”) shall be issued, in duplicate, by the Ministry to the Selected Bidder and the Selected Bidder shall, within 7 (seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Selected Bidder is not received by the stipulated date, the PPP Commission may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as Damages on account of failure of the Selected Bidder to acknowledge the LOA, and the next eligible Bidder may be considered.
- 7.2.2.4 After acknowledgement of the LOA as aforesaid by the Selected Bidder, it shall cause the Successful bidder/investor to execute the PPP Agreement within the period prescribed in Table 1. Schedule of Bidding Process. The Selected Bidder shall not be entitled to seek any deviation, modification or amendment in the PPP Agreement.

### **7.2.3 Contacts during Bid Evaluation**

- 7.2.3.1 Bids shall be deemed to be under consideration immediately after they are opened and until such time the PPP Commission makes official intimation of award/

rejection to the Bidders. While the Bids are under consideration, Bidders and/ or their representatives or other interested parties are advised to refrain, save and except as required under the Bidding Documents, from contacting by any means, the PPP Commission/ Ministry and/ or their employees/ representatives on matters related to the Bids under consideration.

#### **7.2.4 Payment Terms**

- 7.2.4.1 The payment terms for entry fee and annual concession fee to be paid have been detailed in the PPP agreement.

### **8 FRAUD AND CORRUPT PRACTICES**

- 8.1 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 LOA and during the subsistence of the PPP Agreement. Notwithstanding anything to the contrary contained herein, or in the LOA or the PPP Agreement, the PPP Commission may reject a Bid, withdraw the LOA, or terminate the PPP Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder or Successful bidder/investor, as the case may be, if it determines that the Bidder or Successful bidder/investor, 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. In such an event, the PPP Commission shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Ministry under the Bidding Documents and/ or the PPP Agreement, or otherwise.
- 8.2 Without prejudice to the rights of the Ministry under Clause 8.1 hereinabove and the rights and remedies which the Ministry may have under the LOA or the PPP Agreement, or otherwise if a Bidder or Successful bidder/investor, as the case may be, is found by the Ministry to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the LOA or the execution of the PPP Agreement, such Bidder or Successful bidder/investor shall not be eligible to participate in any tender or RFP issued by the Ministry during a period of 2 (two) years from the date such Bidder or Successful bidder/investor, as the case may be, is found by the Ministry to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.
- 8.3 For the purposes of this Section 8, the following terms shall have the meaning hereinafter respectively assigned to them:
- (a) “**corrupt practice**” means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to, or employing, or engaging in any manner whatsoever, directly or indirectly, any official of the Government of the Republic of Malawi, Ministry, PPP Commission and associated entities who is or has been

associated in any manner, directly or indirectly, with the Bidding Process or the LOA or has dealt with matters concerning the PPP Agreement or arising there from, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Ministry or PPP Commission, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) save and except as permitted under sub clause (d) of Clause 5.1.2.1, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the PPP Agreement and till the period of 1 (one) years from the date of signing of the PPP Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the PPP Agreement, who at any time has been or is a legal, financial or technical adviser of the Ministry in relation to any matter concerning the Project;

- (b) **“fraudulent practice”** means a misrepresentation or omission of facts 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;
- (d) **“undesirable practice”** means (i) establishing contact with any person connected with or employed or engaged by the PPP Commission and/or Ministry 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; and
- (e) **“restrictive practice”** means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

## 9 PRE-BID CONFERENCE

9.1 A Pre-Bid conference of the interested parties shall be convened at the designated date, time as per Table 1. Schedule of Bidding Process at Ministry of Tourism, Culture and Wildlife in Taurus House in Lilongwe.

9.2 During the course of Pre-Bid conference, the Bidders will be free to seek clarifications and make suggestions in writing for consideration by the PPP Commission and the Ministry. The Ministry shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process

## 10 MISCELLANEOUS



- 10.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of Malawi and the Court system in Malawi shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.
- 10.2 The PPP Commission in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;
- (a) suspend 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) qualify or not to qualify any Bidder and/ or to consult with any Bidder in order to receive clarification or further information;
  - (d) retain any information and/ or evidence submitted to the Ministry and the PPP Commission by, on behalf of, and/ or in relation to any Bidder; and/ or
  - (e) 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.
- 10.3 It shall be deemed that by submitting the Bid, the Bidder agrees and releases the Ministry and the PPP Commission, 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 and the Bidding Documents, pursuant hereto, and/ or in connection with the Bidding Process, to the fullest extent permitted by applicable law, and waives any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.
- 10.4 The Bidders are required to submit a concept report with financial and investment plan for the project.

# APPENDICES

## 11 APPENDIX I

### 11.1 Letter Comprising the Bid

*(Refer Clause 5.3.3.2 A )*

Dated: [●]

**The Chief Executive Officer  
The Public Private Partnership Commission  
2<sup>nd</sup> Floor, Livingstone Towers  
Glyn Jones Road  
P O Box 937  
Blantyre  
Malawi**

Sub: Bid for “**Development and Management of Lake Malawi National Park through a Public Private Partnership Arrangement**”

Dear Sir,

1. With reference to your RFP document dated [●], I/we, having examined the RFP document and understood its contents, hereby submit my/our Bid for the aforesaid project. The Bid is unconditional and unqualified.
2. I/ We acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying such Bid for selection of the Developer for the aforesaid project, and we certify that all information provided in the Bid and in Annexes I to V is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Bid are true copies of their respective originals.
3. This statement is made for the express purpose of our selection as Investor for the development, financing, construction, operation and maintenance of the aforesaid Project.
4. I/ We shall make available to the Ministry any additional information it may find necessary or require to supplement or authenticate the Bid.
5. I/ We acknowledge the right of the Ministry to reject our Bid without assigning any reason or otherwise and hereby waive to the fullest extent permitted by applicable law our right to challenge the same on any account whatsoever.
6. I/ We certify that in the last three years, we/ any of the Consortium Members or our/ their Associates 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 on our part.

7. I/ We declare that:

- (a) I/ We have examined and have no reservations to the Bidding Documents, including any Addendum issued by the Ministry;
- (b) I/ We do not have any conflict of interest in accordance with Clauses 5.1.2.1(c) and 5.1.2.1(d) of the RFP document;
- (c) 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 Clause 8.3 of the RFP document, in respect of any tender or request for proposal issued by or any agreement entered into with the Ministry or any other public sector enterprise or Government; and
- (d) I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFP document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
- (e) the undertakings given by us along with the Application in response to the RFP for the Project were true and correct as on the date of making the Application.

8. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with Clause 5.4.1.6 of the RFP document.

9. I/ We believe that we/ our Consortium/ proposed Consortium satisfy(s) the Net Worth criteria and meet(s) all the requirements as specified in the RFP document and are/ is qualified to submit a Bid.

10. I / We declare that we/ any Member of the Consortium, or our/ its Associates are not a Member of a/ any other Consortium submitting a Bid for the project.

11. I/ We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates 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.

12. I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.

13. I/ We further certify that no investigation by a regulatory authority is pending either against us/ any Member of the Consortium or against our/ their Associates or against our CEO or any of our Directors/ Managers/ employees.
14. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of this RFP; we shall intimate the Ministry of the same immediately.
15. The Statement of Legal Capacity as per format provided at Annex-V in Appendix-I of the RFP document, and duly signed, is enclosed. The power of attorney for signing of Bid and the power of attorney for Lead Member of consortium, as per format provided at Appendix II and III respectively of the RFP, are also enclosed.
16. I/ We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority in connection with the selection of the Bidder, or in connection with the selection/ Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
17. I/ We agree and undertake to abide by all the terms and conditions of the RFP document.
18. I/ We certify that in terms of the RFP, my/our Net worth is US\$.  
..... (United States Dollars..... in words).
19. I/ We acknowledge and undertake that our Consortium is qualified on the basis of Technical Capacity and Financial Capacity in accordance with this RFP, of those of its Members who shall, for a period of 5 (five) years from the date of full commercial operation of the Project, hold equity share capital not less than: (i) 26% (Twenty Six per cent) of the subscribed and paid-up equity of the Investor;. I/We further agree and acknowledge that the aforesaid obligation shall be in addition to the obligations contained in the PPP Agreement in respect of Change in Ownership.
20. I/ We acknowledge and agree that in the event of a change in control of an Associate whose Technical Capacity and/ or Financial Capacity is taken into consideration for the purposes of qualification in accordance with this RFP, I/We shall inform the Ministry forthwith along with all relevant particulars and the Authority may, in its sole discretion, disqualify our Consortium or withdraw the Letter of Award, as the case may be. I/We further acknowledge and agree that in the event such change in control occurs after signing of the PPP Agreement but prior to Financial Close of the Project, it would, notwithstanding anything to the contrary contained in the Agreement, be deemed a breach thereof, and the PPP Agreement shall be liable to be terminated without the Ministry being liable to us in any manner whatsoever.
21. I/ We understand that the selected Bidder shall either be an existing Company incorporated under the Companies Act, or shall incorporate as such prior to execution of the PPP Agreement and any other addendums thereof.
22. In the event of my/ our being declared as the Selected Bidder, I/we agree to enter into a PPP Agreement in accordance with the Draft PPP Agreement that has been provided to me/us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.

23. I/ We have studied all the Bidding Documents carefully and also surveyed the Project. We understand that except to the extent as expressly set forth in the PPP Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Ministry or in respect of any matter arising out of or relating to the Bidding Process including the award of Concession.
24. I/ We offer a Bid Security of \_\_\_\_\_ to the Ministry in accordance with Clause 6.1 of the RFP Document.
25. The Bid Security in the form of a Bank Guarantee is attached.
26. The Payment Receipt towards the cost of Biding Documents as specified in Clause 4.2.1 is attached.
27. I/ We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/we shall have any claim or right of whatsoever nature if the Project / Development is not awarded to me/us or our Bid is not opened or rejected.
28. The entry fee and annual concession fee have been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, draft PPP Agreement, our own estimates of cost and traffic and after a careful assessment of the site and all the conditions that may affect the project cost and implementation of the Project.
29. We, the Consortium Members agree and undertake to be jointly and severally liable for all the obligations of the Investor under the PPP Agreement till occurrence of Financial Close in accordance with the PPP Agreement.}
30. I/ We shall keep this offer valid for 180 (one hundred and eighty) days from the Bid Due Date specified in the RFP.

In witness thereof, I/ we submit this Bid under and in accordance with the terms of the RFP document.

Yours faithfully,

Date:

(Signature, name and designation of the Authorised Signatory)

Place:

Name and seal of the Bidder/ Lead Member

## 11..2 ANNEX-I

### Details of Bidder

1.
  - (a) Name:
  - (b) Country of incorporation:
  - (c) Address of the corporate headquarters and its branch office(s), :
  - (d) Date of incorporation and/ or commencement of business:
2. Brief description of the Company including details of its main lines of business and proposed role and responsibilities in this Project:
3. Details of individual(s) who will serve as the point of contact/ communication for the Authority:
  - (a) Name:
  - (b) Designation:
  - (c) Company:
  - (d) Address:
  - (e) Telephone Number:
  - (f) E-Mail Address:
  - (g) Fax Number:
4. Particulars of the Authorised Signatory of the Bidder:
  - (a) Name:
  - (b) Designation:
  - (c) Address:
  - (d) Phone Number:
  - (e) Fax Number:
5. In case of a Consortium:
  - (a) The information above (1-4) should be provided for all the Members of the Consortium.
  - (b) A copy of the Jt. Bidding Agreement, as envisaged in Clause 5.1.2.6 (g) should be attached to the Bid.
  - (c) Information regarding the role of each Member should be provided as per table below:

<b>Sl. No</b>	<b>Name of Member</b>	<b>Role</b> {Refer Clause 5.1.2.6 (d)} <sup>\$</sup>	<b>Percentage of equity in the Consortium</b> {Refer Clauses 5.1.2.6 (a), (c) & (g)}
1.			
2.			
3.			

6. A statement by the Bidder and each of the Members of its Consortium (where applicable) or any of their Associates disclosing material non-performance or contractual non-compliance in past projects, contractual disputes and litigation/arbitration in the recent past is given below (Attach extra sheets, if necessary):



### 11.3 Annex - II

#### Technical Capacity of the Bidder

#### (Details of Investors Experience)

1. List only previous similar assignments successfully completed in the last 5 years.
2. List only those assignments for which the investor or team member was legally contracted by the Client as a company or was one of the joint venture partners. Assignments completed by the investor's individual experts working privately or through other investing firms cannot be claimed as the relevant experience of the investor, or that of the investor's partners, but can be claimed by the Experts themselves in their CVs. The investor should be prepared to substantiate the claimed experience by presenting copies of relevant documents and references if so requested by the Client.

Duration	Assignment name/ & brief description of main deliverables/outputs	Name of Client & Country of Assignment	Approx. value invested (in US\$ equivalent)/ Amount paid to your firm	Role on the Assignment
{e.g., Jan.2009– Apr.2019}	{e.g., “Improvement quality of.....”: designed master plan for rationalization of .....; }	{e.g., Ministry of ....., country}	{e.g., US\$1 mill/US\$0.5 mill}	{e.g., Lead partner in a JV A&B&C}
{e.g., Jan 2008-May 2028}	{e.g., “Support to sub-national government.....” : drafted secondary level regulations on.....}	{e.g., municipality of....., country}	{e.g., US\$0.2 mil/US\$0.2 mil}	{e.g., sole investor}

## 11.4 Annex -III

### Financial Capacity of the Bidder

(Refer to Clauses 5.1.2.2(B), 5.1.2.4 (ii) and 7.1.3 of the RFP)

Applicant type <sup>\$</sup>	Member Code <sup>₹</sup>	Proposed Equity Shareholding in Consortium (%)	Net Cash Accruals					Net Worth
			Year 1 (4)	Year 2 (5)	Year 3 (6)	Year 4 (7)	Year 5 (8)	Year 1 (9)
Single entity Applicant								
Consortium Member 1								
Consortium Member 2								
Consortium Member 3								
TOTAL								

#### Name & address of Bidder's Bankers:

A Bidder consisting of a single entity should fill in details as per the row titled Single entity Bidder and ignore the rows titled Consortium Members. In case of a Consortium, row titled Single entity Bidder may be ignored.

For Member Code, see instruction 4 at Annex-IV of this Appendix-I.

The Bidder should provide details of its own Financial Capability or of an Associate specified in Clause 5.1.2.9.

For conversion of other currencies into rupees, see note below Annex-II of Appendix-I.

#### Instructions:

1. The Bidder/ its constituent Consortium Members shall attach copies of the balance sheets, financial statements and Annual Reports for 5 (five) years preceding the Bid Due Date. The financial statements shall:
  - (a) reflect the financial situation of the Bidder or Consortium Members and its/their Associates where the Bidder is relying on its Associate's financials;
  - (b) be complete, including all notes to the financial statements; and

- (c) correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
- 2. Net Cash Accruals shall mean Profit After Tax + Depreciation.
- 3. Net Worth shall mean (Subscribed and Paid-up Equity + Reserves) less (Revaluation reserves + miscellaneous expenditure not written off + reserves not available for distribution to equity shareholders).
- 4. Year 1 will be the latest completed financial year, preceding the bidding. Year 2 shall be the year immediately preceding Year 1 and so on. In case the Bid Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 5.1.2.12.
- 5. In the case of a Consortium, a copy of the Jt. Bidding Agreement shall be submitted in accordance with Clause 5.1.2.6 (g) of the RFP document.
- 6. The Bidder shall also provide the name and address of the Bankers to the Bidder.
- 7. The Bidder shall provide an Auditor's Certificate specifying the net worth of the Bidder and also specifying the methodology adopted for calculating such net worth in accordance with Clause 5.1.2.4 (ii) of the RFP document.

## 11.5 Annex -V Statement of Legal Capacity

*(To be forwarded on the letterhead of the Bidder/ Lead Member of Consortium)*

Ref.

Date:

To,

**The Chief Executive Officer**

**The Public Private Partnership Commission**

**2<sup>nd</sup> Floor Livingstone Towers**

**Glyn Jones Road**

**P O Box 937**

**Blantyre**

**Malawi**

Dear Sir,

We hereby confirm that we/ our members in the Consortium (constitution of which has been described in the Bid) satisfy the terms and conditions laid out in the RFP document.

We have agreed that ..... (insert member's name) will act as the Lead Member of our consortium.\*

We have agreed 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 RFP. Further, the authorised signatory is vested with requisite powers to furnish such letter and authenticate the same.

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorised

signatory) For and on behalf

of.....

*\*Please strike out whichever is not applicable.*

## 12 APPENDIX II

### Power of Attorney for signing of Bid

*(Refer Clause 5.1.2.5)*

Know all men by these presents, We..... (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorise Mr/ Ms (name), ..... son/daughter/wife of

..... and presently residing at ....., who is presently employed with us/ the Lead Member of our Consortium and holding the position of

....., 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 and things as are necessary or required in connection with or incidental to submission of our Bid for the **“Development and Management of Lake Malawi National Park through a Public Private Partnership Arrangement”** Project proposed or being developed by the Department of National Parks and Wildlife in the Ministry of Information, Tourism, and Culture (the “Ministry”) including but not limited to signing and submission of all bids and other documents and writings, participate in pre-bids and other conferences and providing information/ responses to the Ministry, presenting us in all matters before the Ministry, signing and execution of all contracts including the PPP Agreement and undertakings consequent to acceptance of our bid, and generally dealing with the Ministry 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 PPP Agreement with the Ministry.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things 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.

IN WITNESS WHEREOF WE, ....., THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS ..... DAY OF ..... 2.....

.....

(Signature, name, designation and

address) Witnesses:

1.

2.

For

(Notarised)  
Person identified by me/ personally appeared  
before me / signed before me/ Attested /  
Authenticated\*  
(\* Notary to specify as  
applicable) (Signature, Name and Address  
of the Notary)

Seal of the Notary

Registration Number of the Notary

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

Accepted

.....

(Signature)

(Name, Title and Address of the Attorney)

*Notes:*

- ☐ *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 executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- ☐ *Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- ☐ *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.*

13 APPENDIX III

Power of Attorney for Lead Member of Consortium

(Refer Clause 5.1.2.5)

Whereas the Department of National Parks and Wildlife in the Ministry of Information Tourism and Culture (“the Ministry”) has invited Bids from interested parties for the “**Development and Management of Lake Malawi National Park,**” (the “Project”) and

Whereas, ..... , ..... , ..... and

..... (collectively the “Consortium”) being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the Request for Proposal document (RFP) and other connected documents in respect of the Project, and

Whereas, it is necessary for the Members of the Consortium to designate one of them as the Lead Member in accordance with the terms and conditions of the Request for Proposal document (RFP) and other connected documents in respect of the Project 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 and be held responsible for the same.

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We, ..... having our registered office at ..... , M/s.

..... having our registered office at ..... , M/s.

..... having our registered office at ..... , and

..... having our registered office at ..... , (hereinafter collectively referred to as the “Principals”) do hereby irrevocably designate, nominate, constitute, appoint and authorise M/s ..... having its registered office at

..... , being one of the Members of the Consortium, as the Lead Member and

true and lawful attorney of the Consortium (hereinafter referred to as the “Attorney”).

We hereby irrevocably authorise the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the bidding process and, in the event the Consortium is awarded the concession/contract, during the execution of the Project and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the pre-qualification of the Consortium and submission of its bid for the Project, including but not limited to signing and submission of all , bids and other documents and writings, participate in bidders and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to

acceptance of the bid of the Consortium and generally to represent the Consortium in all its dealings with the Ministry, and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the Consortium's bid for the Project and/ or upon award thereof till the PPP Agreement is entered into with the Ministry.

AND hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things 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/ Consortium.

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE  
EXECUTED THIS POWER OF ATTORNEY ON THIS ..... DAY OF  
..... 2.....

For .....  
(Signature)

.....  
(Name & Title)

For .....  
(Signature)

.....  
(Name & Title)

For .....  
(Signature)

.....  
(Name & Title)

Witnesses:

1.

2.

.....  
(Executants)

(To be executed by all the Members of the Consortium)



(Notarised)  
Person indentified by me/ personally appeared  
before me / signed before me/ Attested /  
Authenticated\*  
(\* Notary to specify as  
applicable) (Signature, Name and Address  
of the Notary)

Seal of the

Notary Registration Number of

the Notary Date : \_\_\_\_

*Notes:*

- ☐ *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 executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- ☐ *Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- ☐ *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.*

## 14 APPENDIX IV

### Joint Bidding Agreement

(Refer Clause 5.3.3.2 A)

*(To be executed on Stamp paper of appropriate value)*

THIS JOINT BIDDING AGREEMENT is entered into on this the .....  
day of  
.....  
20...

#### AMONGST

1. {..... Limited, a company incorporated under the Companies Act, 1956} and having its registered office at ..... (hereinafter referred to as the “**First Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)

#### AND

2. {..... Limited, a company incorporated under the Companies Act, } and having its registered office at ..... (hereinafter referred to as the “**Second Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)

#### AND

3. {..... Limited, a company incorporated under the Companies Act, and having its registered office at ..... (hereinafter referred to as the “**Third Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)}

#### WHEREAS,

(A) The Department of National Parks and Wildlife in the Ministry of Information, Tourism, and Culture having its principal office at Taurus House in Lilongwe (hereinafter referred to as the “**Ministry**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited Bids (the “**Bids**”) by its Request for Proposal No. .... dated .....(the “**RFP**”) for development and operation/ maintenance of **Development of Lake Malawi National Park** (the “**Project**”) through public private partnership.

(B) The Parties are interested in jointly bidding for the Project as members of a Consortium and in accordance with the terms and conditions of the RFP document and other bid documents in respect of the Project, and

(C) It is a necessary condition under the RFP document that the members of the Consortium shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Bid.

**NOW IT IS HEREBY AGREED as follows:**

**1. Definitions and Interpretations**

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

**2. Consortium**

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

2.2 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 this Project, either directly or indirectly or through any of their Associates.

**3. Covenants**

The Parties hereby undertake that in the event the Consortium is declared the selected Bidder and awarded the Project, it shall incorporate a special purpose vehicle (the “**SPV**”) under the Companies Act for entering into a PPP Agreement with the Ministry and for performing all its obligations as the Investor in terms of the PPP Agreement for the Project.

**4. Role of the Parties**

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

- (a) 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 and until the Agreement Date under the Development Agreement when all the obligations of the SPV shall become effective;
- (b) Party of the Second Part shall be {the Technical Member of the Consortium;}
- {(c) Party of the Third Part shall be the Financial Member of the Consortium/ Operation and Maintenance Member/ Other Member; and}

**5. Joint and Several Liabilities**

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the RFP and the PPP Agreement, till such time as the Financial Close for the Project is achieved under and in accordance with the Development Agreement.

**6. Shareholding in the SPV**

6.1 The Parties agree that the proportion of shareholding among the Parties in the SPV shall be as follows:

First Party:

Second Party:

{Third Party:}

6.2 The Parties undertake that a minimum of 51% (fifty one per cent) of the subscribed and paid up equity share capital of the SPV shall, at all times till the second anniversary of the date of full commercial operation of the Project, be held by the Parties of the First, {Second and Third} Part whose experience and network have been reckoned for the purposes of qualification and short-listing of Bidders for the Project in terms of the RFP.

6.3 The Parties undertake that they shall comply with all equity lock-in and any other requirements set forth in the PPP Agreement and RFP.

## **7. Representation of the Parties**

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

- (a) 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;
- (b) 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 Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:
  - (i) require any consent or approval not already obtained;
  - (ii) violate any Applicable Law presently in effect and having applicability to it;
  - (iii) violate the memorandum and articles of association, by-laws or other applicable organizational documents thereof;
  - (iv) violate any clearance, permit, Development, 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; or

- (v) create or impose any liens, mortgages, pledges, claims, security interests, charges or 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;
- (c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- (d) 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 fulfillment of its obligations under this Agreement.

## 8. Termination

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the Financial Close of the Project is achieved under and in accordance with the PPP Agreement, in case the Project is awarded to the Consortium. However, in case the Consortium is either not pre-qualified for the Project or does not get selected for award of the Project, the Agreement will stand terminated in case the Bidder is not pre-qualified or upon return of the Bid Security by the Ministry to the Bidder, as the case may be.

## 9. Miscellaneous

- 9.1 This Joint Bidding Agreement shall be governed by laws of Malawi.
- 9.2 The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Ministry.

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

SIGNED, SEALED AND DELIVERED  
DELIVERED For and on behalf of  
LEAD MEMBER by:

SIGNED, SEALED AND  
SECOND PART

(Signature)  
(Name)  
(Designation)  
(Address)

(Signature)  
(Name)  
(Designation)  
(Address)

SIGNED, SEALED AND DELIVERED

DELIVERED For and on behalf of  
THIRD PART

(Signature)  
(Name)  
(Designation)  
(Address)

SIGNED, SEALED AND

For and on behalf of  
**FOURTH PART**

(Signature)  
(Name)  
(Designation)  
(Address)

SIGNED, SEALED AND DELIVERED

DELIVERED For and on behalf of  
FIFTH PART

(Signature)  
(Name)  
(Designation)  
(Address)

SIGNED, SEALED AND

For and on behalf of  
SIX PART

(Signature)  
(Name)  
(Designation)  
(Address)

In the presence of:

1.

2.

(Notarised)  
Person indentified by me/ personally appeared  
before me / signed before me/ Attested /  
Authenticated\* (\* Notary to specify as  
applicable)  
(Signature, Name and Address of the Notary)

Seal of the Notary

Registration Number of the Notary

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

**Notes:**

- The mode of the execution of the Joint Bidding Agreement should be in accordance with the procedure, if any, laid down by the Applicable Law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- Each Joint Bidding Agreement should attach a copy of the extract of the charter documents and documents such as 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 Consortium Member.*

3. *For a Joint Bidding Agreement executed and issued overseas, the document shall be legalised by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney has been executed.*

## 15 APPENDIX V

### Letter Comprising the Financial Offer

(Refer Clause 5.3.3.2B)

To,

**The Chief Executive Officer  
The Public Private Partnership Commission  
2<sup>nd</sup> Floor, Livingstone Towers  
Glyn Jones Road  
P O Box 937  
Blantyre  
Malawi**

Sub Bid for **“Development and Management of Lake Malawi National Park, through a Public Private Partnership Arrangement” – Financial Offer**

Dear Sir,

With reference to your RFP document \_\_\_\_\_, I/we, having examined the  
dated \_\_\_\_\_ Bidding

Documents and understood their contents; hereby submit my/our Financial proposal for the aforesaid Project. The Financial Proposal is unconditional and unqualified.

1. I/We hereby submit our Bid and we agree to pay US\$..... words) as  
(in

\_\_\_\_\_% of gross revenue as the revenue sharing scheme  
for undertaking the aforesaid Project in accordance with the Bidding  
Documents and the PPP Agreement.

2. I/We hereby declare that the revenue sharing scheme is inclusive of all applicable taxes and shall be interpreted and evaluated as per the other clauses of the Bidding Document
3. I/ We hereby declare to undertake to invest US\$.....(in words) in the two project sites over the first years of operation.
4. I/ We hereby declare to undertake the aforesaid Project in accordance with the terms and conditions of the PPP Agreement and the Bidding documents.

In witness thereof, I/we submit this Financial Proposal under and in accordance with the terms of the RFP and the Bidding documents.

Yours faithfully,

Date: \_\_\_\_\_ (Signature, name and designation of the Authorised signatory)

Place:



Name and seal of  
Bidder/Lead Member

## 16 APPENDIX VI

### Bank Guarantee for Bid Security

#### Bid Security

**[Input of Information to be completed by Bidder]**

Date: **[insert date (as day, month and year) of Bid Submission]**.

Procurement Reference Number: **[insert reference number]**

Alternative No: **[insert identification No if this is a Bid for an alternative]**

To: **[insert complete name of Procuring Entity]**

Whereas **[insert complete name of Bidder]** (hereinafter “the Bidder”) has submitted its bid dated **[insert date (as day, month and year) of bid submission]** for Procurement reference Number **[insert Procurement Reference Number]** for the provision of **[insert brief description of the Services and Related Goods]**, hereinafter called “the Bid.”

KNOW ALL PEOPLE by these presents that WE **[insert complete name of institution issuing the Bid Security]**, of **[insert city of domicile and country of nationality]** having our registered office at **[insert full address of the issuing institution]** (hereinafter “the Guarantor”), are bound unto **[insert complete name of the Procuring Entity]** (hereinafter “the Procuring Entity”) in the sum of **[specify in words the amount and currency of the bid security]** (**specify the amount and currency in figures**), for which payment well and truly to be made to the aforementioned Procuring Entity, the Guarantor binds itself, its successors or assignees by these presents. Sealed with the Common Seal of this Guarantor this **[insert day in numbers]** day of **[insert month]**, **[insert year]**.

THE CONDITIONS of this obligation are the following:

1. If the Bidder withdraws its bid during the period of bid validity specified by the Bidder in the Bid Submission Sheet, except where the bid security validity has expired which is after 28 days after the bid validity; or
2. If the Bidder, having been notified of the acceptance of its bid by the Procuring Entity, during the period of bid validity, fails or refuses to:
  - (a) execute the Contract; or
  - (b) furnish the Performance Security, in accordance with the agreed terms of this RFP; or
  - (c) accept the correction of its bid by the Procuring Entity, as agreed in the terms of the RFP.

We undertake to pay the Procuring Entity up to the above amount upon receipt of its first written demand, without the Procuring Entity having to substantiate its demand, provided

that in its demand the Procuring Entity states that the amount claimed by it is due to it, owing to the occurrence of one or more of the above conditions, specifying the occurred conditions.

This security shall remain in force up to and including sixty (60) days after the period of bid validity, and any demand in respect thereof should be received by the Guarantor no later than the above date.

Name: **[insert complete name of person signing the Bid]**

In the capacity of **[insert legal capacity of person signing the bid]**

Signed: **[insert signature of person whose name and capacity are shown above]**

Duly authorised to sign the bid for and on behalf of: **[insert complete name of Bidder]**

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ **[insert date of signing]**

*[This form should be signed by a person with the proper authority to sign documents for the Bidder. It should be included by the Bidder in its bid. The Bidder may reproduce this in landscape format but is responsible for its accurate reproduction].*