



**REQUEST FOR PROPOSAL (RFP)  
FOR PRE-QUALIFIED BIDDERS TO ACQUIRE  
PTDC FLASHMAN'S HOTEL RAWALPINDI ON  
LEASE-BASIS**

**Reference #: PTDC/2023/lease-03**

**RSVP:**

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## SECTION I: INTRODUCTION

Pakistan Tourism Development Corporation (PTDC) is a public sector corporation incorporated under the repealed Companies Act, 1913 (Now Companies Act, 2017). Currently, PTDC owns and operates a chain of Motels, hotels & Hotels at different locations across Pakistan. PTDC in its drive to make optimum utilization of its real-estate properties, wants to convert its properties into high-end hotels/motels while keeping intact the heritage and architectural value attached to existing buildings(s), on lease basis which would help PTDC creating its constant source of revenue from the commercial use of the properties while simultaneously offering private party an adequate rate of return on their investment. This will not only make effective utilization of the PTDC properties and lands, ensure adequate supply of world-class accommodation facilities to the tourists at tourist destinations but will also encourage competition in the hospitality industry and bring improvement in services delivery.

The PTDC Flashman's Hotel and Hotel is located at prominent place of attractive tourist destination of Pakistan having facilities such as rooms, lawns, parks, access roads and they have historically generated significant revenue in shape of room charges, utilities and service charges from tourists availing these facilities.

The Flashman's Hotel is a land mark of Rawalpindi and the history of the subcontinent. The Flashman's hotel was used from the English times and has hosted some of the greatest decision makers of the sub-continent. The rooms have now been fully re-furbished. The Flashman's hotel has been built for Lords so all rooms are on ground floor one can park car straight in front of the room. Flashman's hotel is owned & operated by Pakistan Tourism Development Corporation. Hotel is ideally located near Saddar bazaar and is only 30-minutes' drive from Islamabad International Airport. Chinar & Jasmine banquet halls are ideal for hosting marriage ceremonies and events. Lala Rukh Hotel is tastefully decorated. Staying at Flashman's Hotel is being part of history.

Flashman's Hotel is situated on area of 7.01 acres. The hotel comprises of 73 rooms which include deluxe rooms, mini suites, offices, 02 banquet Halls, Hotel, Permit Shop (Bar Room) and Swimming Pool. Open space measuring 5 ½ kanals available for erection of Marque.

## SECTION II: INSTRUCTIONS TO BIDDERS (ITB)

### 1. Invitation to Bidders

- 1.1. Pakistan Tourism Development Corporation (PTDC) on behalf of Government of Pakistan, intends to lease out PTDC Flashman's Hotel Rawalpindi on "AS IS WHERE IS BASIS", to such reputed firms/ companies/ private corporations who shall operate the Hotel and Hotel with a view to provide high standard hospitality services to the general public/ tourists and uplift the tourism sector of Pakistan with a good share of return for both the lessee and the lessor.
- 1.2. The bidders will be allowed to develop the premises, by way of retrofitting, renovation, and improvement of the existing premises within location being offered.
- 1.3. Bidders will be provided support to review and visit the facility being offered through this process to evaluate the premises on their own expense, prior to submission of bids, failing which PTDC shall not be responsible for any subsequent claim by the bidder of being unaware of any physical or intangible fact or material information related to the property after the bid has been submitted.
- 1.4. The bidding documents shall be made available to the pre-qualified bidders on the date mentioned in BDS 1 in Section IV of this RFP.

### 2. Eligible Bidders

- 2.1. Bidders must adhere to the instructions in the below mentioned clauses as these are mandatory for qualifying for the bidding process.
- 2.2. Applicants should have been eligible for bidding according to the process and criteria mentioned in the pre-qualification undertaken by PTDC, subsequent to which this RFP is being issued to eligible bidders only.

### 3. Cost of Bidding.

The bidding documents will be issued to the prequalified bidders only on payment of Rs 5000/- (non-refundable fee). Bidders shall be required to deposit the requisite fee amounting to RS. 5000/-, in shape of a pay order issued in favour of PTDC, at the time of submission of **technical bid**. The Bidder shall bear all costs associated with the preparation and submission of its bid, and the lessor shall in no case be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.

### 4. Applicable Bidding Procedure.

- 4.1. The following bidding procedure shall be followed for the transaction. Bidders are advised to refer to the Bid Data Sheet (BDS) to confirm the Bidding procedure applicable in the present bidding process.
- 4.2. The bidding procedure prescribed in the Bid Data Sheet is explained below:

- i. The bid shall comprise a single package containing two separate envelopes. Each envelope shall contain separately the Technical Proposal and the Bid Security;
- ii. The envelopes shall be marked as "Technical proposal" and Bid Security" in bold and legible letters to avoid confusion;
- iii. Initially, only the envelope marked "Technical Proposal" shall be opened; Technical proposal is to determine the technical strength and consideration of qualification of the firm for the bidding process, which is to be carried out before the invitation to Open Competitive Financial bidding is sent.
- iv. The envelope marked, as "Bid Security" shall be retained in the custody of lessor, without being opened;
- v. The lessor shall evaluate the technical proposal, and reject any proposal which do not conform to the specified requirements;
- vi. During the technical evaluation no amendments in the technical proposal shall be permitted;
- vii. Upon scoring of the technical parameters, a list of responsive bidders that are technically qualified will be prepared.
- viii. The invitation for open competitive financial bidding will be sent to only those bidders who have scored equal to or higher than 70% marks in their overall technical scores and at least 50% marks in all categories of the evaluation criteria mentioned in Section III of this RFP.
- ix. Time, date and venue of the open competitive bidding to be announced and communicated to the bidder at least two weeks in advance, for facilitating the international bidders to arrange for their travel.
- x. The open competitive financial bidding of each property will be undertaken separately at the premises of PTDC head office, which shall be attended by the authorized representatives of the technically responsive bidders.
- xi. The open competitive financial bidding shall start with any amount above the Reserve Price for each property as mentioned in BDS 34. The bidder should be cognizant of the fact that the Reserve price is the Minimum Annual Rent for the first year of lease term, and the amount of rent shall be subject to an increase of 10% as per terms of the draft lease agreement attached with this RFP for reference to the bidders.
- xii. The authorized representatives attending the open competitive financial bidding, as per Clause x above, shall be provided adequate number of chances for increasing their bid, based on the bids of other competitors attending the process. The bidder with the highest bid price shall be required to complete on the spot, the **FIN-2 FINANCIAL BID SUBMISSION FORM** annexed as part of the required documents in the RFP. The attendees shall make sure that they have made the requisite arrangements for signing the FIN-2 FINANCIAL BID SUBMISSION FORM, that is, the company letter head and stamp etc.
- xiii. The Bid Security received from bidders found technically non-responsive shall be returned un-opened to the respective bidders; and

- xiv. Successful bidders who have qualified in the technical proposal round and have the highest financial bid shall be invited for negotiations on the terms of lease agreement for facilitating project implementation and signing of the lease agreement.
  - xv. In case the highest financial bidder does not sign the lease agreement within the stipulated time of contracting, the lessor or PTDC will approach the next highest bidder or call for new bids in case the next highest bidder is not financially competitive against the first highest bid.
- 4.3. The technical proposal should contain all requisite documents such as their development plans for the property(ies) being bid for, managerial staff to be deployed, and other requirements mentioned in Section III of this RFP. and in the BDS where applicable.

## 5. The bidding Documents:

The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Documents, and Instructions to Bidders. Failure to furnish all information required by the Bidding Documents or to submit a bid not substantially responsive to the Bidding Documents in every respect shall be at the Bidder's risk and may result in the rejection of bid.

## 6. Pre-Bid meeting and Clarification(s) on Bidding Documents

A prospective bidder requiring any clarification of the Bidding Document may notify the lesser in writing through PTDC's official email i.e. [info@tourism.gov.pk](mailto:info@tourism.gov.pk). PTDC will respond by email to any request for clarification provided that such request is received no later than five (5) days prior to the deadline for submission of applications. The PTDC shall upload its response to all queries on the official website of PTDC i.e. [www.tourism.gov.pk](http://www.tourism.gov.pk)., including a description of the inquiry but without identifying its source. **PTDC reserves the right to amend the bidding document as a result of a clarification if deemed appropriate and communicate the same to all bidders by email.** Pre-bid meeting with the interested bidders will be held **on 28-02-2023 at 11.00, A.M** at PTDC HO, Kohsar Block, Pak Secretariat, Islamabad.

## 7. Amendment(s) to the Bidding Documents:

- 7.1. At any time prior to the deadline for submission of bids, the lessor, for any reason, whether at its own initiative or in response to a clarification(s) requested by a prospective Bidder, may modify the Bidding Documents by amendment(s), or cancel the bidding process at their discretion.
- 7.2. All prospective Bidders that have received the bidding documents shall be notified of the amendments through e-mail and shall be binding on them.
- 7.3. Order to allow prospective Bidders reasonable time for taking the amendment(s) into account in preparing their bids, the lessor or PTDC, at its discretion, may extend the deadline for the submission of bids.

## 8. Language of Bids:

All correspondences, communications, associated with preparation of Bids, clarifications, amendments, and submissions shall be written in English language.

## 9. Bid Price/ Lease offer:

- 9.1. The bidder shall indicate their best offer during the open competitive financial bidding that will be held after the technical scoring is complete and the technically responsive bidders are invited for an open competitive financial bidding.
- 9.2. The highest bidder will then confirm in writing at the end of the bidding process on their formal letter head, the amount of bid on a per annum basis for each property that they have bid for, as also mentioned in Clause 4.2, sub clause xii of Section II above. The offer will be clearly written and signed by the bidder on the same day, after the bidding has ended. Any alteration/ correction must be initialled.
- 9.3. Every page is to be signed and stamped at the bottom.

## 10. Bid Currencies.

Price / lease offers shall be quoted in the currency as mentioned in the Bid Data Sheet.

## 11. Documentation on Eligibility of Bidders:

- 11.1. In pursuance of the formal submission of bids mentioned in Paragraph 9.2 above, the formal Bid Form, required at the end of the bidding process, establishing the Bidder's capability to fulfil the bid and ability to perform throughout the lease term if the bid is accepted, and the bidder is asked to sign the lease agreement. A proforma of the Bid Submission Form has been annexed below for reference of the bidders. Refer to annexure Fin 2: Financial Bid Submission Form.
- 11.2. The documentary evidence of the Bidder's eligibility to bid shall establish, to the lessor's satisfaction that the Bidder, at the time of submission of its bid, is an eligible bidder as defined under INSTRUCTIONS TO BIDDERS above.

## 12. Bid Security:

- 12.1. The bidder shall furnish, as part of the bid a Bid Security of 10% of the Minimum Lease amount or Reserve Price, as mentioned in BDS: ITB 34, in the form of a Pay Order/Bank Draft in favour of Pakistan Tourism Development Corporation.
- 12.2. Unsuccessful Bidder's Bid Security shall be discharged or returned soon after signing of lease agreement with the successful bidder.
- 12.3. The successful Bidder's Bid Security shall be discharged upon signing of contract and furnishing the Performance Security / Guarantee.
- 12.4. The Bid Security may be forfeited:
  - (1) If a Bidder withdraws its bid during the period of bid validity'
  - Or
  - (b) In the case of a successful Bidder, if the Bidder fails to sign the Contract or fails to provide a Performance Security / Guarantee for the duration of the contract.

### **13. Bid Validity:**

- 13.1. Bids shall remain valid for the period identified in the BDS after the date of submission of FIN-2 FINANCIAL BID SUBMISSION FORM as subscribed by the procuring entity. A bid valid for a period shorter than the one prescribed in the BDS, shall be rejected by the Lessor as non-responsive.
- 13.2. The lessor shall ordinarily be under an obligation to process and evaluate the bid within the stipulated bid validity period. However, under exceptional circumstances and for reason to be recorded in writing, if an extension is considered necessary, all those who have submitted their bids shall be asked to extend their respective bid validity period. Such extension shall be for not more than the period equal to the period of the original bid validity.
- 13.3. Bidders who agree to the Lessor's request for extension of bid validity period shall not be permitted to change the substance of their bids; and,
- 13.4. Bidders who do not agree to an extension of the bid validity period shall be allowed to withdraw their bids without forfeiture of their bid securities.

### **14. Formats and signing of bids:**

- 14.1. The Bidder shall prepare and submit their bid and provide documents as appropriate, copies of any documents must be signed and stamped by the bidder. The bidder shall submit separate technical proposal and bid security for each property.
- 14.2. The original bid shall be typed or written in indelible ink and shall be signed by the Bidder or a person or persons duly authorized to bind the Bidder to the contract. The person or persons signing the bid shall initial all pages of the bid form.
- 14.3. Any interlineations, erasures, or overwriting shall be valid only if they are initialled by the person or persons signing the bid.
- 14.4. Any tampering, illegitimate inclusion or exclusion in any part of the Bidding Documents shall lead to disqualification of the Bidder.

### **15. Sealing and marking of Bids before submission:**

- 15.1. The envelopes shall be marked as "Technical Proposal" and "Bid Security" in bold and legible letters to avoid confusion. The said two envelopes shall then be sealed in an outer envelope.
- 15.2. The inner and outer envelopes shall:
  - (a) be addressed to the lessor at the address given in the Invitation for Lease; and
  - (b) Bid Reference No. Indicated in Clause 15 in the BDS, and a statement; "Do Not Open Before" the time and the date specified in Clause 16 of the BDS for opening of Bids.
- 15.3. The inner envelopes shall also indicate the name and address of the Bidder to enable the bid to be returned unopened in case it is declared as "Non-responsive" or "Late"
- 15.4. If the outer as well as inner envelope are not sealed and marked as required by the INSTRUCTIONS to the BIDDERS clauses 15.1 to 15.3 above, the Lessor shall assume no responsibility for the bid's misplacement or premature opening.



## **16. Deadline for submission of Bids;**

- 16.1. Bids must be submitted by the bidder and received by the lessor at the address on the time and date specified. Bids received later than the time and date specified will stand summarily rejected. Please refer to Bid Data Sheet (BDS) Clause 16
- 16.2. The Lessor may, in its discretion, extend the prescribed deadline for the submission of bids by amending the advertisement notice.
- 16.3. Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.

## **17. Late Bids:**

Any bid received by the Lessor after the deadline for submission of bids prescribed by the lessor pursuant to INSTRUCTIONS TO THE BIDDERS Clause 16 Shall be rejected and returned un-opened to the Bidder.

## **18. Withdrawal of Bids:**

- 18.1. The bidders may withdraw their bid after the bid's submission and prior to the deadline prescribed for opening of bids.
- 18.2. No bid may be withdrawn in the period between deadline for submission of bids and the expiration of the period of bid validity.
- 18.3. Withdrawal of a bid during this period may result in forfeiture of the Bid Security submitted by the Bidder.

## **19. Opening of Bids by the Lessor:**

- 19.1. All bids received, shall be opened by PTDC, publicly in the presence of the Bidders or their representatives who chose to be present on the date, time, and venue prescribed under Clause 19 of the BDS.
- 19.2. The opening of Bids shall be subject to the Bidding Procedure elaborated in INSTRUCTION TO THE BIDDERS Clause 4 above.
- 19.3. All Bidder in attendance shall sign an attendance sheet.
- 19.4. The Lessor shall open one Bid at a time and read out aloud its contents which may include name of the Bidder, any bid modifications or withdrawal, the presence or absence of the requisite Bid Security, and such other details as the Lessor, at its discretion, may consider appropriate.
- 19.5. The lessor shall have the minutes of the Bid opening (technical and when applicable Open Competitive Financial Bidding) recorded.
- 19.6. No bid shall be rejected at technical proposal/ bid opening, except for late bids, which shall be returned un-opened to the Bidder.
- 19.7. The bids found without Bid Security shall also be returned un-announced to the Bidders.

## **20. Pre-Evaluation of bids by the Lessor:**

During evaluation of the bids, the lessor may, at its discretion, ask the Bidder for a clarification of its bid. The request for clarification and the response shall be in writing, and no change in the substance of the bid shall be sought, offered, or permitted.

## **21. Preliminary Examination:**

- 21.1. The lessor shall examine the bids to determine whether they are complete, whether any computational errors have been made. Whether required sureties have been furnished, whether the documents have been properly signed, and whether the bids are generally in order.
- 21.2. The lessor may waive any minor non-conformity, or irregularity in a bid which does not constitute a material deviation, provided such waiver does not prejudice or defect the relative ranking of any Bidder.
- 21.3. Prior to the detailed evaluation, the Lessor shall determine the substantial responsiveness of each bid; a substantially responsive bid is one, which conforms to all the terms and conditions of the bidding documents without material deviations. The Lessor's determination of a bid's responsiveness is to be based on the contents of the bid itself without recourse to extrinsic evidence.
- 21.4. If a bid is not substantially responsive, it shall be rejected by the lessor and may not subsequently be made responsive by the Bidder by correction of the non-conformity.

## **22. Evaluation of Bids:**

- 22.1. The lessor shall evaluate and compare the bids, which have been determined to be substantially responsive in accordance with INSTRUCTIONS TO THE BIDDERS Clause 21 above.
- 22.2. All bids shall be evaluated in accordance with the Evaluation Criteria mentioned in Section III, and other terms and conditions set forth in this RFP.
- 22.3. A bid once opened in accordance with the prescribed procedure shall be subject to only those rules, regulations and policies that are in force at the time of issue of notice for Lease.

## **23. Determination of Qualification of Bidder:**

- 23.1. The Lessor, at any stage of the bid proceedings, having credible reasons for or prima facie evidence of any defect in Bidder's capacities, may require the Bidder to provide information concerning their professional, technical, financial, legal or managerial competence whether already pre-qualified or not.
- 23.2. Such qualification shall only be laid down after recording reasons thereof in writing. They shall form part of the records of that procurement proceeding.
- 23.3. The Lessor shall determine to their satisfaction whether a bidder, technically and financially qualified is capable to perform the Contract satisfactorily.
- 23.4. The determination can take into account the Bidder's financial, technical, and operational capabilities. It shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidders, as well as such other information as the lessor deems necessary and appropriate.
- 23.5. An affirmative determination shall be a pre-requisite for entering open competitive financial bidding, prior to the final qualification. A negative determination shall result in rejection of the bidder's bid, in which event the lessor shall proceed to the next highest evaluated bid to make a similar determination of that Bidder's capabilities to perform satisfactorily.

- 23.6. The Lessor shall disqualify a bidder if it finds at any time, that the information submitted in the bid concerning qualification as bidder was false and materially inaccurate or incomplete.

#### **24. Announcement of Evaluation Report:**

The lessor may announce the results of the bid evaluation in form of a report through its website, PPRA website, via e-mail or display on office notice board, giving justification for acceptance or rejection of bids at least ten days prior to the signing of lease agreement.

#### **25. Rejection of Bids:**

- 25.1. The lessor may reject all bids or proposals at any time prior to the acceptance of a bid or proposal. PTDC may upon request communicate to any bidder who submitted a bid or proposal, the grounds for rejection of all bids or proposals. However, the lesser shall not be bound to justify those grounds.
- 25.2. The Lessor incurs no liability, solely by virtue of its invoking INSTRUCTIONS TO THE BIDDERS (Clause 25.1) above towards Bidders who have submitted bids.
- 25.3. Notice of the rejection of any or all bids shall be given promptly to the concerned bidders that submitted bids.
- 25.4. Any bid not received as per terms and conditions laid down in this document, is liable to be ignored. No bid shall be considered if:
- Received without Bid Security;
  - It is received after the date and time fixed for its receipt;
  - The tender document and the bid are un-signed;
  - The offer is ambiguous or conditional;

#### **26. Re-Bidding:**

- 26.1. If the lessor has rejected all bids, it may call for a re-bidding.
- 26.2. The Lessor before invitation for re-bidding shall assess the reasons for rejection and may revise specifications, evaluation criteria or any other conditions for Bidders, as it may deem necessary.

#### **27. Contacting the Lessor:**

- 27.1. No bidder shall contact the lessor on any matter relating to its bid, from the time of the bid opening to the time of announcement of evaluation report. If a bidder wishes to bring additional information to the notice of the procuring entity, it should do so in writing.
- 27.2. Any effort by the Bidder to influence the lessor in its decisions on bid evaluation, bid comparison or contract award may result in the rejection of the Bidder's bid. Canvassing by any Bidder at any stage of the bid evaluation is strictly prohibited. Any infringement shall lead to disqualification.

## **28. Acceptance of Bid, Invitation to Open Competitive Financial Bids & Award Criteria:**

- 28.1. The bidders who have qualified by obtaining minimum 70% marks in the technical proposal shall be invited for an Open Competitive Financial Bidding according to Clause 4 above, and as per date and time mentioned in Clause 28 of the BDS.
- 28.2. The Bidder, who has qualified in the technical evaluation round as per clause 28.1 above, and also has the highest financial bid, will be rendered as Highest Evaluated Responsive Bidder, if not in conflict with any other law, rules, regulations or policy of the Government of Pakistan.
- 28.3. The bidders invited for the open financial bidding should be cognisant of the fact that the financial bid price shall be in accordance to the requirements of Clause 34 of this section, and Clause 34 of the BDS in Section IV of this RFP, which states the Reserve Price, to be treated as floor price for start of the Open Competitive Financial Bidding.
- 28.4. The highest evaluated responsive bidder shall be invited by PTDC for negotiations on the terms of the lease agreement for facilitating project implementation and signing of the lease agreement within 30 days of completion of bidding process. A specimen of the Draft Lease Agreement has been stated in Section V of this RFP.

## **29. Notification of award.**

The lessor shall notify to the highest evaluated responsive bidder, in writing within 30 days of finalisation of bidding process that their bid has been accepted. Notice will include an invitation for start of negotiation on the terms of lease agreement.

## **30. Limitation on Negotiations:**

- 30.1. After completion of the agreement negotiations the lessor shall send the Bidder the Lease Agreement, incorporating all agreements between the parties.
- 30.2. Within ONE week of receipt of the Agreement, the Lessor and successful Bidder shall sign the Agreement in accordance with the legal requirements in practice.
- 30.3. Unless the lease agreement has already entered into force, the lessee feeling aggrieved by the order of the lessor, accepting a bid may file an application for review.
- 30.4. If the Successful Bidder, after completion of all legal formalities shows an inability to sign the lease contract then its Bid Security shall stand forfeited and the firm may be blacklisted and de-barred from future participation, whether temporarily or permanently. In such situation the lessor may award the contract to the next highest evaluated Bidder or call for new bids in case of next highest bidder is not financially competitive in lieu of first highest bid.
- 30.5. The agreement shall become effective upon affixation of signature of the lessor and the selected Bidder on the agreement document and by the terms and conditions mutually agreed in the contract.
- 30.6. The Bid Security submitted by the bidder at the time of submitting its bid shall be returned to the Bidder upon submission of Performance Guarantee.

- 30.7 Lease terms will be initially 20 years with the option of extension for another similar period, subject to satisfactory performance.

### **31. Security Deposit**

Lessee shall pay to the Lessor/PTDC an amount of Security Deposit which will be an amount equal to the first-year annual amount for PTDC Flashman's Hotel Rawalpindi to be held by PTDC as security for the effective performance of provisions mentioned in the Draft Lease Agreement by the lessee.

### **32. Reserve Price**

- 32.1 PTDC has estimated a Minimum Annual Rent or Reserve Price for this property based on expert analysis of the highest and best use market study of the property, attached with this RFP for reference. Therefore, the Reserve Price for this property has been set by PTDC as mentioned in BDS Clause 34.
- 32.2 The reserve price is inclusive of cost of existing moveable inventory which will be handed over to the Lessee on As-is-Where Basis.
- 32.3 The open financial bidding will be started with any amount over and above this reserve price, estimated as a base case for start of open competitive financial bidding.
- 32.4 The bidders shall be cognizant of the fact that the reserve price provided in BDS Clause 34 is an amount to Minimum Annual Rent of the property being bid for the first year, which shall be subject to an escalation of 10% per annum for each subsequent year.
- 32.5 Requirements with respect to payment of Rent are also mentioned in Clause 3.2 of the Draft Lease Agreement stated as Section V of this RFP for reference of the bidders.

## SECTION III: EVALUATION CRITERIA

The evaluation criteria of short-listed parties will be based on development plans proposed by the bidders. Each major item of development will be scored separately based on its weightage and priority for the overall project. All technical bids shall be evaluated as per following criteria:

### PTDC Flashman's Hotel, Rawalpindi

S. NO	Parameters	Total Marks	Criteria for Marks
1.	<p><b>Renovation and Retrofitting:</b></p> <ul style="list-style-type: none"> <li>• Plan for renovating the existing property               <ul style="list-style-type: none"> <li>○ Facility plans for rooms (5)</li> <li>○ Facility plans for hotel (5)</li> <li>○ Plan for developing outdoor infrastructure (5)</li> <li>○ Facility plans for reception and lobby (5)</li> </ul> </li> </ul>	20	<p>Bidder should provide details of renovation that will be undertaken with a plan for starting operations in phases, keeping in mind the quality of service and customer experience.</p> <p>Maximum marks will be given to bids including a detailed plan of renovation, along with timelines and details of facilities to be upgraded.</p>
2	<p><b>Plan for Development:</b></p> <ul style="list-style-type: none"> <li>• Renovation of existing rooms (5)</li> <li>• Facilities in each room per category of room (5)</li> <li>• Proposed standard of facilities being offered in star or equivalent local standard (minimum of 3 Star etc.) (5)</li> <li>• Plan for development in existing Hotel along with planned capacity and proposed menu (5)</li> <li>• Plans for development of banquet hall for hosting events (5)</li> <li>• Other new services to be introduced (5)</li> </ul>	30	<p>This section to include details of proposed rooms renovation, other facilities, inside and outside of built-up structure. This will demonstrate the thought process of the bidder in making sure that a market-based capacity is developed to ensure a certain level of revenue for being able to pay the agreed amount of rent.</p> <p>Maximum marks will be assigned to bids with the most amount of detail and comprehensiveness in this category.</p>
3	<p><b>Capital Cost Planned:</b></p> <ul style="list-style-type: none"> <li>• Proposed capital expenditure for renovation/up-gradation of existing facilities (5).</li> <li>• Planned capital cost for new developments, including Outdoor and Landscape plan and Technology plan (5)</li> <li>• Availability of funds (investment plan with timing of each investment (5)</li> <li>• Source of funds (5)</li> </ul>	20	<p>Capital expenditure or cost plan to be provided so that it can be ensured that the proposed renovation plan is backed by adequate capital commitment to ensure developments are undertaken as planned. Availability of funds and source is also a requirement in this category.</p> <p>Maximum marks will be assigned to bids with the most amount of capital expenditure commitment by the bidder under each category.</p>

4	<p><b>Outdoor and Landscape plan:</b></p> <ul style="list-style-type: none"> <li>• Plan for development of outdoor facilities: <ul style="list-style-type: none"> <li>○ Parking and access area (1)</li> <li>○ green area and outdoor seating (1)</li> <li>○ other landscaping (1),</li> <li>○ recreational activities (1)</li> <li>○ sports and gymnasium (1)</li> </ul> </li> </ul>	5	This will be important to create an attractive environment for guests and ensure footfall essential for Hotel and other services as additional sources of revenue. Maximum marks will be assigned to bids having the most responsive proposal/plan.
5	<p><b>Staffing Plan:</b></p> <ul style="list-style-type: none"> <li>• Proposed staffing plan (Minimum 4 CVs of Key proposed managerial staff (4)</li> <li>• Level of education background of proposed staff (3)</li> <li>• Experience in hospitality sector (3)</li> </ul>	10	Quality of staff in a hospitality environment is a key to a quality customer experience. Trained, experienced and certified staff proposed for the project will ensure a pleasant stay of guests, which is essential for repeat business and good rating. Maximum marks will be assigned to bids having the most responsive proposal/plan.
6	<p><b>Management Strategy &amp; Marketing Plan:</b></p> <ul style="list-style-type: none"> <li>• Management style/brand (existing or any other) (2)</li> <li>• Marketing Plan/ Strategy for Business development (3)</li> </ul>	5	Management style and approach is necessary to understand how the bidder proposes to run the project. What will be the key strategy, the brand to be used, or some other recognised management approach or style which will ensure the turnaround of the project and a consistent source of revenue throughout the lease term. Maximum marks will be assigned to bids having the most responsive proposal/plan.
7	<p><b>Technology Plan:</b></p> <ul style="list-style-type: none"> <li>• Operational software application, including billing system (2)</li> <li>• Accounting, invoicing, and book-keeping (2)</li> <li>• Online sale/marketing (2)</li> <li>• Dedicated website (2).</li> <li>• Incorporation of eco-friendly technologies in up-gradation and operation such as use of solar energy water conversation and waste management (2)</li> </ul>	10	Without a robust technology implementation plan, no other plans are sustainable. Since there will be a periodic requirement for an independent audit of books, development and operational activities, it will be imperative to adopt and implement proper technology for book keeping, sales management, operations and other aspects such that record keeping and audit trains are readily and easily available for any period to be reviewed by PTDC. Maximum marks will be assigned to bids having the most responsive proposal/plan.
<b>Total</b>		<b>100</b>	

**Important Notice:**

- The relevant documents must be attached for the above evaluation criteria.
- Bidders will be evaluated in detail against each of the 7 attributes mentioned above, and scores will be assigned based on the level of detail and comprehensiveness of the bidder in being able to plan and provide information to the lessor prior to making a decision for award of contract.
- Bidders will need to obtain at least an aggregate of 70% marks to qualify for the competitive financial bidding round.
- Any bidder scoring less than 70% marks will be issued a letter of regret and their Bid Security will be returned immediately along with the letter of regret.
- After the above evaluation is completed and the technical proposals are marked and scored, the lessor will invite responsive and technically qualified bidders to the Open Competitive Financial bidding as also mentioned in Clause 4.2 of the Instructions to Bidders in Section II of this RFP.
- The commitments made by the bidders under each of the above categories will form the essential part of the lease agreement, which will be monitored by third party auditors/engineer from time to time as per the monitoring mechanism stated in Schedule F of the Draft Lease Agreement stated in Section V of this RFP.



## SECTION IV: BID DATA SHEET

Paragraph Ref. #	Description	Detail
	Bid reference number	PTDC/2023/Lease-03
ITB 1	Name of client	PTDC
ITB 1	Name of Project	Leasing out of <b>PTDC Flashman's Hotel, Rawalpindi</b>
ITB 1	Commencement date of provision of bidding documents	<b>16-02-2023</b>
ITB 3	Cost of Bidding	<b>PKR 5,000 non-refundable</b> in the shape of Pay Order or Bank Draft in favour of PTDC.
ITB 4	Bidding procedure	One stage one envelope with Open Competitive Financial Bidding
ITB 6	Clarification on bidding documents	General Manager (Hotels), PTDC HO, Kohsar Block, Pak. Secretariat, Islamabad. E: info@tourism.gov.pk
ITB 8	Language of bid	English
ITB 9	Bid Price/Lease offer	Total Annual Rent for PTDC Flashman's Hotel Rawalpindi
ITB 10	Currency of bid	Pakistan Rupees
ITB 12	Amount of Bid Security	<b>10% of the reserve price indicative for starting the bidding process.</b> Reserved price of the property is mentioned in Clause 34 of this BDS.
ITB 13	Bid validity period	<b>180 days</b>
ITB 16	Last date and time for receipt of bids	<b>07-03-2023 at 11.00 A.M</b>
ITB 19	Date, time and venue of opening of technical bids	<b>07-03-2023 at 12.00 A.M</b> PTDC HO, Kohsar Block, Pak. Secretariat, Islamabad.
ITB 22	Evaluation Criteria	Attached in Section III
ITB 28 & 29	Acceptance of Bid, and Invitation to Open Competitive Financial Bids & Award Criteria	The bidders who have qualified by obtaining <b>minimum 70% marks in the technical bid</b> shall be invited for Open Competitive Financial Bidding on Date and Time as per letter of invitation for this effect by PTDC.

ITB 34	Reserve Price	Reserve price of PTDC Flashman's Hotel Rawalpindi has been set by PTDC to provide a base case for starting open competitive financial bidding and the same have been stated <b>in Annexure-I to this RFP: Reserve Price Schedule.</b>
ITB 33	Security Deposit	Security Deposit will be calculated as an <b>amount equal to the first-year annual lease amount to be held by PTDC</b> as security for the effective performance of provisions mentioned in the Draft lease Agreement by the Lessee, stated in Section V.
ITB 35	Specific description of PTDC property in the bidding documents	The detail of the property is attached in <b>Schedule A of the Draft Lease Agreement in Section V</b>
ITB 36	Duration of lease term	<b>Minimum 20 years, extendable for another similar period subject to mutually agreed terms,</b> and successful periodic review according to monitoring mechanism stated in Schedule F of the Draft Lease Agreement stated in Section V.

**DRAFT/LEASE AGREEMENT**

Between

Pakistan Tourism Development Corporation

And

[Insert Name of the Company]

DATED [X] 2023

This Lease Agreement (the "**Agreement**") is executed at Islamabad on this [X] day of [X] 2023,

#### BETWEEN

- 1) **PAKISTAN TOURISM DEVELOPMENT CORPORATION**, a company incorporated under the repealed Companies Act, 1913 (now Companies Act, 2017) and having its registered office at Kohsar Block, Pakistan Secretariat, Islamabad through its duly authorised representative [please insert name and designation] (hereinafter referred to as the "**Lessor**" or "**PTDC**", which expressions shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its successors-in-interest and permitted assigns) of the First Part;

#### AND

- 2) **[PLEASE INSERT NAME OF COMPANY/FIRM]**, a company/firm incorporated/registered under the Companies Act, 2017/Limited Liability Partnership Act, 2017/ with the Registrar of Firms, having its registered office [please insert address], through its duly authorised representative [please insert name and designation] (hereinafter referred to as the "**Lessee**" or the "**Company**", which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its successors-in-interest and permitted assigns) of the Second Part;

(The Lessor and Lessee/ PTDC and the Company are hereinafter collectively referred to as the "**Parties**" and individually as a "**Party**" as the context so requires.)

#### RECITALS

- (a) **WHEREAS**, PTDC is a company incorporated by the Government of Pakistan to promote and develop the tourism industry in Pakistan and is the owner of a hotel situated at (please insert location) more particularly described in **Schedule A** of this Agreement (the "**Hotel**");
- (b) **AND WHEREAS**, PTDC is desirous of commercialisation of the Hotel by way of delivering the possession of the property for the purposes of developing, financing, managing, operating, maintaining, possessing, controlling and setting up of any other facilities as deemed necessary and agreed in writing by the Parties after the entry into force of this Agreement ("**Proposed Commercialisation**");
- (c) **AND WHEREAS**, the Company in response to the Request for Proposal issued by PTDC on [X] for the Proposed Commercialisation of the Hotel (the "**RFP**") submitted a bid on [X] to undertake, *inter alia*, the development, operations and management of the Hotel ("**Bid**");
- (d) **AND WHEREAS**, subsequent to a competitive bidding process conducted by PTDC, the Company was informed by PTDC *vide* letter dated [X] that its Bid had been accepted for the Proposed Commercialisation of the Hotel;
- (e) **AND WHEREAS**, the Parties are entering into this Agreement so that the Company may carry out the Proposed Commercialisation of the Hotel based on the terms

and conditions set out herein and in a manner that reflects close cooperation between the public and private sector in the development of tourism and service sector in Pakistan; and

**(f) NOW, THEREFORE,** in consideration of the foregoing and relying on the representations, warranties, covenants, undertakings, and agreement set forth in this Agreement, receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties hereby agree as follows:

## **1. Definitions and Interpretation**

In this Agreement, unless the context otherwise requires, words and expressions shall bear the meanings ascribed to them in this **Clause 1.1** hereinbelow. Capitalised terms used but not defined shall have the same meaning as ascribed to them under the RFP Documents:

### **1.1. Definitions**

**"Agreement"** means this Lease Agreement and all schedules, exhibits and attachments hereto which are explicitly incorporated herein (as may be amended, modified, or supplemented from time to time).

**"Applicable Laws"** means all federal, provincial, and local laws of Pakistan and laws of Gilgit Baltistan and Azad Jammu and Kashmir (delete as applicable), and all orders, rules, regulations, executive orders, statutory regulatory orders, decrees, judicial decisions, notifications, or other similar directives issued by any public sector entity pursuant thereto, as any of them may be amended or substituted from time to time, and as may be in force and effect during the subsistence of this Agreement.

**"Bid"** means bid submitted by the Company to PTDC in response to the RFP circulated by PTDC.

**"Business Day(s)"** means any day which is not a public holiday and on which banks are open for normal banking business in Islamabad, Pakistan.

**"Change of Control"** means:

- (a) any change in the entity ownership occurring when any person or company, directly or indirectly, becomes the beneficial owner of voting equity shares of the entity (to the extent of more than 50 percent of the voting shares) or the rights to acquire such shares;
- (b) any direct or indirect sale or transfer of substantially all of the assets of the entity;
- (c) a plan of entity liquidation or an agreement for the sale on liquidation is legally approved and completed; and
- (d) the board or empowered managing committee determines and declares that a change of control has occurred, irrespective of any occurrences described above.

**"Company"** as defined in the preamble.

“**Completion Certificate**” means the certificate to be issued by the Independent Engineer in accordance with **Clause 6.5** certifying completion of Site Development by the Company;

“**Completion Period**” means the period of (X) months from the Lease Commencement Date for the completion of the Site Development pursuant to **Clauses 2.2** and **2.3**.

“**Day**” means a calendar day, unless the Agreement clearly states otherwise, and “**Business Day**” means a business day in Pakistan.

“**Effective Date**” means the date of execution of this Agreement.

“**Encumbrance(s)**” means any encumbrance on an asset, including but not restricted to mortgage, charge, pledge, lien, hypothecation and / or any security interest, assignment, privilege, or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy and physical encumbrances and encroachments thereon.

“**Event of Default**” means, as the context may require: the Company Event of Default; and the PTDC Event of Default.

“**Expiry Date**” means the last day of the Lease Term or any extension thereof pursuant to this Agreement.

“**Fit for Purpose**” shall mean in relation to the services to be performed by the Company hereunder shall be fit and appropriate for the purpose(s) of PTDC's applicable standards and in the event of any discrepancy the most stringent standards, requirements and criterion, as contained in the relevant industry shall apply.

“**Financial Year**” means in respect of each Party, the year commencing from 1st day of July of any calendar year and ending on 30th day of June of the next calendar year.

“**Force Majeure**” bears the meaning attributable thereto in **Clause 25**.

“**Good Industry Practice**” means those practices, methods, techniques, standards, skills, diligence, and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged in respect of the Company under this Agreement and acting generally in accordance with the provisions of the Applicable Laws.

“**Government Authority**” means any government entity, body or authority officially recognized by the Government of Pakistan and includes provincial and municipal entities and bodies.

“**Independent Engineer**” means a person or entity of repute appointed in accordance with **Clause 6.2** and specifically assigned with the functions and duties set out in **Schedule C**.

**"Insurances"** means all insurances, reinsurance, agreements of insurance and reinsurance and / or arrangement for insurance and / or reinsurance in relation to the Hotel and / or any part or portion thereof procured by the Company.

**"Lease Commencement Date"** means the date on which possession of the Hotel is delivered to the Company.

**"Leasehold Rights"** means all the exclusive and irrevocable lease and possession rights, licences, easements, and interests in, under, above and over the Hotel including without limitation the rights to use, uninterrupted access, to the Hotel leased to the Company by PTDC for the term or any extension thereof.

**"Lease Term"** From the Lease Commencement Date, unless terminated earlier, a period of twenty (20) years and three (03) months (grace period) and any further period for which this Agreement may be extended.

**"Maintenance"** means inspection, prevention maintenance, repairs, and service to be carried out by the Company as set out in **Clause 13**.

**"Material Breach"** means non-performance of an obligation required by this Agreement that is so material and important so as to justify any injured Party in regarding the entire transaction covered by this Agreement to be at an end.

**"Hotel"** as defined in the Preamble.

**"Hotel Operations and Management"** means the performance of functions and obligations of the Company as set out in **Clause 7**.

**"Pakistan"** means the Islamic Republic of Pakistan.

**"Party"** means each Party to this Agreement, and "Parties" mean all parties collectively.

**"Performance Guarantee"** means the guarantee to be provided in the format as indicated by PTDC to the Company as set out in **Clause 8** of this Agreement.

**"PTDC"** as defined in the Preamble.

**"Rent"** means the sum of money payable by the Company to PTDC in accordance with **Clause 3.1** of this Agreement.

**"RFP"** shall mean the request for proposal no.: (X)

**"RFP Documents"** shall collectively mean the RFP and the documents submitted by the Company in accordance with the terms and conditions of the RFP.

**"Rupees"** means the currency of Pakistan, being Pakistani rupees.

**"Security Deposit"** means the payment of Rupees [\*] from the Company to PTDC as more fully described in **Clause 3.2**.

**"Site Development"** means the financing, erection, procurement, construction, renovation, reconfiguration, redesigning, completion of the Hotel as set out in **Schedule E**.

**"Staff"** means the employees of the Company hired in connection with the Hotel..

**"Taxes"** shall mean and include all general and special taxes, duties and levies, whether ordinary or extraordinary, including existing and future assessments for property, income, goods or services of any description by whatever name called now or in future which may be lawfully charged, assessed, or imposed upon all or any portion of the Hotel (as the same may be increased or diminished from time to time during the Term) and all improvements contained thereon and/or the Company's business;

**"Termination"** means early termination of this Agreement pursuant to a Termination Notice or otherwise in accordance with the provisions of this Agreement but shall not, unless the context otherwise requires, include the expiry of this Agreement.

**"Termination Date"** means the date specified in the Termination Notice.

**"Termination Notice"** means the notice of Termination by either Party to the other Party, in accordance with the applicable provisions of this Agreement.

**"Utility Charges"** means a charge for such services as electricity, water, satellite television cable, telephone and facsimile communications, internet, sewer, and generator fuel changes.

## **1.2. Clauses, Schedules etc.**

References to this Agreement shall include any Recitals and Schedules to it and references to Clauses, Schedules and Appendices are to clauses of, and schedules and appendices to this Agreement. References to paragraphs are to paragraphs of the Schedules.

## **1.3. Headings**

Headings shall be ignored in construing this Agreement.

## **1.4. Successors**

Any reference to any person shall include its successors and permitted assigns.

## **1.5. Including**

The word "including" and words of similar import when used in this Agreement shall mean "including, without limitation,".

## **1.6. No Presumption**

The Parties hereby acknowledge that each Party and its counsel have reviewed and revised this Agreement and that no rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall be employed in the interpretation of this Agreement (including all of the Schedules and Appendices) or any amendments hereto or thereto.



## 2. Grant of Lease

### 2.1. Assignment and grant of rights

- 2.1.1. In consideration of the mutual covenants and obligations of the Parties hereto and in pursuance of the Bid, PTDC hereby irrevocably and exclusively grants and legally assigns to the Company during the Lease Term and any extension thereof unless terminated earlier according to the terms of the Agreement:
- i. The Leasehold Rights in respect of the Hotel for carrying out the Site Development including the right to perform all activities necessary in relation to the Site Development;
  - ii. The Leasehold Rights in respect of the Hotel for carrying out the Hotel Operations and Management including the right to perform all activities necessary in relation to Hotel Operations and Management obligations; and
  - iii. The rights to demand, collect and appropriate amounts from guests and/or persons for using the Hotel or any part thereof and refuse entry of any guests and/or persons if said amount is not paid.

### 2.2. Delivery of Hotel

- 2.2.1. PTDC shall, on or immediately after the Effective Date, deliver possession of the Hotel to the Company free from all obligations and Encumbrances as follows:
- i. Delivery of the Hotel shall be duly acknowledged in writing by Company on the date the Hotel is handed over by PTDC to the Company;
  - ii. The Hotel shall be delivered to the Company with vacant possession with all buildings, structures, inventories, fixtures, boundary walls, services, utilities, landscape including trees and shrubs intact and on an "as is where is" basis; and
  - iii. The Hotel is to be delivered free from all old liabilities, corporate or any other type of taxes and utility or all other such charges.

### 2.3. Lease Term and Commencement Date

- 2.3.1. The Lease Term shall begin from the Lease Commencement Date for an initial period of twenty (20) years and three (03) months (grace period) and to be further extendable for a similar period on mutually acceptable terms in accordance with this Agreement unless terminated earlier as per the terms and conditions of this Agreement.
- 2.3.2. Upon expiration of the Lease Term or termination of this Agreement in accordance with **Clause 27**, the Leasehold Rights hereby granted shall stand cancelled and revoked forthwith but without prejudice to the rights of PTDC against the Company in respect of any matter or thing occurring or arising prior to such termination or expiration.

- 2.3.3. On expiry of the Lease Term or early termination of this Agreement by PTDC, the Company shall handover to PTDC, vacant and peaceful possession of the Hotel, together with all buildings, structures, boundary walls, utilities, landscape, fixtures and fittings on an "as is where is basis", free from all Encumbrances and other documents relating to the Hotel, within 14 days of such expiry or termination and shall execute such instrument(s) and deeds as PTDC may require the Company to execute.
- 2.3.4. Notwithstanding anything contained herein, the Company recognizes and agrees that its Leasehold Rights over the Hotel shall stand terminated effective immediately on the Expiry Date, or if a Termination occurs, on the Termination Date. PTDC, however, reserves the right to renew, extend or otherwise enter into another agreement on mutually agreed terms and conditions with regards to continuity of the concession or otherwise act in a prudent manner as the situation warrants in the larger public interest.

### 3. Rent and Security Deposit

#### 3.1. Rent

- 3.1.1. In consideration of the Leasehold Rights of the Hotel, the Company shall pay to PTDC in the manner outlined herein, an annual rent/land utilization fee in an amount of Rs. (X) ("**Rent**"), which shall be paid in annual instalments with the first payment to be made in advance of the Lease Term.
- 3.1.2. For the first year Rent, PTDC will allow the Company a three (03) month grace period as an incentive for facilitating the Company in establishing its operations. Therefore, the first year Rent shall be for fifteen (15) months from the start of Lease Term, and thereafter Rent shall be payable on every anniversary after the end of the first fifteen (15) months until the expiry of the Lease Term. Provided always that there shall be an escalation of ten per centum (10%) in the Rent after the first fifteen (15) months and thereafter every one (1) year period as set forth in **Schedule B**.

#### 3.2. Security Deposit

- 3.2.1. Upon the Effective Date, the Company shall transfer a Security Deposit equivalent to the annual Rent to PTDC in the form and manner required by PTDC ("**Security Deposit**") which shall be held by PTDC as security for the faithful performance of every provision of this Agreement to be performed by the Company.
- 3.2.2. The Security Deposit shall be used in accordance with the provisions of this Agreement to ensure that the Company performs its obligations under this Agreement.
- 3.2.3. Provided that the Company fully performs all its obligations under this Agreement, the Security Deposit or any balance thereof shall be returned to the Company within sixty (60) days following the expiration or termination of this Agreement.

- 3.2.4. The amount of Security Deposit required under **Clause 3.2.1** shall be in addition to the Rent mentioned in **Clause 3.1.1**.

#### **4. Mode of Payment of PTDC's Entitlement**

- 4.1. Payment of all money due to PTDC under this Agreement shall be paid in Pakistan Rupees, and be made in the form of cross cheque or demand draft, or pay order issued in favour of "Pakistan Tourism Development Corporation (PTDC)".

#### **5. Site Development**

- 5.1. The Company shall commence the Site Development on the Hotel upon the Lease Commencement Date and the Company shall diligently pursue such work to completion within the Completion Period. All the Site Development shall be at the Company's sole cost and expense. All the Site Development shall be undertaken and completed in a good workmanlike manner and the Company must fully comply with all Applicable Laws and all covenants, conditions and restrictions pertaining thereto.
- 5.2. The Company shall, with prior written consent of PTDC which may not be withheld unreasonably, be entitled, to amend, vary, and/or modify any part of the Site Development as the Company may deem necessary for the due completion of the Site Development in accordance with the spirit and intent of this Agreement.

#### **6. Independent Engineer**

- 6.1. A reputable concern of Independent Engineer shall be appointed for the purpose of determining and ensuring compliance with standards with respect to Site Development and performing the duties mentioned in **Schedule C** hereof.
- 6.2. The procedure for the appointment of the Independent Engineer shall be as follows:
- i. The Company shall, within seven (7) Days of the Effective Date, forward to PTDC a list of three (3) firms/companies/bodies corporate who are eligible and willing to act as the Independent Engineer and PTDC shall have the right in respect of these firms/companies/bodies corporate to seek presentations and such other information from them as it deems necessary.
  - ii. The list shall comprise of independent persons of repute with substantial experience in tasks similar to what has been contemplated herein.
  - iii. PTDC shall, within fourteen (14) days of receipt of the said list, shall:
    - a. select an entity to be the Independent Engineer,
    - b. in consultation with the Company, finalize the terms of appointment of the Independent Engineer, including the required qualifications and job experience of its key personnel.
- 6.3. The fee for the services of the Independent Engineer and the out-of-pocket expenses shall be paid by the Company.

- 6.4. The Independent Engineer shall inspect the Hotel and the Site Development work after every three months. It shall prepare a report of such inspection (the "**Report**") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Site Development plan as set out in **Schedule E** and send a copy thereof to PTDC and the Company within seven (7) days of such inspection.
- 6.5. Any certification of the completion of Site Development in accordance with terms hereof, which is necessary for determining compliance of the Company of its obligations under this Agreement shall be performed by the Independent Engineer. The Independent Engineer shall in accordance with terms hereof be obliged to complete its certification by way of issuance of a completion certificate ("**Completion Certificate**") as soon as reasonably practicable after being requested to do so by the Company and/or PTDC.

## **7. Hotel Operations and Management**

### **7.1. Hotel Operations and Management Obligations of the Company**

- 7.1.1. During the Lease Term, the Company shall operate and manage the Hotel in accordance with this Agreement.
- 7.1.2. The Company shall illustrate the highest level of professionalism, efficiency and dedication and diligently and efficiently conform to all applicable laws, and with Good Industry Practice.
- 7.1.3. The Company shall ensure the performance of seamless day-to-day operations of the Hotel, managing and training Staff, managing vendors and suppliers for the Hotel.
- 7.1.4. The Company shall be responsible for employing the Staff and bearing all costs associated therewith. The Company shall ensure that the Staff possesses the requisite skills and training according to the best business standards, practices and ethics.
- 7.1.5. The Company shall carry out periodic preventive and routine Maintenance of the Hotel.
- 7.1.6. The Company shall establish and maintain the highest standard of services and assistance and facilitation to all its guests.
- 7.1.7. The Company shall provide the equipment infrastructure, including hardware and software, necessary to accomplish the booking and reservation process.
- 7.1.8. The Company must ensure that the Hotel is kept fully equipped to meet all foreseeable circumstances and deliver in accordance with its commitments to guests and customers.
- 7.1.9. The Company must ensure that it adheres and implements all necessary measures to ensure fire safety, environmental and occupational health and safety standards pursuant to the Applicable Laws.
- 7.1.10. The Company shall prevent, with the assistance of the concerned law enforcement agencies, any encroachments on the Hotel.

- 7.1.11. The Company shall provide all sales and marketing services required in order to accomplish the commercial management of the Hotel, including sales, marketing events and public relations.
- 7.1.12. The Company shall be responsible for maintaining the appearance of the Hotel, including but not limited to matters such as the cleaning of the general grounds and gardening services. The grounds cleaning services shall include the sweeping of paths and walkways, disposal and the general cleaning and beautification of the Hotel, as is deemed necessary.
- 7.1.13. The Company is responsible for maintaining a high standard of cleanliness and hygiene on the premises of the Hotel, and keep the Hotel in a clean, tidy and orderly condition, in conformity with the Applicable Laws, permits and Good Industry Practice.
- 7.1.14. The Company shall be responsible for keeping the Hotel reasonably free of pests and rodents.
- 7.1.15. The Company shall be solely responsible for obtaining and maintaining utility services in the Hotel and will pay all the relevant utility charges including electricity, gas, oil, water, sewer and other utilities used in the Hotel during the Term.
- 7.1.16. The Company shall provide security services for the Hotel as is deemed required to the satisfaction of PTDC.

## **8. Performance Guarantee**

- 8.1. The Company shall provide to PTDC a Performance Guarantee equivalent to five per centum (5%) of the total cost of Site Development as provided for in **Schedule E** in the format set out in **Schedule D** to be issued by a Pakistani scheduled bank to the satisfaction of PTDC on the Effective Date which Performance Guarantee shall be held by PTDC as security for the faithful performance by the Company of the Site Development. PTDC shall have the right to invoke the Performance Guarantee after one hundred (100) days from the date of decline in grant of extension of the Completion Period by PTDC upon a written request made by the Company in accordance with **Clause 8.2**, provided further that in the event of non-receipt of written request from the Company for the extension in Completion Period, PTDC would be at liberty to invoke the Performance Guarantee after expiry of Completion Period. Upon completion of Site Development within stipulated time, the Performance Guarantee shall be returned upon a written request by the Company to PTDC.
- 8.2. For each day of delay from the Completion Period and for which no extension is granted within thirty (30) days by PTDC upon written request by the Company, an amount of Rupees Fifty Thousand (Rs.50,000/-) shall be payable by the Company as liquidated and ascertained damages up to a maximum of Rupees Five Million (Rs.5,000,000/-). The liquidated and ascertained damages shall be applicable from the date of decline in grant of extension in Completion Period by PTDC. PTDC may deduct such liquidated and ascertained damages from the Performance Guarantee. Upon completion of Site Development, the balance amount of Performance Guarantee shall be returnable to the Company by PTDC upon

written request. Liquidated damages shall not be applicable in case where Company has been granted specific extension for the completion of its work for Site Development.

- 8.3. Provided that any approval for extension of the Completion Period shall not be withheld unreasonably by PTDC and, in any event, PTDC shall communicate its decision within thirty (30) days of receipt of such request by the Company. Failure to respond within the given timeframe shall result in the request for extension of the Completion Period being deemed approved.

## **9. Other Charges**

### **9.1. Utility Charges**

9.1.1. The Company shall be responsible for and shall make, on a regular and timely basis, payments for all utility charges in respect of the Hotel during the entire Lease Term, including water, electricity, telecommunications, internet, cable charges, municipal, solid waste, and other utilities. All such payments shall be made by the Company directly to the service provider(s) providing such services, failure in respect of which would entitle the services being disconnected as per rules of the service provider, and the Company shall keep and hold PTDC harmless and indemnified in this regard. The Company shall also pay the charges for various servicing and common facilities and up-keep and maintenance of water supply, drainage, sewage disposal and the like to the relevant agencies.

9.1.2. All outstanding charges (utility dues or recovery against other losses) in respect of any obligation arising against the Company under this Agreement are deductible from the Security Deposit and the Company shall not have any objections to it and will only be entitled for the refund of balance Security Deposit. The Company shall be required to replenish the Security Deposit (or part thereof) within 7 Days from being notified by PTDC, of any usage of amount therefrom.

### **9.2. Service Tax/ GST/ VAT and other Taxes**

9.2.1. It is specifically agreed by the Company that the Rent is exclusive of all Taxes levied or charged as per Applicable Laws and the same shall be borne and paid by the Company alone. The Company shall bear, pay and discharge all future amounts, duties, and whatsoever taxes imposed or charged upon the Hotel or upon the occupier in respect thereof from the Effective Date. It is agreed and understood that each Party shall bear their respective income tax/other direct taxes, arising out of the lease granted under this Agreement.

## **10. Use**

### **10.1. Permitted Use**

10.1.1. The Company shall not use, nor permit or suffer the use of, the Hotel for any business or purpose other than solely and specifically for the purposes as set forth herein without the consent of PTDC.

## 10.2. **Uses Prohibited**

10.2.1. The Company shall not do or permit or suffer anything to be done in or about the Hotel which will in any way obstruct or interfere with the rights or residents of the neighborhood of the Hotel nor should the Company allow the Hotel to be used for any unlawful or offensive purpose, nor shall the Company cause, maintain or suffer or permit any nuisance in, on or about the Hotel. The Company agrees that during the Term, the Hotel shall be kept in a clean and wholesome condition, free of any objectionable noises or odours and that all health and safety regulations shall be respected at all times, and truly complied with by the Company. The Company shall not commit nor allow to be committed any waste in or upon the Hotel. If the use permitted under this Agreement shall be a use that may generate excessive noise offensive odours or other offensive impacts which could be a nuisance to surrounding neighborhood, the Company shall be responsible for installing, providing for and maintaining at the Company's sole cost and expense measures to mitigate the nuisance or potential nuisance.

## 10.3. **Operation of Business**

10.3.1. The Company shall conduct its business on the Hotel during the entire Lease Term with the utmost diligence and efficiency.

## 10.4. **Compliance of Laws**

10.4.1. PTDC shall also be under an obligation at its sole cost and expense to faithfully observe and promptly comply with all Applicable Laws now in force or which may hereafter be in force with respect to PTDC allowing the Company to use, occupy and possess the Hotel and conduct business thereon.

## 10.5. **Hazardous Materials**

10.5.1. The Company shall at all times and in all respects comply with all Applicable Laws relating to industrial hygiene, environmental protection or the use, analysis, generation, manufacture, storage, presence, disposal or transportation of any Hazardous Materials as hereinafter defined.

10.5.2. The Company shall not cause or permit any Hazardous Materials to be brought upon, kept, stored, generated, treated, manufactured, produced, disposed of, discharged, released, spilled, or used in, on or about the Hotel by the Company. If the Company breaches the obligations contained herein, or if the presence of Hazardous Materials on the Hotel caused or permitted by the Company results in contamination of the Hotel or any adjacent property, then the Company shall indemnify, defend and hold harmless PTDC from and against any and all claims, judgments, actions, damages, penalties, fines, forfeitures, costs, expenses, liabilities or losses which arise during the Term or any extension hereof, as a result of such breach.

10.5.3. The term "**Hazardous Materials**" in the Clause shall mean any flammable item, explosive, radioactive material, hazardous or toxic substance, waste or related materials. Provided that the term Hazardous Materials shall not include materials necessary for the Hotel Operations and Management (such as LPG

cylinders, kerosene oil, fuel, firewood, etc.) so long as the same are stored and used in accordance with Applicable Laws.

## 11. Covenants

### 11.1. Company Covenants

- 11.1.1. The Company acknowledges that during the Lease Term it shall be bound to act in a manner consistent with its status under this Agreement and it shall be specifically bound by the covenants stated hereinafter.
- 11.1.2. The Company shall procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Hotel.
- 11.1.3. The Company shall be responsible to procure at its own cost, risk and expense and in a timely manner, and secure and maintain the same in full force and effect, all consents, permits, licenses etc., required in relation to:
  - a. Use, occupation, construction, and development of the Hotel;
  - b. The operation and management of the Hotel; and
  - c. Undertake other permitted activities within the Hotel as per the terms of this Agreement.
- 11.1.4. The Company shall send to PTDC by letter and email, a report stating accidents and unusual occurrences if any at the Hotel during the Lease Term. An annual summary of such reports shall also be sent within fifteen (15) days of the closing of each Financial Year. For the purposes of this clause, accidents and unusual occurrences at the Hotel shall include, *inter alia*, the following:
  - a. death or injury to any person;
  - b. damaged or dislodged fixed equipment;
  - c. disablement of any equipment during operation;
  - d. smoke or fire;
  - e. flooding of hotel; and
  - f. such other relevant information as may be required by PTDC, from time to time.
- 11.1.5. Apart from letting out parts of the Hotel for the purposes of Hotel Operations and Management, the Company shall not transfer, dispose of, let, lease, license, sub-license or otherwise alienate the Hotel or any part thereof. The Company shall not do or permit to be done any act whereby PTDC's right, title, interest or entitlement in or upon the Hotel is in any way prejudicially affected, impaired or extinguished. Further, the Company shall not create or allow to subsist any Encumbrance on the Hotel.
- 11.1.6. The Company shall not use the Hotel for any illegal or unlawful purposes and shall not use, permit, or suffer upon the Hotel or any part thereof anything which



may become a nuisance or annoyance or cause damage to the Hotel or to the guest staying at or visiting the Hotel. The Company shall not store at the Hotel, any hazardous, inflammable material or material not permitted to be stored under Applicable Laws.

- 11.1.7. The Company shall, on and from the Effective Date and for the entire Lease Term, keep the Hotel and every part thereof, in good order, condition, and repair. PTDC shall not be responsible to carry out any construction or development, make any improvements or carry out any changes of any kind whatsoever at the Hotel and the Company shall solely be responsible for all works required to be carried out at the Hotel, at its own cost, expenses, risk and liability.
- 11.1.8. The Company shall carry out any and all works including repairs required to be carried out at the Hotel due to damage caused to the Hotel or any part thereof due to any fire or casualty and restore all such portions of and equip them with such fittings, fixtures and equipment as are necessary or proper.
- 11.1.9. The Company shall, at all times during the Lease Term, insure and keep insured, the Hotel, the fittings, fixtures from any and all risks and keep such insurance policies valid and subsisting during the entire Lease Term. All such insurance shall be from a reputed insurance company.
- 11.1.10. The Company shall, at all times during the Lease Term, ensure that the Hotel remain free from all encroachments and shall take all steps necessary to remove encroachments, if any. Upon expiry of the Lease Term, the Hotel shall be handed over by the Company to PTDC free from all encroachments and Encumbrances. Except where permitted by this Agreement, the Company shall not permit any lease/license by action or inaction at the Hotel or permit the Hotel to be used in such a way as to cause nuisance or annoyance or inconvenience to the occupiers of the surrounding area.
- 11.1.11. The Company shall arrange and access at its own cost, expense, risk and liability, all infrastructural facilities like water, power and technology, goods, materials, consumables, things and services etc., as may be necessary or required by it at the Hotel and make arrangements and backup arrangements of the same. PTDC is neither required to nor shall be obligated to provide any facilities to the Company at the Hotel other than specifically set out in this Agreement.
- 11.1.12. The Company shall be solely responsible to PTDC for observance of all provisions of this Agreement and compliance with all Applicable Laws by itself, its employees, agents, permitted users/occupants, contractors and representatives and their employees and any other person acting for or under or on behalf of any of the aforementioned as fully as if they were the acts or defaults of the Company alone. The Company shall not do or omit to do any act, deed, matter or thing, which may, in any manner, be in violation of any of the provisions of this Agreement, or Applicable Law.
- 11.1.13. The Company shall observe, perform and abide by or otherwise comply with Applicable Laws in so far as the same are applicable to the Company, including to the provisions of all Applicable Laws in relation to food, fire safety

and environment, in each case including the rules and regulation made thereunder, and the provisions laid down under any other Applicable Law, in respect of the manner and method of running a hospitality establishment.

- 11.1.14. The Company shall be liable for and shall indemnify, protect, defend and hold PTDC, harmless and indemnified, from and against any and all demands, claims, suits and causes of action and any and all liability, costs, expenses, settlements and judgements arising out of or in relation to the failure or non-compliance with the terms of this Agreement, the RFP Documents, Applicable Law, and the discharge of its obligations under this Agreement or Applicable Laws.
- 11.1.15. The Company shall be responsible to keep the Hotel and the entire area forming part of it together with its fixtures and other installations including, if applicable, air-conditioning plant, lifts, electrical installations, boilers, gas installations and other assets, in a safe, sound and working condition. The Company shall also be responsible to carry out effective Maintenance and repairs, annual or special, as may be required from time to time, including operation of all services at its own cost, including Maintenance, repairing and replacement of fixtures, fittings and equipment.
- 11.1.16. The Company shall be further responsible for the Maintenance of lawns and open spaces in good condition, at its own cost.
- 11.1.17. The Company shall employ throughout the Lease Term, qualified Staff to manage and operate the Hotel totally at its own costs and liabilities.
- 11.1.18. The Company shall maintain harmony and good industrial relations among the personnel, labour, vendors, contractors, sub-contractors, engaged or employed in connection with the performance of its obligations under this Agreement and shall be solely responsible for compliance with all labour laws and liable for all possible claims and employment related liabilities of the Staff employed in by the Company or its vendors contractors or sub-contractors in relation with the operation, management and, if any, construction, and development of the Hotel, during the term of this Agreement and that in no case and for no purposes whatsoever, shall PTDC be treated as the employer in this regard. The Company hereby agrees to indemnify and keep and hold PTDC, harmless and indemnified against any and all claims, damages, expenses or losses incurred or caused to be incurred or suffered by them in this regard.
- 11.1.19. The Company shall handover the actual, vacant and peaceful occupation of the Hotel to PTDC, free and clear from all Encumbrances and encroachments, and in fully operational and functional condition as required under **Clause 28** of this Agreement, upon the expiry of the Lease Term or upon early termination of this Agreement, in accordance with the provisions hereof.
- 11.1.20. The Company shall receive and deliver goods and material required by it at the Hotel only at the areas designated for it. It shall keep and maintain the Hotel in a neat manner and ensure that all trash, refuse, and the like, are kept in covered bins/ cans, to ensure hygiene and cleanliness of the Hotel,

compliances of Applicable Laws in respect of waste management & disposal at all times, during the Lease Term.

- 11.1.21. The Company shall make its own arrangements for daily disposal of all waste generated out of the Hotel at the waste disposal sites approved by the concerned Government Departments/ Authority and in accordance with Applicable Laws. Disposal of waste on or around non-approved sites or in violation of Applicable Law shall make the Company liable to fines/penalties prescribed in the Applicable Laws. The garbage disposal system would be in conformity with the latest standards and norms.
- 11.1.22. The Company shall obtain and maintain requisite health license from the concerned Government Departments/ Authority for preparation of food articles within the Hotel, and dish washing will be done only in the kitchen area and nowhere else.
- 11.1.23. The Company shall not employ or permit to be employed any minor or, allow into the Hotel any person suffering from any contagious or infectious disease or epidemic.
- 11.1.24. It shall maintain environmental hygiene and proper sanitation of the Hotel including water closet, toilet etc. at all times during the Term.
- 11.1.25. It shall undertake day to day Maintenance, watch and ward, sanitation of the Hotel including routine and periodical Maintenance of electrical and other installations and engage adequate number of trained personnel for the same.
- 11.1.26. Subject to **Clause 11.2.6**, the Company shall obtain electric and water connections and shall bear the electric and water consumption charges along with completing all formalities like deposits of the new connections, fee etc. The Company shall not exceed the sanctioned electric load for the Hotel and if any additional load is required by the Company over and above that what is installed, the same shall be requisitioned at the Company's cost.
- 11.1.27. The Company shall comply with all the labour laws, welfare legislations etc.
- 11.1.28. Upon reasonable notice, afford access to the Hotel to the authorized personnel of PTDC (including PTDC representative), and any Government Authority having jurisdiction, including those concerned with safety, security or environmental protection, to inspect the Hotel and to investigate any matter within their authority and provide to such person's assistance reasonably required to carry their respective duties and functions.
- 11.1.29. Provide all necessary assistance to PTDC representative, and any expert engaged, as may be reasonably required in the performance of their respective duties and services;
- 11.1.30. Maintain its corporate existence and its rights to carry on operations of its business;
- 11.1.31. Not permit, without the prior approval of PTDC, any Change of Control of the Company; and

11.1.32. Not revoke or extinguish, under any circumstance, the usufruct of the Hotel created in favor of PTDC prior to the Expiry Date or the Termination Date, whichever is earlier.

## 11.2. PTDC Covenants

11.2.1. PTDC acknowledges that during the Lease Term it shall be bound to act in a manner consistent with its status under this Agreement and it shall be specifically bound by the covenants stated hereinafter.

11.2.2. PTDC shall handover possession of the Hotel, free from all Encumbrances, to the Company.

11.2.3. Provided that the Company fully complies with and promptly performs all of the terms, covenants and conditions of the Agreement on its part to be performed, and promptly and timely makes payment of all sums due hereunder, PTDC shall ensure peaceful use of the Hotel by the Company under and in accordance with the provisions of this Agreement without any let or hindrance from PTDC or any Government Authority or persons claiming through or under it/them.

11.2.4. PTDC shall not do, perform or omit to do, perform any act or thing which will in any manner undermine the Leasehold Rights and the rights to erect, reconfigure, procure, construct, finance, develop, operate, manage, maintain, and control the Site Development.

11.2.5. PTDC has all necessary powers to commercialize the Hotel and in respect of all other matters, which are the subject of this Agreement and has the right to transfer such of these powers to the Company as may be required to uphold the terms and obligations of this Agreement.

11.2.6. PTDC shall facilitate the Company in obtaining electric and water connections for the Hotel.

11.2.7. PTDC shall be solely responsible for and shall bear and discharge all Taxes, unpaid utility bills and all other charges or liabilities of any nature whatsoever for or in relation to the Hotel that pertain to the period prior to the Effective Date;

- i. After the Effective Date, PTDC shall provide reasonable cooperation to the Company in obtaining the requisite, permits, consents that may need to be issued in the name of PTDC or, otherwise; and
- ii. Perform its obligations as set forth in this Agreement in accordance with Applicable Laws.

## 12. Representations and Warranties

### 12.1. Representations and Warranties of the Company

12.1.1. The Company represents and warrants to PTDC the following:

- i. The Company is a company duly incorporated under the Companies Act, 2017 and has full power to carry on its business and to own its property and assets;
- ii. The Memorandum and Articles of Association of the Company incorporates provisions which authorize, and all necessary corporate actions have been taken to authorize, the Company to own its assets, carry on its business and operations as it is now conducting and sign and deliver and perform the transactions contemplated in this Agreement, and to perform its obligations herein;
- iii. The Company has full power and authority to undertake the Hotel Operations and Management and all related, ancillary and incidental activities;
- iv. The Company has all the necessary corporate as well as statutory approvals, permissions and other actions (a) to authorise the execution, delivery and performance by it of this Agreement each of such actions is in force and effect; and (b) for carrying out its operation;
- v. The Company shall pay PTDC's entitlements as provided herein at the times and in the manner mentioned herein;
- vi. This Agreement constitutes legal, valid, and binding obligations of the Company enforceable in accordance with their respective terms;
- vii. The execution, delivery and performance of its obligations under this Agreement by the Company, subject to any approval or consents, does not and shall not, constitute a violation of any statute, judgment, order, decree, regulation or rule of any court, governmental authority or arbitrator of competent jurisdiction applicable or relating to it, its assets or its business;
- viii. The Company is subject to the Laws of Pakistan with respect to this Agreement and the Company hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;
- ix. There are no actions, suits, proceedings or investigations pending or to the Company's knowledge threatened against it at law or in equity before any court or before any judicial, quasi-judicial or other authority, the outcome of which may constitute a Company Event of Default or which individually or in the aggregate disrupt or interfere with the Company's possession and management of the Hotel and prevent or prohibit the Company from performing its obligations under this Agreement;
- x. No steps have been taken by the Company nor have any legal proceedings been started or threatened for the dissolution or winding-up of the Company or for the appointment of a receiver, liquidator, judicial manager or similar officer in respect of all or any part of the business or assets of the Company, the outcome of which may constitute a Company Event of Default, and it has no knowledge of any violation or default with respect to any order, writ, injunction

or any decree of any court or any legally binding order of any Government Authority which may result in a Company Event of Default;

- xi. No event has occurred which constitutes, or which with the serving of notice and or the lapse of time and or relevant determination would constitute a Company Event of Default under this Agreement or any agreement or instrument by which the Company or any of its assets is bound or affected;
- xii. No representation or warranty by the Company contained herein or in any other document furnished by it to PTDC or to any other Government Authority contains or shall contain any untrue statement of material fact or omits or shall omit a material fact necessary to make such representation or warranty not misleading;
- xiii. The Company has not nor shall commit, fraud, nor provide any financial information with the intent of misleading PTDC;
- xiv. The Company will use the Hotel only for the use permitted in accordance with the provisions of this Agreement;
- xv. No bribe or unlawful payment or illegal gratification has been or shall be paid in cash or through any medium by or on behalf of the Company to any person, including any officer or employee of PTDC;
- xvi. The Company is in compliance in all respects of all Applicable Laws including those which are necessary or desirable in respect of the conduct of its business, the ownership of assets, in relation to the Hotel;
- xvii. The Company has completed its due diligence in respect of the Hotel and has satisfied itself with the title of PTDC; and
- xviii. The Company has inspected the Hotel and has satisfied itself in all respects in relation thereto including as to the area, location, etc. and PTDC shall not be held responsible in any manner whatsoever in relation to the same.

## 12.2. **Representations and Warranties by PTDC**

12.2.1. PTDC represents and warrants to the Company as follows:

- i. PTDC has the valid ownership and possession of the Hotel and it is authorised to lease and provide the possession and Hotel Operations and Management rights to the Company;
- ii. It has taken all necessary action to authorize the execution, delivery and performance of this Agreement, and to perform its obligations herein;
- iii. This Agreement constitutes legal, valid and binding obligations of PTDC enforceable in accordance with their respective terms;
- iv. The execution, delivery and performance of its obligations under this Agreement by PTDC does not infringe any statute, judgment, order, decree, regulation or rule

- of any court, governmental authority or arbitrator of competent jurisdiction applicable or relating to it or its assets;
- v. PTDC undertakes that the Company shall peacefully, lawfully and freely hold, occupy, use, operate and enjoy the Hotel during the Lease Term;
  - vi. No third party shall have the right or claim to the Hotel for the duration of the Agreement;
  - vii. No suits or investigations or other legal proceedings are pending or threatened against it in respect of the Hotel, at law or in equity, before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may constitute an Event of Default by PTDC, and it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Authority which may result in an Event of Default by PTDC;
  - viii. The Hotel is free of any lien, charge, Encumbrances or hypothecation whatsoever, whether financial or legal or any other restraint;
  - ix. No event has occurred which constitutes, or which with the giving of notice and or the lapse of time and or relevant determination would constitute an Event of Default by PTDC under this Agreement or any agreement or instrument by which PTDC or any of its assets is bound or affected; and
  - x. No representation or warranty by PTDC contained herein or in any other document furnished by PTDC to the Company contains or will contain any untrue statement of material fact or omits or will omit a material fact necessary to make such representation or warranty not misleading.
- 12.3. In the event that any of the representations or warranties made or given ceases to be true or stands changed, the Party who had made such representation or given such warranty shall promptly notify the other Party of the same.
- 12.4. The representations and warranties set out hereinabove shall survive the signing and delivery of this Agreement until the payment of all monies due under this Agreement, as if repeated by reference to the then existing circumstances.

### **13. Repairs & Maintenance**

- 13.1. During the Lease Term, the Company shall unconditionally undertake at its sole costs and expense all and any Maintenance and repair works and highest performance standards and workmanship, including major repairs (structural or otherwise), Maintenance of day-to-day items, ordinary wear and tear and degradation and shall take all necessary remedial actions and rectification of any damage or defects in the Hotel and shall keep the Hotel Fit for Purpose.
- 13.2. The Company shall ensure that the workmanship and performance standards in the Hotel are kept in first class condition, including but not limited to, prompt redressal of customer complaint, plumbing, electrical, structural, mechanical systems, roof, stairs, doors, floors, windows, weatherproof integrity, ceiling, air-conditioning, Wi-Fi, outside fencing etc.

- 13.3. In the event that PTDC determines or obtains knowledge of any defect or damage which requires repairs and remedial work, and the Company has failed to perform such repair and remedial work, PTDC will immediately direct the Company to repair the defect or damage. In case of failure by the Company, PTDC may procure and allocate human resource to remedy such defect or damage and the Company undertakes that it shall reimburse within seven (7) days all related costs incurred to PTDC plus 10% of the cost as penalty for the work performed. Failure in making timely reimbursement payment within aforesaid will entitle PTDC to draw the same amount from Security Deposit and in such case the Company shall without delay deposit the same amount as Security Deposit to restore the previous level.

#### **14. Ownership of the Hotel**

- 14.1. The Hotel and any and all construction, development, structures, additions, modifications and expansions at the Hotel carried out by the Company shall, at all times be owned by PTDC and vest solely with PTDC, together with all installations of immovable nature, and execution of this Agreement shall in no manner be interpreted to mean any transfer or alienation of such ownership rights, interest or entitlements in any manner by PTDC to the Company.

#### **15. Sublease and Assignment**

- 15.1. Subject to clauses herein, the Company shall not directly or indirectly transfer, assign, sell, mortgage, pledge, assign, hypothecate, encumber or part with hotel or any part thereof and/or the benefits arising out of this Agreement or any part thereof, or sublet, underlet or part with the possession of the Hotel or any part thereof without obtaining prior written approval from PTDC at any time during the Lease Term. Any such act, in the absence of a prior written approval, shall be considered a material breach of this Agreement by the Company.
- 15.2. The Company may, with the written approval of PTDC, sublease certain parts of the Hotel for any activity relating to development, promotion of tourism. The prior written approval to be obtained from PTDC shall not be withheld unreasonably and, in any event, PTDC shall communicate its decision within thirty (30) days of receipt of such request by the Company. Failure to respond within the given timeframe shall result in the request being deemed approved.

#### **16. Rights of PTDC**

- 16.1. PTDC shall at all times, be deemed to be in the ownership of the Hotel, and PTDC, through its authorized officers, employees, representatives and agents shall, throughout the Lease Term, have the right:
- i. to enter into the Hotel at any time in the case of an emergency.
  - ii. upon giving a prior notice of forty-eight (48) hours to enter upon and inspect:
    - a. the Hotel;
    - b. the services provided at the Hotel;
    - c. the fixtures installed at the Hotel; and



d. the offices of the Company at the Hotel;

## **17. Hotel Insurance**

17.1. The Company shall maintain at its expense and costs, the types and amounts of insurance coverages required to be maintained by it from financially strong and reputable insurance companies. The insurances required shall include property insurance, product liability insurance, and such other insurances which are commonly required in similar industry. PTDC shall be included as an additional insured on any property and liability insurance policies covering the Hotel.

## **18. Branding**

18.1. The Hotel or any part thereof may be branded in any manner to advertise, display or reflect the name or identity of the Company. The Company may, in any manner, use the name or entity of the Hotel to advertise or display its own identity, brand equity or business interests, as may be necessary in the normal course of business along with the name of PTDC. For the avoidance of doubt, it is agreed that the Company shall display the name/logo of PTDC at a spot where other public notices are displayed.

## **19. Commercial Operation of the Hotel**

19.1. The Company has the right and power to do all things reasonably necessary for the successful commercial operation of the Hotel including, but not limited to:

- i. Establishing pricing policies and related terms and conditions for all guest rooms and function facilities;
- ii. Resolving all pricing and billing issues with guests, visitors and referring bodies; and
- iii. Providing all booking and reservation systems required for the Hotel.

## **20. Hotel Regulations**

20.1. The Company shall establish internal rules and regulations for the Hotel, in accordance with Applicable Laws, which must be made readily available to all guests and visitors, and with which all guests and visitors must comply.

20.2. The rules must be in accordance with the Applicable Laws including but not limited to 'No Smoking Indoors in Public Places'.

## **21. Notice Requirement**

21.1. Except as provided in **Clause 5** hereinabove, no sub-contractor or person may perform any work or provide any service within or to the Hotel, without prior intimation to PTDC at least seven (7) days before the performance of the work and/or provision of the service.

## **22. Insurance over Guests, Visitors and Staff**

22.1. The Company shall insure against accidents and injury to Staff, guests and visitors. Such insurance shall continue for the duration of this Agreement.

## **23. Cost and Expenses**

- 23.1. All cost and expenses related to the legal, technical and financial due diligence, legal documentation fees, government charges and ancillary expenses incurred by any Party, including the cost of attorney fees and expenses, shall be borne by the Party that incurred them.

## **24. Indemnity**

- 24.1. The Company shall defend and indemnify and keep PTDC, its directors, officers, and employees against and hold PTDC and its directors, officers, and employees indemnified and harmless at all times after the date hereof, from any and all losses incurred, suffered, sustained or required to be paid, directly, or indirectly, by or sought to be imposed upon, PTDC and its directors, officers, and employees, for all claims, including those of personal injury or death to persons or damage to Hotel arising out of negligent or intentional act or omission of the Company in connection with this Agreement.

## **25. Force Majeure**

### **25.1. Inability to perform**

- 25.1.1. Neither PTDC nor the Company shall be in breach of its obligations under this Agreement if it is unable to perform its obligations under this Agreement or any part thereof as a result of the occurrence of any Force Majeure acts.

### **25.2. Force Majeure Acts**

- 25.2.1. A "Force Majeure" act shall mean an act not within the control of the Party affected, which that Party is unable to prevent, avoid or remove and shall include:
- i. War, hostilities (whether war can be declared or not), invasion, act of foreign enemies, rebellion, revolution, insurrection, military or usurped power, civil war, terrorism, civil riots, provincialism;
  - ii. Ionizing radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste, or from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
  - iii. Natural catastrophe including, but not limited to earthquakes, floods, subsidence, lightning, an epidemic or pandemic, or any operation of the forces of nature against which a reasonable/ experienced contractor could not reasonably have been expected to take effective precautions; or
  - iv. Riot and disorders, strike, lockout, lockdown, labour unrest, or other industrial disturbances (affecting the performance of this Agreement) which are not the fault of the Company, its contractors, and which cause or can reasonably be expected to cause, either party to fail to comply with its obligations hereunder.

### **25.3. Notice**

- 25.3.1. If an act of Force Majeure occurs by reason of which PTDC or the Company is unable to perform its obligations under this Agreement or any part thereof, PTDC or the Company shall immediately inform the other Party in writing of the

occurrence of such act of Force Majeure, its consequences, and the cessation of such event.

#### 25.4. **Non-reliance**

25.4.1. Neither Party shall be entitled to rely upon the provisions of **Clause 25.2** if both Parties reasonably determine that an act of Force Majeure has not occurred. If either Party does not agree that an act of Force Majeure has occurred, then the dispute shall be dealt with in accordance with **Clause 27** of this Agreement.

#### 25.5. **Frustration**

25.5.1. If an act of Force Majeure continues for a period of six (6) months and either party reasonably considers that such an act of Force Majeure is widespread throughout Pakistan and of such severity or to be continuing for such a period of time that it effectively frustrates the original intention of this Agreement, then this Agreement may be terminated by either party.

#### 25.6. **Extended Completion Period**

25.6.1. Provided that the party concerned has complied with **Clause 25.3** hereof it shall not be liable for any delay in the performance of its obligations under this Agreement and the Completion Period, as the case may be extended for a period to compensated the loss incurred as a result of the delay caused by such act of Force Majeure, if the Parties do not agree as to the period of the extension, the dispute shall be dealt with in accordance with this Agreement.

### 26. **Events of Default**

#### 26.1. **Events of default by the Company**

26.1.1. The occurrence of any or more of the following events shall constitute a default (each, a "**Company Event of Default**") and breach of this Agreement by the Company:

- i. Failure by the Company to make any payment of the Rent, or any other payment due to PTDC as and when due where such failure should continue beyond a period of sixty (60) days;
- ii. The Company abandons the Hotel for sixty (60) days or more at any time during the Lease Term or its extension thereof unless such abandonment is in accordance with the Applicable Laws or at the advice of the architect; or
- iii. The Company commits any material breach of the terms and covenants herein which is not remedied within sixty (60) days.

#### 26.2. **PTDC's right to terminate**

26.2.1. In the event of any such default by the Company, PTDC shall give a Termination Notice to the Company specifying the default, and requiring the Company to remedy, correct or make good the default within a period of not more than three (03) months from the date of such notice or such other period as may be agreed in writing by the Parties, failing which PTDC may terminate this

Agreement and thereafter neither party shall have any obligations toward each other under or in relation to this Agreement except those provided in this Agreement. In case of Company's Event of Default, PTDC shall be compensated with reasonable damages owed to it in accordance with the Applicable Laws. Provided that no indirect or incidental damages shall be payable by the Company.

### 26.3. **Events of default by PTDC**

26.3.1. The occurrence of any one or more of the following events shall constitute a default (each a "**PTDC Event of Default**") and breach of this Agreement by the PTDC:

- i. PTDC has made any statement, representation or warranty herein which proves to have been incorrect, in any respect, when made or when deemed to have been made and such failure or incorrect statement, representation or warranty has a material adverse effect on the Company's ability to perform its obligations under this Agreement.
- ii. PTDC commits any material breach of any of its obligation under this Agreement, which is not remedied within sixty (60) days.

### 26.4. **Company's right to terminate**

26.4.1. In the event of a PTDC Event of Default, the Company may after serving a Termination Notice in writing to PTDC specifying the PTDC Event of Default, and requiring PTDC to remedy, correct or make good the default within a period of not more than three (03) months from the date of such notice or such other period as may be agreed in writing by the Parties, failing which the Company may terminate this Agreement. In case of PTDC's Event of Default, the Company shall be compensated with reasonable damages owed to it in accordance with the Applicable Laws. Provided that no indirect or incidental damages shall be payable by PTDC.

## 27. **Dispute Resolution**

### 27.1. **Amicable Settlement**

27.1.1. In the event that any misunderstanding, disagreement or dispute shall arise concerning any aspect of this Agreement, including any dispute touching the validity or the construction, meaning or effect of this Agreement, or the rights or liabilities of the Parties hereunder, or any matter arising out of the same, or connected herewith, the Parties hereby covenant that, in keeping with the cordial relationship of good faith and mutual trust that exists between them, they will exercise earnest efforts and use their best endeavours to resolve any such misunderstanding, disagreement or dispute in an amicable manner so as to eliminate any discord and avoid any conflict.

### 27.2. **Arbitration**

- 27.2.1. In the event that such dispute, difference or question cannot be resolved amicably between the Parties, then such dispute may be referred by any party giving a notice in writing to the other party requiring the dispute to be settled by arbitration.
- 27.2.2. The arbitration shall be in accordance with the Arbitration Act, 1940. The Arbitration proceedings shall be held in Islamabad, Pakistan and the Agreement shall be construed in accordance with the Laws of Pakistan.
- 27.2.3. Any arbitration shall be conducted in the English Language. The Party in whose favor the arbitration award is granted shall be entitled to recover costs and expenses of administration of the arbitration proceedings.
- 27.2.4. The Parties agree that the number of arbitrators shall be three (3), one (1) arbitrator to be appointed by PTDC, one (1) to be appointed by the Company, and the third arbitrator, being the Chairman shall be appointed by the arbitrators appointed by the Parties hereto and in the absence of agreement as to the appointment of the Chairman, the Court would appoint the Chairman of the Arbitral Tribunal who must not be a person having been directly or indirectly involved in a prior or ongoing arbitration with either Party or associated with either of the Parties.
- 27.2.5. The Parties bind themselves and acknowledge and accept as final in all respects any decision or award of an arbitration.

## **28. Handing Over Occupation; Consequences of Expiry or Termination**

- 28.1. Simultaneously with the expiry of the Lease Term or on early termination of the Agreement under the provisions of this Agreement:
- i. The Company shall pay all arrears, if any, of all unpaid Rent and other payments and charges in relation to the Hotel payable by the Company under this Agreement;
  - ii. The Company shall return possession of the Hotel to PTDC together with all buildings, structures, boundary walls, utilities, landscape, fixtures and fittings, and any and all other improvements to the Hotel on an "as is where is basis" whereupon the Company's interest hereunder shall cease with immediate effect;
  - iii. Notwithstanding the above, the Company shall grant PTDC a right of first refusal ("**Right**") to purchase the equipment, appliances, and inventories within the Hotel premises and rights to use any services enjoyed by the Company in connection with the Hotel upon expiry and/or termination of the Lease Term. It is agreed between the Parties that should PTDC choose to exercise its Right under this Lease Agreement, the valuation of the aforesaid equipment, appliances, and inventories shall be on a Fair Value basis.
  - iv. The Company shall, and shall ensure that all persons, vacates the Hotel within a period of seven (7) days from the date of expiry of the Term or termination of the Agreement, whichever is earlier and shall ensure that its officers, employees and agents remove themselves and their articles, belongings and things from the Hotel and the Company shall hand over to PTDC, actual, vacant, and peaceful

occupation of the Hotel in working condition (reasonable wear and tear excepted) and modifications made in accordance with the terms of this Agreement. The Company shall not remove any of fixtures or permanent fittings and fixtures, removal of which may cause damage to the Hotel, unless otherwise specifically required by PTDC. In case of any damage to the Hotel or to any permanent fixture or fitting therein, the Company shall be obliged, at its cost, to repair any such damage and restore the Hotel to a good and tenantable state.

- v. In the event, for any reason whatsoever, the Company fails to or refuses to or delays in vacating the Hotel within the time period set out in this Agreement, then without prejudice to such rights, PTDC has under this Agreement or under Applicable Law or otherwise including the right to forfeit the Security Deposit (if applicable at such time of termination), the Company shall be obligated to pay to PTDC in advance, on a weekly basis, 15% (fifteen percent) of the Rent at the time of such failure to vacate the Hotel for such period for which it overstays at the Hotel.
- vi. Subject to the Company having handed over actual vacant occupation of the Hotel upon expiry or early termination of the Lease Term and the Company having paid and discharged all its payment obligations to PTDC in full (including without limitation all unpaid Rent and accrued interest thereon and all other amounts due and payable) under this Agreement, PTDC shall return the balance Security Deposit, if any (and if applicable at such time of termination), to the Company within a period of sixty (60) days from the date of discharge by the Company of the aforesaid payment obligations to PTDC.
- vii. Upon termination, PTDC has the right to allot the Hotel as per its internal policy/decision.

## 29. Notice

- 29.1. Every notice or demand or other communication, including change of address or contact detail, under or in connection with this Agreement shall be in writing, in English and delivered by courier, by facsimile, or by hand to the address or addresses specified below:

If any communication is to be sent to PTDC:

[PLEASE INSERT]

Fax: [\*]

If any communication is to be sent to the Company:

[PLEASE INSERT]

Fax: [\*]

## 30. Reporting

### 30.1. Annual Reports and Close-out Audit

- 30.1.1. As soon as available, but not later than sixty (60) days following the last day of the Financial Year, the Company shall submit a detailed progress report to

PTDC, covering all major activities during the year with respect to Hotel Operations and Management (including but not limited to information regarding capital improvements, other significant matters, and operations of the Hotel). The Annual Report shall include a comparison of such items to the corresponding values for the preceding year and a listing of any significant operating problems along with immediately planned remedial actions, and a brief summary of major activities planned for the next reporting period i.e., next year and compliance with already informed planned activities of last year and the extent and reasons for deviation and the planned remedial action.

30.1.2. Within three months prior to the Expiry Date or immediately upon the issuance of a Termination Notice, the Company shall, at its own cost, appoint an Independent Auditor to conduct an audit of the Hotel, its assets, fixtures, fittings, inventories, equipment etc. ("**Close-out Audit**") and submit a report of the same to PTDC.

### 30.2. **Litigation, Permit Lapses**

30.2.1. Upon obtaining knowledge thereof, the Company shall promptly notify PTDC in writing of:

- i. Any Event of Default under any clause of the Agreement;
- ii. Any litigation, claims, disputes or actions, threatened or filed, concerning the Hotel;
- iii. Any refusal or threatened refusal to grant, renew or extend (or any action pending or threatened that might affect the granting, renewal or extension of) any license, permit, warranty, approval, authorization or consent relating to the Hotel; and
- iv. Any dispute with any Government Authority relating to the Hotel.

### 30.3. **Other Information**

30.3.1. The Company shall promptly submit to PTDC any material information concerning new or significant aspects of the Hotel activities and, upon PTDC's request, shall promptly submit any other information concerning the Hotel.

30.3.2. Within thirty (30) days after submission of each annual or other reports, PTDC shall meet with the Company to review and discuss the report and any other aspects of the Hotel operations that PTDC may wish to discuss.

## 31. **General Limitations**

31.1. The Company or any employee, representative, contractor or other agent of the Company is prohibited from taking the specified actions with respect to the matters indicated below:

- i. Sell, lease, pledge, mortgage, convey or make any license, exchange or other transfer or disposition of the Hotel or assets of PTDC.

- ii. Make, enter into, execute, amend, modify or supplement any contract or agreement:
  - a. On behalf of, in the name of, or purporting to bind PTDC; or
  - b. That prohibits or otherwise restricts the Company's right to assign such contract or agreement to PTDC at any time.
- iii. Take or agree to take any action that materially varies from the Agreement.
- iv. Create, incur, or assume any lien upon the Hotel.
- v. Engage in any other transaction on behalf of PTDC or any other person or entity not expressly authorised by this Agreement or that violates the Agreement, or any applicable law.

### **32. Choice of Law and Jurisdiction**

- 32.1. This Agreement shall be governed by and construed in accordance with the Laws of Pakistan. The Courts of Pakistan at Islamabad shall have exclusive jurisdiction.
- 32.2. No court proceedings or action or suit of any kind shall be commenced in the courts unless and until the Parties have complied with the provisions of **Clause 27** hereof and the Parties shall be entitled to apply for a stay of such proceedings in the event that the provision is not complied with.

### **33. Variation in writing**

- 33.1. No provisions of this Agreement may be voided, amended, waived, discharged, absolved, or terminated orally nor may any default, breach, or omission of any provision of this Agreement be waived or condoned orally.
- 33.2. Any alteration, amendment to, or variation in this Agreement, whether in whole or part at any time shall only be effective by an agreement in writing signed by the proper authorized representative of the Parties.

### **34. No Partnership**

- 34.1. The Parties remain independent contracting Parties. Neither this Agreement, nor any performance under it, creates a relationship of principal and agent, or joint venture, or partnership, or employer employee, or any similar relationship.

### **35. Miscellaneous**

- 35.1. The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision unenforceable, invalid, or illegal. The Parties intend that the remaining provisions shall constitute the Agreement between them.
- 35.2. This Agreement is the entire agreement of the Parties, and replaces all prior understandings, agreements, conditions, reservations, or representations, oral or written.
- 35.3. All communication between the parties shall be conducted in the English language and all notices if in any other language shall be accompanied by a duly



certified translation in English. In the event of a conflict between the English text and the text in any other language, the English text shall prevail.

- 35.4. A waiver by either party of any default or non-performance required under this Agreement shall not be construed as a waiver of any prior or subsequent default or breach of the same or any other provision of this Agreement. The exercise of any right, power or remedy provided by this Agreement or by law, shall not act to the exclusion of any other right, power, or remedy.
- 35.5. This Agreement is binding upon the heirs, assigns and successors in interest of the Parties.
- 35.6. This Agreement shall be lodged for registration by the Parties and the Parties shall admit execution thereof. All stamp duty and registration charges and related fees, costs, charges and expenses in respect of this Agreement and/or any other document pertaining to the license granted hereunder or any other charges by whatever name called, shall be borne and paid by the Company, alone.
- 35.7. This Agreement may be executed in any number of counterparts. This has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

IN WITNESS WHEREOF this Agreement has been executed by the Parties on the date first written above.

For PTDC Name: [X]	For the Company Name: [X]
Designation: [X]	Designation: [X]
Signature:	Signature:
Date:	Date:
Witnessed By:	Witnessed By:
CNIC No:	CNIC No:

Schedule A  
Description of property

**PTDC Flashman's Hotel Rawalpindi**



The Flashman's Hotel is a land mark of Rawalpindi and the history of the subcontinent. The Flashman's hotel was used from the English times and has hosted some of the greatest decision makers of the sub-continent. The rooms have now been fully re-furbished. The Flashman's hotel has been built for Lords so all rooms are on ground floor one can park car straight in front of the room. Flashman's hotel is owned & operated by Pakistan Tourism Development Corporation. Hotel is ideally located near Saddar bazaar and is only 30-minutes' drive from Islamabad International Airport. Chinar & Jasmine banquet halls are ideal for hosting marriage ceremonies and events. Lala Rukh Hotel is tastefully decorated. Staying at Flashman's Hotel is being part of history.

Flashman's Hotel is situated on area of 7.01 acres. The hotel comprises of 73 rooms which include deluxe rooms, mini suites, offices, 02 banquet Halls, Hotel, Permit Shop (Bar Room) and Swimming Pool. Open space measuring 5 ½ kanals available for erection of Marque.

**SCHEDULE B****RENT PAYMENT SCHEDULE**

(Which is to be taken and construed as an essential part of this Agreement)

PERIOD APPLICABLE		RENT INSTALLMENTS PAYABLE (As per Section 3.1 of the Agreement)	
		The first year Rent shall be for fifteen (15) months from the start of Lease Term, and thereafter Rent shall be payable on every anniversary after the end of the first fifteen (15) months until the expiry of the Lease Term. Provided always that there shall be an escalation of ten per centum (10%) in the Rent after the first fifteen (15) months and thereafter every one (1) year period.	
Year	Pak Rupees	Year	Pak Rupees
1 (15 Months)			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			

## **SCHEDULE C**

### **INDEPENDENT ENGINEER - SCOPE OF WORK**

#### **1. Role of the Independent Engineer**

The Independent Engineer is to play a positive and independent role in discharging its functions, thereby facilitating the smooth implementation of the Site Development. Broadly, the role of the Independent Engineer is to:

- (a) independently review, monitor and where required by the Agreement, to ensure compliance by the Company with the **Schedule E** and provisions of the Agreement; and
- (b) report to the Parties on the various physical, technical and financial aspects of the Site Development based on inspections;

#### **2. Scope of Services**

The services to be provided by the Independent Engineer are listed below. In addition, the scope of services would also include such other functions as are required to be undertaken pursuant to specific provisions of the Agreement.

##### **2.1 Completion Period – Site Development**

The Independent Engineer would monitor, in accordance with Good Industry Practice, the progress in implementation and ensure compliance with **Schedule E**. For this purpose, the Independent Engineer shall undertake, *inter alia*, the following activities and where appropriate make suitable suggestions:

- (a) monitor the progress in implementation of the Site Development as set out in **Schedule E**;
- (b) review and monitor the quality assurance and quality control procedures followed by the Company;
- (c) review the manpower and equipment deployed by the Company;
- (d) Quarterly inspections of the Hotel to monitor the Site Development for conformity with **Schedule E**;

- (e) require suspension of whole or any part of the Site Development if in its reasonable opinion the same does not conform to the requirements set out in **Schedule E**; and
- (f) issue the Completion Certificate in accordance with the applicable provisions of the Agreement.

**SCHEDULE D**

**PERFORMANCE GUARANTEE**

(Which is to be taken and constructed as an essential part of the Agreement)

**DRAFT**

[ON PAKISTAN STAMP PAPER]

**PERFORMANCE GUARANTEE**

**To: The Pakistan Tourism Development Corporation**  
**[Address]**

**Date of the Performance Guarantee: [•]**

**Amount of the Performance Guarantee: [PKR • (Pakistani Rupees •)]** (hereinafter referred to as the "**Guaranteed Sum**")

**Date of issuance: [•]**

**Validity upto: [•]**

**THIS PERFORMANCE GUARANTEE** is executed at [•] on this [•] day of [•] 20• **BY:**

[Name of the issuing Bank] having our registered office at [•] [and branch office at •] (hereinafter referred to as the "**Guarantor**", which expression shall mean and include its successors, administrators, assigns and legal representatives, whether jointly or severally);

On the request and on behalf of [•] (hereinafter referred to as the ["**Sponsor(s)**"/ "**Company**"], which expression shall mean and include [its/their] successors, executors, administrators, assigns, legal representatives, whether jointly or severally);

In favour of the Pakistan Tourism Development Corporation ("**PTDC**") (hereinafter referred to as the "**Beneficiary**", which expression shall mean and include its successors, administrators and legal representatives, whether jointly or severally).

**WHEREAS:**

- A. Upon the request and proposal of the Sponsor(s) and/or the Company to lease the Hotel, as defined within the Lease Agreement, the Beneficiary has entered into a Lease Agreement with the [Sponsor(s)/ Company] dated [•] (hereinafter referred to as the "**Lease Agreement**").
- B. As required by the Beneficiary under the Lease Agreement, the Guarantor, at the request and on behalf of the [Sponsor(s)/ Company],

hereby furnishes this irrevocable, unconditional, without recourse, on demand bank guarantee (hereinafter referred to as the "**Performance Guarantee**") in favour of the Beneficiary in order to secure the performance of the Sponsor's obligations under the Lease Agreement with respect to the Site Development (as defined within the Lease Agreement) under and in accordance with the terms of the Lease Agreements (hereinafter referred to as the "**Guaranteed Obligations**").

**NOW THEREFORE**, this Performance Guarantee witnessed as under:-

1. In the event that the Sponsor(s) and/ or the Company defaults in, delays, or fails, to perform the Guaranteed Obligations, of which events the Beneficiary shall be the sole arbiter, the Guarantor shall, on the Beneficiary's first written demand, pay to the Beneficiary the entire sum of, or any portion of, the Guaranteed Sum as specified in the Beneficiary's written demand within three (3) days of the receipt of the written demand (the "**Due Date**"). Such first written demand of the Beneficiary shall only state that the Sponsor has defaulted in, or delayed, or failed, to perform the Guaranteed Obligation stated in the written demand under and in accordance with the terms of the Lease Agreement.
2. The Guarantor hereby binds itself unconditionally and irrevocably, and undertakes and guarantees to pay the Guaranteed Sum, as primary obligor and not merely as surety, on first written demand of the Beneficiary, without protest or demur and without reference, notice or recourse to the Sponsor(s) or to the Company or any other person, and hereby expressly waives all rights to deny its obligation to the Beneficiary irrespective of any dispute, difference or disagreement between the Sponsor(s)/ Company and the Beneficiary or contest by any other party or person.
3. At any time during the validity of this Performance Guarantee, the Beneficiary may, at its sole discretion and decision, demand payment of the entire Guaranteed Sum, or any portion thereof, from the Guarantor. The decision of the Beneficiary as to the Sponsor(s)' / Company's default, delay, or failure in performing the Guaranteed Obligations shall be final and binding on the Guarantor, which shall not be questioned by the Guarantor in any manner whatsoever.
4. This Performance Guarantee shall remain in full force and be effective for a period up to [•] and the Guarantor's obligations under this Performance Guarantee shall be for payment of the Guaranteed Sum or part thereof as may be demanded by the Beneficiary from time to time.

5. The Beneficiary may, if and when and in such manner as the Beneficiary in its sole discretion deems appropriate, grant time or other indulgence to or accept or make any composition or arrangement with the Sponsor(s) and/or the Company and/or vary, renew, discharge, realize, release, enforce or deal with any other securities, guarantees, obligations, decrees, contracts, or agreements, now or hereinafter made or held by the Beneficiary, and such acts shall not affect in any way whatsoever the Beneficiary's rights under this Performance Guarantee, and shall not affect in any way whatsoever the Guarantor's liability hereunder, or discharge the Guarantor from its obligations under this Performance Guarantee.
6. The Guarantor's obligations as set out in this Performance Guarantee shall be continuing obligations and shall not be modified or impaired upon the happening, from time to time, without the Guarantor's assent or otherwise, of any act or omission, or any circumstances or events which would otherwise discharge, impact or otherwise affect any of Guarantor's obligations contained in this Performance Guarantee.
7. Demands under this Performance Guarantee may be made from time to time in accordance with its terms. Partial payments of the Guaranteed Sum shall not discharge this Performance Guarantee and this Guarantee shall remain in full force and effect in accordance with its terms for the difference from time to time between the aggregate total of the partial payments made and the Guaranteed Sum.
8. No delay or failure to exercise any right or remedy under this Performance Guarantee by the Beneficiary shall constitute a waiver of such right or remedy. No single or partial exercise of any right or remedy shall preclude any other or further exercise thereof or of any other right or remedy. No waiver by the Beneficiary shall be valid unless made in writing.
9. No set-off, counter claim, reduction, or diminution of any obligation that the Guarantor has or may have against the Beneficiary shall be available to it against the Beneficiary in connection with any of its obligations to the Beneficiary under this Performance Guarantee. The Guarantor shall make all payments under this Performance Guarantee in Pakistani Rupees and in full, without set-off or counterclaim and free and clear of any deductions or withholdings in immediately available, freely transferable, cleared funds for value on the Due Date to the Beneficiary, provided that if the Guarantor is required to make any deduction or withholding from such payments under applicable law, it shall pay to the Beneficiary such additional amount necessary to ensure that the Beneficiary receives an amount equal to the amount which it would have received had no such deduction or withholding been made.



10. The Guarantor hereby declares and confirms that under its constitution and applicable laws and regulations, it has the necessary power and authority, and has obtained all necessary authorizations, approvals and consents thereunder to enter into, execute, deliver and perform the obligations it has undertaken under this Performance Guarantee, which obligations are valid and legally binding on and enforceable against the Guarantor under the Laws of Pakistan. Further, that the signatory(ies) to this Performance Guarantee are the Guarantor's duly authorized officers.
11. This Performance Guarantee shall be governed by the laws of Pakistan.
12. Capitalised terms not otherwise defined herein shall bear the meaning ascribed to them in the Lease Agreement.
13. This Performance Guarantee shall expire at the official closing of the counters of the Guarantor, [*name of the Branch*] [*city*], on [*■expiry date*] (the "**Expiry Date**"). The Guarantor's obligations under this Performance Guarantee are limited to payment of claims lodged in writing and presented at the counters of the Guarantor at [*name of the Branch*] [*city*], on or before the Expiry Date. Except for demands made by the Beneficiary under this Performance Guarantee on or before the Expiry Date, the Guarantor shall stand fully discharged and released from any and all obligations, claims and liabilities under this Performance Guarantee whether or not this instrument of Performance Guarantee is returned to the Guarantor.

For and on behalf of the Guarantor:

[To be signed by the authorized signatory of the Bank,  
Dated and Stamped with the Bank's Stamp]

[Also to be witnessed by two adult male witnesses, specifying in each case, the full name, National Identity Card # if any, and address]

**SCHEDULE E**

SITE DEVELOPMENT PLAN

## **SCHEDULE F**

### REPORTING AND MONITORING MECHANISM

Below is a non-exhaustive list of the clauses relating to reporting and monitoring requirements as contained within the Lease Agreement:

- Independent Engineer must be appointed in accordance with the procedure laid out in Clause 6 of the Agreement;
- As per Clause 6.4, the Independent Engineer shall inspect the Hotel and Site Development Work after every three months;
- As per Clause 6.5, the Independent Engineer shall be responsible to inspect and issue, in accordance with the terms of its appointment and the Site Development Plan (laid out in Schedule E above), the completion certificate as soon as practicable once a request for the same has been made;
- As part of its Covenants, under Clause 11.1.4, the Company shall send to PTDC by letter and email, a report stating accidents and unusual occurrences if any at the Hotel during the Lease Term. An annual summary of such reports shall also be sent within 15 (fifteen) days of the closing of each Financial Year. For the purposes of this clause, accidents and unusual occurrences at the Hotel shall include, inter alia, the following:
  - a) death or injury to any person;
  - b) damaged or dislodged fixed equipment;
  - c) disablement of any equipment during operation;
  - d) smoke or fire;
  - e) flooding of hotel; and
  - f) such other relevant information as may be required by PTDC, from time to time.
- As part of its monitoring of the Hotel, PTDC shall have the right under Clause 16 to:
  - i. to enter into the Hotel at any time in the case of an emergency.
  - ii. upon giving a prior notice of forty-eight (48) hours to enter upon and inspect:
    - a. the Hotel;

- b. the services provided at the Hotel;
- c. the fixtures installed at the Hotel; and
- d. the offices of the Company at the Hotel;

- As per Clause 21 of the Lease Agreement, notwithstanding what has been provided in Clause 5 of the Lease Agreement, the Company shall ensure that no work or services to the Hotel are provided by any sub-contractor or person without prior written intimation to PTDC at least seven (7) days before the performance of the work and/or provision of the service;
- In accordance with the terms of Clause 30.1 of the Lease Agreement, the Company shall, soon as available, but not later than sixty (60) days following the last day of the Financial Year, submit a detailed progress report to PTDC, covering all major activities during the year with respect to Hotel Operations and Management (including but not limited to information regarding capital improvements, other significant matters, and operations of the Hotel). The Annual Report shall include a comparison of such items to the corresponding values for the preceding year and a listing of any significant operating problems along with immediately planned remedial actions, and a brief summary of major activities planned for the next reporting period i.e., next year and compliance with already informed planned activities of last year and the extent and reasons for deviation and the planned remedial action.
- Within three months prior to the Expiry Date or immediately upon the issuance of a Termination Notice, the Company shall, at its own cost, appoint an Independent Auditor to conduct an audit of the Hotel, its assets, fixtures, fittings, inventories, equipment etc. and submit a report of the same to PTDC; and
- In accordance with the terms of Clause 30.3 of the Lease Agreement, the Company shall:
  - (i) promptly submit to PTDC any material information concerning new or significant aspects of the Hotel activities and, upon PTDC's request, shall promptly submit any other information concerning the Hotel; and
  - (ii) Within thirty (30) days after submission of each annual or other reports, PTDC shall meet with the Company to review and discuss the report and any other aspects of the Hotel operations that PTDC may wish to discuss. and discuss the report and any other aspects of the Hotel operations that PTDC may wish to discuss.

## SECTION VI: PROPOSAL-STANDARD FORMS

TECH-1. Technical Proposal Submission Form

TECH-2. Bidders Organization and Experience

TECH-3. Detailed Development Plan and Work Plan for Development and Operations

TECH-4. Proposed Management Team

TECH-5. Curriculum Vitae (CV) for Proposed Management Staff

FIN-1 Bid Security Submission Form

FIN-2 Financial Bid Submission Form

## TECH-1. TECHNICAL PROPOSAL SUBMISSION FORM

[Location, Date]

To:  
 General Manager (Hotels),  
**PTDC HO,**  
 Kohsar Block, New Secretariat,  
 Islamabad.

Dear Sir:

We, the undersigned, offer to provide the technical bid for Lease of PTDC Property \_\_\_\_\_ in accordance with your Request for Proposal dated [Insert Date] and our Proposal. We are hereby submitting our Proposal, which includes this Technical Proposal, and Pay Order for Bid Security sealed under a separate envelope.

We are submitting our Proposal in association with: [Insert a list with full name and address of JV Partner]

We hereby declare that all the information and statements made in this Proposal are true and accept that any misinterpretation contained in it may lead to our disqualification.

If negotiations are held during the period of validity of the Proposal, i.e., before the date indicated in the BDS, we undertake to negotiate on the basis of the proposed staff. Our Proposal is binding upon us and subject to the modifications resulting from Contract negotiations.

We undertake, if our Proposal is accepted, to initiate the consulting services related to the assignment not later than the date indicated in the Data Sheet.

We understand you are not bound to accept any Proposal you receive.

We remain,  
 Yours sincerely,

Authorized Signature [In full and Initials]; \_\_\_\_\_

Name and Title of Signatory; \_\_\_\_\_

Name of Firm: \_\_\_\_\_

Address; \_\_\_\_\_

## **TECH-2. DESCRIPTION OF BUSINESS PLAN, WORK PLAN & CAPITAL COST PLAN FOR PROJECT DEVELOPMENT AND OPERATIONS**

Technical Approach and Methodology. In this chapter you should explain your understanding of the objectives of the project, methodology for carrying out the development activities and obtaining the expected output, and the degree of detail of output. You should highlight the problems being addressed and their importance, and explain the approach you would adopt to address them. You should also explain the methodologies you propose to adopt and highlight the compatibility of those methodologies with the proposed approach.

The number of rooms to be developed or newly constructed as well as the plan for developing or improving Hotels and banquet facilities as well as any other proposed development shall be provided in this section.

Work Plan. In this chapter you should propose the main activities to be carried out during the development period, their content and duration, phasing and interrelations, milestones and delivery dates of the various phases of the project in which renovation is completed and new rooms are commissioned for commercial operations. The proposed work plan should be consistent with the technical approach and methodology, showing understanding of the overall project and the terms of the lease agreement.

A schedule of the business plan and feasibility ascribing revenue generating activities, including necessary controls and monitoring mechanism of the management throughout the lease term should be included here.

A detailed work plan during the construction and development phase should also be provided which will be consistent with the financial feasibility or business plan that will be submitted by the management. The business plan should clearly spell out revenue generating activities and the ability of the sponsors to pay rent to the lessor (PTDC) on a yearly basis, without having an impact on the routine operations of the project and continue to provide the customers with a quality hospitality experience, which is the main objective of this project.

Capital Cost Plan, including a comprehensive cost plan that will be committed for carrying out the above business plan and feasibility for renovation and also for development of the facility in terms of new construction of rooms, Hotels, banquet facilities, and other facilities including outdoor landscape and technology plans shall also be provided.

Outdoor and Landscape Plan to be provided which will ascribe the details with respect to operational facilities that will be developed as part of the overall development of the facility such as to include the provisions for parking, landscape development, green areas, recreational activities, sports and gymnasium activities that will be provided as part of the new construction where applicable.

Management strategy and marketing plan should also be provided in this section which shall describe the approach of the proposed management for business development, outreach to the prospective clients, branding strategy, and all other necessary plans and approaches that will be deployed by the bidder upon award for enhancing the project acceptability in the market and increasing tourism as a result of the plan.

Technology plan to be also provided in this section, which shall describe all the necessary technology solutions to be brought by the successful bidder upon award of the project, including any automation proposed for operations of the project, as well as for accounting and book keeping, HR management, online marketing, website and other plans including incorporation of eco-friendly technologies in construction or upgradation work.

### TECH-3. TEAM COMPOSITION AND TASK ASSIGNMENT

Organization and Staffing. In this chapter you should propose the structure and composition of your team. You should list them in disciplines according to the business plan, especially the key management roles that will be part of the day-to-day operations, accounting and book keeping, quality controls, and other key operational roles that are customary to such projects.

S. No.	Name	Department	Proposed Role	Permanent/Temporary
1				
2				
3				
4				

### TECH-4. CURRICULUM VITAE (CV) FOR PROPOSED MANAGEMENT STAFF

Proposed Position [only one candidate shall be nominated for each position]:

Name of Staff [insert full name]:

Date of Birth:

Nationality:

Educational Qualification: [Summarize college/university and other specialized education of staff member, giving names of schools, dates attended and degrees obtained]:

Membership of Professional Societies/Hospitality Diploma etc.:

Other Trainings [indicate significant trainings obtained]:

Countries of Work Experience: [list countries where staff has worked]:

Languages [for each language indicate proficiency: good, fair, or poor in speaking, reading and writing]:

Employment Record:

[Starting with present position, listing reversed order, and every employment held by staff member since graduation, giving for each employment (see format here below): dates of employment, name of employing organization, position held]:

From [Year]: To [Year]:

Employer:

Position held:



Detailed Tasks Assigned [List all tasks to be performed under this project]:

Work Undertaken that Best Illustrates Capability to Handle the Tasks Assigned [Among the assignments in which the staff has been involved, indicate the following information for those assignments that best illustrate staff capability to handle the tasks expected from them under this project]:

Name of assignment or project: \_\_\_\_\_

Year: \_\_\_\_\_

Location: \_\_\_\_\_

PA: \_\_\_\_\_

Main project features: \_\_\_\_\_

Positions held: \_\_\_\_\_

Activities performed: \_\_\_\_\_

Certification:

I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes me, my qualification and my experience. I understand that any wilful misstatement described herein may lead to my disqualification or dismissal, if engaged.

Date:

[Signature of staff member or authorized representative of the staff]

Day/Month/Year

Full name of authorized representative:

**FIN-1 BID SECURITY SUBMISSION FORM**

[Location, Date]

To:  
General Manager (Hotels),  
**PTDC HO,**  
Kohsar Block, New Secretariat,  
Islamabad.

**Subject: Bid Security for RFP No. \_\_\_\_\_ against leasing  
out of PTDC Property in \_\_\_\_\_ (location name)  
in the form of Pay Order/Bank Draft favouring PTDC.**

Dear Sir:

We, the undersigned, offer to obtain the subject PTDC property on lease as per terms in the draft lease agreement in accordance with your Request for Proposal dated [Insert Date] and our Technical Proposal.

Our enclosed Bid Security is for the sum of [Insert amount(s) in words and figures<sup>1</sup>] which is based on 10% of the Minimum Annual Rent or Reserve Price as stated in Clause BDS 34 of the RFP, for the subject PTDC property.

Our Proposal shall be binding upon us up to expiration of the validity period of the Proposal, i.e. before the date indicated in the Data Sheet.

Yours faithfully,

Authorized Signature [In full and initials]  
Name and Title of Signatory  
Name of Firm  
Address.

**FIN-2 FINANCIAL BID SUBMISSION FORM – On Company Letter Head**

[Location, Date]

To:  
General Manager (Hotels),  
**PTDC HO,**  
Kohsar Block, New Secretariat,  
Islamabad.

**Subject:**      **Financial Bid Submission for RFP No. \_\_\_\_\_**  
                         **against leasing out of PTDC Property in \_\_\_\_\_**  
                         **(location name)**

Dear Sir:

We, the undersigned, offer to obtain the subject PTDC property on lease as per terms in the draft lease agreement in accordance with your Request for Proposal dated [Insert Date] and our Technical Proposal.

Our financial bid for First Year for PTDC \_\_\_\_\_ will be a sum of [Insert amount(s) in words and figures<sup>1</sup>], as announced by us verbally in the Open Competitive Financial Bidding process earlier today. This amount is exclusive of all taxes and any taxes applicable to this payment shall be added over and above the quoted bid amount.

Our financial bid shall be binding upon us up to expiration of the validity period of our Proposal, i.e., as per proposal validity mentioned in the Bid Data Sheet.

Yours faithfully,

Authorized Signature [In full and initials]  
Name and Title of Signatory  
Name of Firm  
Address.

## ANNEXURE - I RESERVE PRICE

Sr. No	Property Name	Reserve Price/ Minimum Rent for 1 <sup>st</sup> Year
1.	PTDC Flashman's Hotel, Rawalpindi	80.00 million

