

PROJECT

**A TENDER FOR THE DESIGN, FINANCE,
CONSTRUCTION, OPERATION AND
MAINTENANCE OF A BIOLOGICAL PLANT FOR
TREATMENT OF CONTAMINATED
GROUNDWATER IN THE VICINITY OF THE
RAMAT HASHARON IMI**

AN INVITATION FOR PRE-QUALIFICATION NO.

1903/2020

MARCH 2020

PQ no. 1903/2020 - Invitation – Addendum no. 5 - Marked

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¹ Addendum no. 1; Item no. 2(e).

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1. INVITATION FOR PRE-QUALIFICATION

1.1. Definitions

- 1.1.1. All terms used in this Invitation shall have the meaning ascribed thereto herein:
- 1.1.2. **“Addendum”** or **“Addenda”** Shall have the meaning ascribed thereto in Section ~~2.10.12-10.1~~ of this Invitation.
- 1.1.3. **"Advisors"** Shall have the meaning ascribed thereto in Section ~~2.14.22-14.2~~ of this Invitation.
- 1.1.4. **“Agreement”** Shall mean the agreement which will be signed between the Tender Committee and the Successful Bidder for the execution of the Project.
- 1.1.5. **“Anticipated Holdings”** Shall mean the intended share of holdings of each Member in the Participant or of the Experience Provider(s) in the Engineering Procurement Company (EPC) referred to under Section ~~5.1.15-1.1~~ or Operation and Maintenance company (O&M) referred to under Section ~~5.2.25-2.2~~.
- 1.1.6. **“Authorized Representative”** Shall have the meaning ascribed thereto in Section ~~3.7.13-7.1~~ of this Invitation.

- 1.1.7. **“Average Operating Cash Flow”** Shall have the meaning ascribed thereto in Section ~~4.2.24.2.2~~ (Financial Pre-Qualification Requirements; Operating Cash Flow) of this Invitation.
- 1.1.8. **“Banking Corporation”** Shall mean (i) each of the Entities listed in Section 4 of Schedule 1 of the **Securities Law 1968**; or (ii) with respect to an Entity registered outside the State of Israel – a similar Entity pursuant to applicable law under the applicable jurisdiction.
- 1.1.9. **"Bid"** Shall mean the bid submission submitted by an Eligible Participant within the Tender Process.
- 1.1.10 **“BTS”** Shall mean a Biological Treatment System, in accordance with the provisions of Section ~~4.1.1.24.1.1.2~~ (Technical Pre-Qualification Requirement no.1 – Design of a Biological Treatment System) of this Invitation.
- 1.1.11 **"Business Day(s)"** Shall mean any working day (excluding Friday and Saturday) on which banks are open for business in Israel.
- 1.1.12. **"Commitments"** Shall mean the overall amount of all financial commitments made available to a Private Investment Fund by its limited partners.

- 1.1.13. **“Completion”** or Shall mean the delivery of the referenced project to its owner, or
“Completed” the commencement of its commercial operation in accordance with its intended use.
- 1.1.14. **“Conference”** Shall have the meaning ascribed thereto in Section ~~2.11.12-11.1~~ of this Invitation.
- 1.1.15. **“Control”** Shall have the meaning ascribed thereto in the **Securities Law 1968**.
- 1.1.16. **“Declared Entity”** Shall mean an entity: (i) declared pursuant to Section 3 or Section 9 of the Law for the Struggle with Iran’s Nuclear Program from 2012; or (ii) declared pursuant to Section 3 or 4 of Law for the Prevention of Distribution and Financing of Weapons of Mass Destruction from 2018; (iii) listed by the Israeli Sanctions Administration (“**מטה הסנקציות**”) according to any applicable Law.
- 1.1.17 **“Deviation”** Shall mean any deviation, amendment, omission, addition, condition, reservation or qualification of the contents of this Invitation, including of the Pre-Qualification Requirements, made by the Participant in its Pre-Qualification Submission.

1.1.17 **“Effective”**

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Shall mean the effective percentage of all Means of Control held by Entity A in Entity X, calculated by multiplying the percentages of Means of Control held by Entity A in each of the Entities in the chain of holdings between Entity A and Entity X. For purposes of this definition, holdings exceeding 70% shall be deemed and calculated as holdings of 100%.

e.g. if Entity A holds 50% of all Means of Control of Entity B which, in turn, holds 50% of all Means of Control of Entity X, then Entity A Effectively holds 25% of all Means of Control of Entity X.

1.1.18 **“Eligible Participant”**

Shall have the meaning ascribed thereto in Section 8.48.4 (~~Announcement of Eligible Participants~~~~Announcement of Eligible Participants~~) of this Invitation.

1.1.19 **“Entity”**
Or “Entities”

Shall mean any corporation, company or partnership, registered per the law within its domicile, excluding individuals.

² Addendum no. 2; Item no. 3.

- 1.1.20 **“Experience Provider(s)”** Shall have the meaning ascribed thereto in Section ~~3.3.13-3.4~~ (~~Experience Provider~~~~Experience Provider~~) of this Invitation.
- 1.1.21 **“Financial Close”** Shall have the meaning ascribed thereto in Section 1.2.3(b)~~(a)(a)~~ of this Invitation.
- 1.1.22 **“Financial Entity”** Shall mean: (i) a Private Investment Fund; (ii) a Banking Corporation; (iii) an Institutional Investor; or (iv) an Investment Entity³.
- 1.1.23 **“Financial Pre- Qualification Requirement(s)”** Shall mean the requirements of Section ~~4.2.14-2.1~~ (Financial Pre- Qualification Requirements; Turnover); Section ~~4.2.24-2.2~~ (Financial Pre- Qualification Requirements; Operating Cash Flow); Section ~~4.2.34-2.3~~ (Financial Pre- Qualification Requirements; Equity), Section ~~4.2.54-2.5~~ (Financial Pre- Qualification Requirements; Private Investment Fund); Section ~~4.2.64-2.6~~ (Financial Pre- Qualification Requirements; Banking Corporation or Institutional Investors) and Section 4.2.6A (Financial Pre- Qualification Requirements; Investment Entities)⁴ of this Invitation.

³ Addendum no. 1; Item no. 2(b).

⁴ Addendum no. 1; Item no. 2(c).

1.1.24 **“Financial Statement(s)”**

Shall mean, for each Entity:

(i) its audited consolidated financial statement which includes a report signed by the external auditor of the Entity, confirming its compliance with one of the accounting standards specified pursuant to Section 4.2.74.2.7 (Content and Submission Form) of this Invitation; or, in the absence thereof (ii) its audited solo financial statement which includes a report signed by the external auditor of the Entity, confirming its compliance with one of the accounting standards specified pursuant to Section 4.2.74.2.7 (Content and Submission Form) of this Invitation.

1.1.25 **“GOI”**

Shall mean the Government of the State of Israel.

1.1.26 **“Guarantor”**

shall have the meaning ascribed thereto in Section 3.43-4 (~~Guarantor~~Guarantor) of this Invitation.

1.1.26 **“Institution of Higher Education”**

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shall have the meaning ascribed thereto in the Council for Higher Education Law (1958); and with respect to non-Israeli Entities – a similar entity pursuant to applicable law under the applicable jurisdiction.

1.1.27 **"Institutional Investor"**

Shall mean each of the Entities listed in Sections 1-4 of Schedule 1 of the Securities Law 1968; or with respect to an Entity registered outside the State of Israel – a similar Entity pursuant to applicable law under the applicable jurisdiction.

1.1.28 **“Interested Party”** or **"Interested Parties"**

Shall mean with respect to Entity1 (the Participating Entity): (a) any Entity or individual directly holding at least 15% of any of the Means of Control of Entity1 (in this definition: **“Entity2”**); (b) any Entity or individual Effectively holding at least 70% of any of the Means of Control of Entity 2; (c) the CEO of Entity1; or (d) any of the directors of Entity1.⁶

⁵ Addendum no. 2; Item no. 4.

⁶ Addendum no. 2; Item no. 5.

- 1.1.28 **"Investment Entity"** A⁷ Shall have the meaning ascribed thereto in the International Financial Reporting Standard (IFRS) 10 (Consolidated Financial Statements).
- 1.1.29 **"Invitation"** Shall mean this invitation for pre-qualification including the Pre-Qualification Forms and all clarifications, Addenda, Amendments, written notices, and all appendices or Annexes.
- 1.1.30 **"Israel Military Industries (IMI)"** or **"IMI"** Shall have the meaning ascribed thereto in Section ~~1.2.28(a)~~1.2.28(a) of this Invitation.
- 1.1.31 **"Law(s)"** The various national (state) laws and legislation, statutes, ordinance, codes, and regulations (including the Regulations), as enacted by the State of Israel, and any by-laws, codes, regulations enacted by the relevant authorities or municipalities, and case law and precedents of relevant competent judicial authorities; all as modified, amended, replaced or created from time to time.
- 1.1.32 **"Main Contractor"** As defined under Section ~~4.1.2.24~~4.1.2.2

⁷ Addendum no.1; Item no. 2(a).

- 1.1.33 **"Means of Control"** Shall have the meaning ascribed thereto in the **Securities Law 1968**.
- 1.1.34 **"Member(s)"** Shall have the meaning ascribed thereto in Section ~~3.2.13.2.1~~ (~~Members of the ParticipantMembers of the Participant~~) of this Invitation.
- 1.1.35 **"Member's Average Turnover"** Shall have the meaning ascribed thereto in Section ~~4.2.1(b)~~4.2.1(b) (Financial Pre-Qualification Requirements; Turnover; Member's Average Turnover) of this Invitation.
- 1.1.36 **"Minimal Turnover Required"** Shall have the meaning ascribed thereto in Section ~~4.2.1(c)~~4.2.1(c) (Financial Pre-Qualification Requirements; Turnover; Minimal Turnover Required) of this Invitation.
- 1.1.37 **"NIS"** New Israeli Shekel.

1.1.38 “**Offence**”

Shall mean criminal offences included in Chapters 7 (National Security, Foreign Relations and Official Secrets), 8 (Offences against the Public Order and the Society), 9 (Offences against the Government and the Law) and 10 (Bodily Harm) of the Penal Code 1977, Criminal offences in Sections 384A, 402, 413E, 415, 418, 423, 425, 427, 428 and 456 of the **Penal Code 1977**, offences under the **Antitrust Law 1988**, offences under the **Securities Law 1968**, offences under the **Prohibition on Money Laundering Law 2000**, offences under the Planning and Building Law 1965 or any other criminal offence which resulted or may result in a prison sentence of at least one (1) year, or if the Entity or any office holder or representative thereof is not a citizen or a resident of the State of Israel, analogous offences committed under the laws of its domicile, provided that if the applicable entity and/or person have been convicted, the conviction for such offence (committed in Israel or outside of Israel) was given during the seven (7) years preceding the Pre-Qualification Submission Date.

- 1.1.39 **“Participant”** Shall have the meaning ascribed thereto in Section ~~3.1.13-1.4~~ (~~The Participant~~~~The Participant~~) of this Invitation.
- 1.1.40 **“Participating Entity”** Shall mean the Participant, a Member, an Experience Provider, a Guarantor or a Professional Related Entity.⁸
- 1.1.41 **“Participant's Weighted Turnover”** Shall have the meaning ascribed thereto in Section ~~4.2.1(a)~~~~4.2.1(a)~~ (Financial Pre-Qualification Requirements; Turnover; Participant's Weighted Turnover) of this Invitation.
- 1.1.42 **“Participation Fee”** Shall have the meaning ascribed thereto in Section ~~2.6.22-6.2~~ of this Invitation.
- 1.1.43 **“Plant”** Shall mean the biological treatment plant to be designed, constructed, operated and maintained within the scope of the Project.
- 1.1.44 **“Pre-Qualification Documents”** Shall mean this Invitation, its Annexes, the Pre-Qualification Forms and any other document issued by the Tender Committee during the Pre-Qualification Process.

⁸ Addendum no. 2; Item no. 6.

- 1.1.45 **“Pre-Qualification Forms”** Shall mean the forms attached hereto as forms **1 - 9**⁹ which each Participant is required to complete, execute and submit as part of its Pre-Qualification Submission.
- 1.1.46 **“Pre-Qualification Process”** Shall mean the process commencing upon the issuance of this Invitation and ending upon the announcement of Eligible Participants.
- 1.1.47 **“Pre-Qualification Submission Date”** Shall have the meaning ascribed thereto in Section ~~7.97.9~~ (Pre-Qualification Submission Date~~Pre-Qualification Submission—Date~~) of this Invitation.
- 1.1.48 **“Pre-Qualification Submission Letter”** Shall have the meaning ascribed thereto in Section ~~6.16.1~~ (Pre-Qualification Submission Letter) of this Invitation.

⁹ Addendum no. 1; Item no. 2(e).

- 1.1.49 **“Pre-Qualification Submission(s)”** Shall mean the complete written pre-qualification submission, complying with the terms and conditions contained in this Invitation, including the completed Pre-Qualification Forms and all the information added thereto or requested by the Tender Committee, submitted by the Participant(s) on the Pre-Qualification Submission Date.
- 1.1.50 **“Pre-Qualification Requirement(s)”** Shall mean the Technical Pre-Qualification Requirements and the Financial Pre-Qualification Requirements.
- 1.1.51 **“Private Investment Fund”** Shall mean an Entity incorporated for the purpose of making financial investments which at least 50%¹⁰ of its Commitments (at any given time) are made by Institutional Investors.
For the purposes of calculating the above 50%, an Institution of Higher Education can be regarded as an Institutional Investor.¹¹
- 1.1.52 **“Professional Related Entity”** As defined under Section ~~(iv)(iv)~~4.1.2.34.1.2.3(d).

¹⁰ Addendum no. 1; Item no. 1.

¹¹ Addendum no. 2; Item no. 7.

- 1.1.53 **“Project”** Shall have the meaning ascribed thereto in Section ~~1.2.28(a)~~ 1.2.28(a) (Introduction and General Description of the Project~~Introduction and General Description of the Project~~; Preface) of this Invitation.
- 1.1.54 **“Registration of Contractors Law”** of Shall have the meaning ascribed thereto in Section ~~5.35.3~~ of this Invitation.
- 1.1.55 **“Regulations”** Shall mean the **Mandatory Tender Regulations 1993**, as amended from time to time.
- 1.1.56 **“Related Entity”** Shall have the meaning ascribed to such term pursuant to: (i) the Law for the Struggle with Iran’s Nuclear Program from 2012; or (ii) the Law for the Prevention of Distribution and Financing of Weapons of Mass Destruction, from 2018.
- 1.1.57 **“Request(s) for Clarifications”** of Shall have the meaning ascribed thereto in Section ~~2.9.12.9.1~~ (Requests for Clarifications) of this Invitation.
- 1.1.58 **“Site”** Shall have the meaning ascribed thereto in Section ~~1.2.301.2.30~~ (General Description of the Project) of this Invitation.

- 1.1.59 **“SPC”** Shall have the meaning ascribed thereto in Section ~~8.98-9~~ (~~Formation of a Sole Purpose Company~~~~Formation of a Sole Purpose Company~~) of this Invitation.
- 1.1.60 **“State”** Shall mean the State of Israel.
- 1.1.61 **“Successful Bidder”** Shall mean the Eligible Participant awarded with the Agreement pursuant to the completion of the Tender Process.
- 1.1.62 **“Technical Pre- Qualification Requirement(s)”** Shall mean each of the requirements described in Sections ~~4.1.14.1.1~~ and ~~4.1.24.1.2~~ of this Invitation.
- 1.1.63 **“Tender”** Shall have the meaning ascribed thereto in Section ~~1.2.29~~~~1.2.29~~ (Introduction and General Description of the Project; The Selection Process and the Tender Stages) of this Invitation.
- 1.1.64 **“Tender Committee”** Shall mean the committee – referred to in Section ~~1.2.28(b)~~~~1.2.28(b)~~ below - appointed by the Government of the State of Israel in accordance with the provisions of the Regulations, in order to control and manage the Pre-Qualification Process and the Tender Process.

- 1.1.65 **"Tender Documents"** Shall mean the Pre-Qualification Documents and the Tender Process Documents.
- 1.1.66 **"Tender Process"** Shall mean the second stage of the selection process, in which Eligible Participants will submit their Bids and a Successful Bidder for the Project shall be selected
- 1.1.67 **"Tender Process Documents"** Shall mean all documents which shall be issued as part of the Tender Process, including the request for proposals and all forms provided therein, the Agreement, the technical volumes and all appendices attached therein, and any other document which will be issued by the Tender Committee during the Tender Process.
- 1.1.68 **"Unutilized Commitments"** Shall mean the overall amount of Commitments, deducted by funds invested and funds committed to be invested by the Private Investment Fund.
- 1.1.69 **"Update Statement"** Shall have the meaning ascribed thereto in Section ~~8.8.18-8.1~~ (General) of this Invitation.
- 1.1.70 **"Updated Financial Statements"** Shall have the meaning ascribed thereto in Section ~~8.8.28-8.2~~ (Updated Financial Statements) of this Invitation.

- 1.1.71 **“Voluntary Participants' Conference”** Shall have the meaning ascribed thereto in Section ~~2.112.11~~.
- 1.1.72 **“The Water and Sewage Authority (WA)” or “WA”** Shall have the meaning ascribed thereto in Section ~~1.2.28(a)~~ ~~1.2.28(a)~~ of this Invitation.
- 1.1.73 **“Website”** Shall have the meaning ascribed thereto in Section ~~2.6.12.6.1~~ of this Invitation.

1.2. Introduction and General Description of the Project

1.2.28. Preface

- (a) On January 30, 2011, the Government of Israel (GOI) voted in favor of a decision titled: **“Coping with the Water Crisis”**. Article 5 of the decision instructs the Water and Sewage Authority (WA) to act for the reduction and remediation of groundwater contaminations caused as a result of the Israel Military Industries (IMI) activities, including at the IMI Compound, referred to below, at Ramat Ha'sharon.
- (b) On November 1, 2016, the GoI, via the Accountant General, nominated an Inter-Ministerial Tender Committee comprised of: (i) the Ministry of Finance, (ii) the Ministry of Energy , (iii) the WA and (iv) Inbal Insurance Company Ltd., a wholly government owned company, (the Tender Committee) for the preparation and issuance of a tender for the design, finance, construction, operation and maintenance of a contaminated groundwater biological treatment plant, comprised of this Pre-Qualification Process and the following Tender Process.

- (c) Accordingly, the Government of the State of Israel, operating through the Tender Committee, hereby invites Entities to participate in the Pre-Qualification Process for the design, financing, construction, operation and maintenance of a biological plant for treatment of contaminated groundwater at the vicinity of Ramat Ha'sharon IMI, all in accordance with the provisions of the Pre-Qualification Documents (the "**Pre-Qualification Process**" and the "**Project**", respectively) and per the description provided under **Annex A** (General Description of the Project).
- (d) The Tender Committee is issuing this Invitation as part of a tender for the execution of the Project with a pre-qualification stage.

1.2.29. **The Selection Process**

The Tender Committee intends to select a Successful Bidder to execute the Project through the following stages:

- (a) this Pre-Qualification Process; and
- (b) the Tender Process.

1.2.30. **General Description of the Project**

Without derogating from the provisions of any other Pre-Qualification Document, hereunder is only a general and indicative description of the Project. It is hereby clarified that the Project's actual, complete and definite scope of works for execution shall be determined and reflected within the Tender Process Documents.

The Project will be executed at the Site during the term of the Agreement and will be handed over - at the end of such period - to the State of Israel, all in accordance with the terms which shall be provided in the Tender Process Documents.

- (a) The Project's Site (the: "**Site**"):

The Site includes the following:

(i) Within the IMI Compound –

- **Production Sites** - the six Production Wells whose anticipated locations are indicated in **Annex A(2)** (the Site) (“**Production Sites**” and “**Production Wells**”, respectively);
- All connecting pipelines between the Production Wells and the terminal point.

The final location of the Production Sites, Production Wells, connecting pipelines and terminal point will be determined within the Tender Process Documents.

(ii) The Plant’s Site – at the location indicated in **Annex A(2)** (the Site) (“**Plant’s Site**”).

(iii) Connecting pipelines between the terminal point (referred to under item ~~(ii)~~(~~ii~~)) and the Plant’s Site, and between the Plant's Site and the discharge point which shall be introduced in the Tender Process Documents (“**Infrastructure Corridor**”).

The execution of the Production Wells, connecting pipelines, terminal point, the Plant and the Infrastructure Corridor are also included under the Project’s scope of Works as shall be further detailed within the Tender Process Documents.

(b) The Term of the Agreement:

The Term of the Agreement (the “**Term**”) shall be determined in the Tender Process Documents. It is currently anticipated that the Term shall consist, *inter alia*, of the following periods:

(a) **Design Period** – to commence, be executed and completed in parallel to the **Financial Close**, as shall

be regulated within the Tender Process Documents, with an anticipated duration of 12 months following the signature of the Agreement.

- (b) **Construction Period** – to commence upon completion of Design Period and obtainment of Financial Close with an anticipated duration of 24 months.
- (c) **Operation and Maintenance (O&M) Period** – to commence after completion of Construction, as follows:
 - (i) Execution of the Initial Operation Period (see the provisions of Section ~~5.1.35.1.3~~ [Initial Operation Period]) until issuance of the permit to operate (PTO). The period of the Initial Operation Period – should such be determined - is anticipated to be 4 years;
 - (ii) PTO until completion of the Concession Period. The duration of the Initial Operation Period (referred to in item ~~(i)~~ above) and duration as of PTO until completion of the concession period is anticipated to be approximately 25 years after which the concession period may be extended or the Project transferred back to the State of Israel or a third party of its designation, all as shall be determined and stipulated within the Tender Process Documents.
- (d) The criteria for the selection of the Successful Bidder shall be defined in the Tender Process Documents.
- (e) See **Annex A(1)** (General Technical Overview of the Project) of this Invitation for additional review of the Project's anticipated technical and engineering aspects.

1.3. **The Pre-Qualification Process**

1.3.28. The purpose of this Pre-Qualification Process is to identify Eligible Participants, who will be invited to participate in the Tender Process.

1.3.29. During the Pre-Qualification Process, Participants will be required to submit Pre-Qualification Submissions, in accordance with the provisions of this Invitation, in order to demonstrate their compliance with all Pre-Qualification Requirements and all other applicable requirements and provisions of this Invitation.

1.3.30. Pre-Qualification Submissions submitted by the Participants will be evaluated by the Tender Committee in accordance with the provisions of this Invitation. Without derogating from the provisions of Section ~~88~~ [Review and Evaluation of Pre-Qualification Submissions] following its evaluation, the Tender Committee will announce the Eligible Participants. Only those Participants which demonstrated compliance with all Pre-Qualification Requirements and all other applicable requirements and provisions of this Invitation, and were not otherwise disqualified thereby, will be announced as Eligible Participants.

1.4. **The Tender Process**

Without derogating from the Tender Committee's rights and prerogatives pursuant to this Invitation [including under Section ~~8.108.10~~ [Reservation of Rights)] or Law:

1.4.28. Following the completion of the Pre-Qualification Process, the Tender Committee intends to invite all Eligible Participants to

participate in the Tender Process, and submit Bids, for the execution of the Project.

1.4.29. It is expected that Eligible Participants will be permitted to participate in the Tender Process(s) only in the composition which was prequalified pursuant to the Pre-Qualification Process (i.e. the same Members, Experience Providers and Guarantors), subject to and unless the prior written approval of the Tender Committee's was obtained for a requested change in the composition which was prequalified.

1.5. Invitation for Pre-Qualification

The Tender Committee hereby invites Entities to participate in the Pre-Qualification Process, according to the terms and conditions of this Invitation.

1.6. Anticipated Schedule

The anticipated schedule for the Pre-Qualification Process is as follows:

Publication of the Invitation	-	March 19, 2020
Voluntary Participants' Conference and following Site Visit in accordance with Section 2.112.11 [Voluntary Participants Conference and Site Visit] of this Invitation.	-	Shall be notified within an Addenda
Final date for the Submission of Requests for Clarifications in accordance with Section 2.92.9 [Requests for Clarification] of this Invitation.	-	August 31 ¹³ , 2020
Pre-Qualification Submission Date	-	October 27, 2020 ¹⁴ [see Section 7.9 for the submission's

¹² Addendum no. 1; Item no. 25(c).

¹³ Addendum no.2; Item no. 2(a).

¹⁴ Addendum no. 4; Item no. 1.

hourly
timeframe].¹⁵

All dates, times and hours are local Israel (ISR) dates, times and hours. The Tender Committee reserves the right to amend any date contained herein, at any time, at its sole discretion, by issuing a written clarification or Addenda to this Invitation in accordance with the provisions of Section ~~2.102.10~~ [AddendaAddenda] of this Invitation.

2. RULES AND PROCEDURES

2.1. Governing Law and Jurisdiction

2.1.1. Jurisdiction

The Pre-Qualification Process shall be governed and construed in accordance with the provisions of all applicable Laws, including the **Mandatory Tenders Law 1992**, and the Regulations.

2.1.2. Local Jurisdiction

The applicable court in Jerusalem shall have the sole jurisdiction over all matters and all disputes arising in connection with the Pre-Qualification Process and the Tender Process.

2.1.3. Waiver

Each Participant, Member, Experience Provider and Guarantor (to the extent applicable) who submits, or participates in, a Pre-Qualification Submission in accordance with these Pre-Qualification Documents, hereby waives any right to seek an injunction with any court, in any legal proceeding, with respect to this process, against the Tender Committee or anyone on its behalf or against any of the others Participants, including the Eligible Participants, and shall be prohibited from seeking an injunction in such process.

¹⁵ Addendum no. 2; Item no. 2(b).

The foregoing does not derogate from the obligation of the Participant, each of its Members, Guarantors, Experience Providers and anyone on their behalf, to address the Tender Committee, in writing, with a specific and detailed claim or complaint.

2.2. Preparation for Submission

2.2.1. By submitting a Pre-Qualification Submission, each Participating Entity confirms and will be deemed to have confirmed that it has received the complete Pre-Qualification Documents, that it has read, considered and understood the Pre-Qualification Documents, and that it accepts the terms and conditions thereof and all obligations and undertakings specified or implied therein.

2.2.2. Each Participating Entity is assumed to have obtained advice in all aspects relating to the Pre-Qualification Process and the Pre-Qualification Submission's preparation and submittal including legal, engineering-technical and financial advice.

2.2.3. Each Participating Entity and the Pre-Qualification Submissions shall: (i) abide by the Laws; and (ii) shall be subject to any changes in any of the Laws, should such changes be introduced during the Pre-Qualification Process.

2.3. The Invitation

The Pre-Qualification Documents include this Invitation for pre-qualification, its Appendices, and any other document issued by the Tender Committee during the Pre-Qualification Process. Without derogating from the provisions of Sections ~~7.17.1~~ [Compliance with the Requirements of the Pre-Qualification Documents] and ~~7.27.2~~ [No Unauthorized Modification], the Pre-Qualification Forms shall be provided to all Participants in MS-Word file as well.

2.4. Priority of Documents

In any event the Tender Committee determines the existence of a discrepancy between any of the provisions of this Invitation or Appendices, the Tender Committee shall determine the superseding provision at its sole discretion. Without derogating from the aforesaid and of the Tender Committee's discretion, it is the Participant's obligation to bring to the attention of the Tender Committee – within the framework of a Request for Clarification (per Section 2.92.9 [Requests for Clarification of this Invitation] - any discrepancy the Participant believes to exist as soon as possible, prior to the Pre-Qualification Submission Date for the Tender Committee's consideration.

2.5. **Severability**

The invalidity or unenforceability of any part, provision or section of the Pre-Qualification Documents shall not affect the validity or enforceability of other parts, provisions or sections thereof. Any invalid or unenforceable part, provision or section shall be deemed severed from the Pre-Qualification Documents, and the Pre-Qualification Documents shall be construed and enforced as if this Invitation did not contain such invalid or unenforceable part, provision or section.

2.6. **Access to Documents and Participation Fee**

2.6.1. Copies of the Pre-Qualification Documents may be downloaded at:
<https://www.mr.gov.il/OfficesTenders/Pages/SearchOfficeTenders.aspx> <https://mr.gov.il/ilgstorefront/he/p/648079>¹⁶ (the “**Website**”), for no charge

2.6.2. As a pre-condition for submission of a Request For Clarification pursuant to Section 2.92.9 [Requests for Clarifications of this Invitation] below and for submission of the Pre-Qualification Submission, the Participant shall pay a participation fee (single payment) in an amount of 5,000 NIS (VAT included) (the “**Participation Fee**”). Additionally, a CD with the PSDP’s information as referred to in **Annex A5** (Pilot Scale Demonstration

¹⁶ [Addendum no. 5; Item no. 17.](#)

Plant Information) shall be handed – upon early coordination - to Entities who have paid the Participation Fee.

2.6.3. The Participation Fee shall be paid by any of the following methods:

(a) By transfer to account no. **25636**, at the Postal Bank **09, Jerusalem Branch 001**, in the name of the **Accountant General**.

(b) By a bank transfer from an Israeli bank account - to the Bank of Israel (bank code: **99**, branch code: **001**), bank account number **1310010081303** (Accountant General- NIS income account).

(c) By a bank transfer from a foreign bank account –

Final Beneficiary Bank = Bank of Israel, Jerusalem

Swift code = ISRAILIR

Beneficiary Name = Accountant General – NIS income

account Beneficiary IBAN = IL370990011310010081303¹⁷

2.6.4. Without derogating from the provisions of Section ~~8.108.10~~ **Reservation of Rights** ~~Reservation of Rights~~ the Participation Fee shall not be refunded in any way for any reason.

2.6.5. Participants shall submit a copy of the receipt for the payment of the Participation Fee as well as the Participant's contact details (*inter alia*, the name of the Participant, and its Authorized Representative's name, address, phone number, fax number, email address etc.) to the email address Referred to in Section ~~2.9.12.9.1~~. Participants shall be responsible for informing the Tender Committee of any change in their contact details.

¹⁷ Addendum no. 1; Item no. 3.

2.6.6. Only Participants who have paid the Participation Fee may raise questions regarding the Invitation per Section ~~2.92.9~~ [Requests for Clarifications of this Invitation] and participate in the Pre-Qualification Process, as provided in Section ~~2.6.22.6.2~~.

2.6.7. A person or an Entity may pay the Participation Fee on behalf of another Entity; so that an Entity who has not purchased this Invitation may submit a Pre-Qualifications Submission, provided that the right to participate pursuant to the purchase of this Invitation was assigned or transferred from an Entity entitled to participate. For the avoidance of doubt, one (1) purchase shall entitle the submission of one (1) Pre-Qualification Submission.

2.6.8. The Tender Committee or anyone on its behalf shall not be responsible in any respect for any damage or loss of any kind whatsoever, suffered by a Participating Entity or anyone on its behalf, due to an error or omission with respect to any information provided under this Section.

2.6.9. It is hereby emphasized that the payment of the Participation Fee does not constitute recognition of an Entity's (including a Participant's) eligibility, qualifications or competence to meet the requirements of this Invitation.

2.7. Cost of Participation in the Pre-Qualification Process

A Participating Entity and anyone on its behalf, will bear any and all costs and expenses connected with participation in the Pre-Qualification Process as incurred by such, and will not be reimbursed or otherwise compensated by the Tender Committee or the State for any costs or expenses so incurred thereby, including in the event of termination of the Pre-Qualification Process for any reason whatsoever.

2.8. Language

This Invitation is published in English. Notwithstanding the forgoing, the Tender Committee reserves the right to issue a Hebrew version of this Invitation or any part thereof and to determine the order of precedence in

case of any discrepancy between the provisions of the English version and the provisions of the Hebrew version.

2.9. Requests for Clarifications of this Invitation

2.9.1. Participants who have paid the Participation Fee and have provided the Tender Committee with contact details per Sections ~~2.6.52-6.5~~ and ~~2.6.62-6.6~~, may raise questions and requests for clarifications or interpretations to the Pre-Qualification Documents, in writing, by no later than the deadline for the submission of requests for clarifications as set forth in section ~~1.64-6~~ [~~Anticipated Schedule~~~~Anticipated~~—~~Schedule~~] (“**Request(s) for Clarification(s)**”). in writing only to Tender Committee's email address: PPP-Taas@inbal.co.il. As part of the request, any Participant shall provide details about its appointed representative, including its postal address, telephone numbers and e-mail address. Such Requests for Clarifications shall be addressed via the aforesaid email address to:

To: Mr. **Yitsik Marmelshtein**, Chairman of the Tender Committee

Via: Ms. **Michal Moshe**, Coordination manager of the Tender Committee,

Address: Division of Public Private Partnership Projects

Inbal Insurance Company Ltd.

Inbal House, 3 Arava St., Airport City

P.O.B 282 Ben-Gurion Airport, Israel

Participants shall verify the receipt of Requests for Clarifications by the Tender Committee.

2.9.2. Requests for Clarifications shall be submitted via email in a signed PDF file and in an Excel file (open for editing) in the following format, which can be downloaded, together with this Invitation, at the address indicated in section ~~2.6.12-6.1~~ above:

Name of Participant	Clarification No.	Date [submission of request for clarification]	Pre-Qualification Document	Section (reference to the relevant Section in the exact Pre-Qualification Documents/Tender Process Documents)	Subject	Clarification/Question
	.1					
					

2.9.3. Without derogating from the provisions of Section ~~2.9.52-9.5~~, the Tender Committee reserves the right to ignore Requests for Clarifications which are not submitted in accordance with the requirements of submission specified in this section ~~2.9.22-9.2~~.

2.9.4. The Tender Committee may request Participants to provide clarifications to any part of their Requests for Clarifications including by way of meeting with the Participants or any of them.

2.9.5. The Tender Committee has no obligation to clarify or interpret this Invitation, to respond to any specific question or to publish any of the Requests for Clarifications submitted to it.

2.9.6. The Tender Committee's responses shall be distributed to the Participants as an Addenda in accordance with the provisions of Section ~~2.102-102.102-10~~ [~~AddendaAddenda~~]. Participants shall acknowledge receipt of any Addendum in the manner set forth in Section ~~2.102-10~~ [~~AddendaAddenda~~].

2.9.7. In its response to a Request for Clarification, the Tender Committee may rephrase any Request for Clarification, including adding to the original language or omitting from the original language, as it shall deem fit under the circumstances. In any event the language of the requests as distributed to the Participants as par

of an Addenda, shall not have any interpretive meaning unless such meaning is explicitly implied within the Addenda.

2.9.8. Any Request for Clarification not responded by the Tender Committee shall be deemed rejected.

2.9.9. Any Request for Clarification raised at a date following the deadline for the submission thereof as provided in Section ~~1.61.6~~ Anticipated Schedule~~Anticipated Schedule~~, will be accepted or rejected, answered or not, at the discretion of the Tender Committee.

2.9.10. For the avoidance of doubt, a response by the Tender Committee to any Request for Clarification shall not derogate from the discretion or the prerogative of the Tender Committee under this Invitation, including under Section ~~2.102.10~~ Addenda~~Addenda~~.

2.9.11. Without derogating from the Tender Committee's rights and prerogatives pursuant to this Invitation or Law, and without in any way limiting the Tender Committee's discretion, the Tender Committee will endeavor to avoid the issuance of Addenda to the Pre-Qualification Documents during the seven (7) days immediately preceding the Pre-Qualification Submission Date.

2.10. Addenda

2.10.1. Notwithstanding any of the provisions of this Invitation and without derogating from the Tender Committee's rights and prerogatives pursuant to this Invitation (including under the provisions of Section ~~8.108.10~~ [Reservation of Rights] or any Law, the Tender Committee reserves the right to revise, modify, amend, clarify, add, eliminate or otherwise change the Pre-Qualification Documents or any part thereof, including, but not limited to, any instruction, requirement, specification, Pre-Qualification Requirement(s) or date contained therein, whether at the discretion of the States or the Tender Committee or as a result of a Request for Clarification. Such revisions, if any, shall be announced by

written clarification or addenda to the Pre-Qualification Documents (“**Addenda**” or “**Addendum**”, respectively) and will be deemed an integral part of this Invitation.

- 2.10.2. The Tender Committee shall not be bound by, and Participants shall not rely on, any oral clarification to the Pre-Qualification Documents.
- 2.10.3. For the avoidance of doubt, no answers, clarification or amendment to the Pre-Qualification Documents shall be binding unless issued in the form of an Addendum.
- 2.10.4. Should any Addendum result from any Request for Clarification submitted by a Participant, the identity of such Entity or Participant shall not be disclosed.
- 2.10.5. The Addenda shall be published by the Tender Committee at the Website.
- 2.10.6. Participants are required to check the Website on a regular basis for any addenda, updates, postponements, changes, clarifications or modifications, during the Pre-Qualification Process and prior to the Pre-Qualification Submission Date.
- 2.10.7. Participants are required to acknowledge receipt of Addenda in writing no later than two (2) Business Days following receipt thereof. Such acknowledgements shall be sent to the Tender Committee's address as described in Section ~~2.92.9~~ (Requests for Clarifications) above.
- 2.10.8. Without derogating from the generality of the provisions of Sections ~~1.61.6~~ [~~Anticipated Schedule~~~~Anticipated Schedule~~] and ~~2.102.10~~ [Addenda], the Tender Committee may postpone the date for submission of Pre-Qualification Submissions, or any other date herein, by such number of days as shall be necessary in the opinion of the Tender Committee to enable the Participants to revise their Pre-Qualification Submissions as a result of any Addendum issued

by the Tender Committee. The Tender Committee may repeat this process as it deems required. The announcement of a new date, if any, will be included in the Addendum and all provisions regarding the previous Pre-Qualification Submission Date shall apply upon the postponed Pre-Qualification Submission Date, including any Addenda unless otherwise instructed by the Tender Committee within such Addenda. Nothing in this Section shall be construed as an obligation of the Tender Committee, *inter alia*, with respect to its discretion to grant a postponement.

2.11. Voluntary Participants Conference and Site Visit

- 2.11.1. The Tender Committee may decide to conduct a **Voluntary** Participants' Conference and following Site Visit (the "**Conference**"). The venue(s), date and time on which the Conference shall be held will be provided by the Tender Committee within the framework of an Addenda.
- 2.11.2. the Tender Committee may limit the number of delegates on behalf of a single Participant in the Conference and may request prior confirmation of attendance.
- 2.11.3. **Entrance subject to approval in advance by the IMI** – in the event the Conference or any part thereof will be held within the IMI Compound then entrance thereto will be subject to the IMI's approval and discretion. Accordingly, the IMI may condition entrance to the IMI Compound upon requirements it deems necessary. It may, at its discretion, reject the entrance of a delegate, in which case it will consider the entrance of a different delegate on the Participants' or Member's behalf. The IMI may condition entrance upon the submission of an application form and any additional details, documentation and information it may require.
- 2.11.4. At the Conference, the Tender Committee may answer questions referred to it by Participants. However, it is hereby clarified that the

Tender Committee shall not be bound by, and Participants shall not rely on, any oral representation or information made by the Tender Committee or Participants during the Conference, and any such information shall be provided for informative purposes only. Only an Addenda or written minutes issued by the Tender Committee in accordance with Section ~~2.102.10~~ [Addenda], above, following the Conference, if issued, shall be binding.

- 2.11.5. At its full and sole discretion, the Tender Committee may choose to conduct additional Conference(s) or Site Visit(s).

2.12. Intellectual Property Rights

The Pre-Qualification Documents and any and all intellectual property rights therein are exclusively owned by the State and are supplied to the Participants solely for the purpose of participation in the Pre-Qualification Process.

2.13. Information Supplied to the Participants

2.13.1. The description of the Project detailed in this Invitation is general and indicative only. The actual scope of works and further particulars may differ from the description thereof in this Invitation.

2.13.2. In any event and without derogating from the foregoing, to the extent applicable during the Pre-Qualification Process, Participating Entities are required to independently examine and verify all aspects of the Project, *inter alia*, the Plant Site, all statutory plans relating thereto, the Pre-Qualification Documents and any other legal, organizational, operational, technical or financial detail relevant to the Pre-Qualification Submission.

2.13.3. The State and the Tender Committee do not represent or warrant that the information contained in the Pre-Qualification Documents, or any other information which they or anyone on their behalf are

making available to Participants, is either complete or accurate, or undergone any independent verification of the Tender Committee and the Tender Committee shall not be responsible for such information or any use of such information by the Participants or anyone on their behalf or the Eligible Participants and anyone on their behalf. Any and all information presented hereby with respect to the Project, including with respect to the Tender Process, the time schedule for the execution of the Project and the expected requirements with respect thereof, may change.

2.13.4. It is expressly understood that any reliance of the Participants, Members, Experience Providers, Guarantors and/or any Entity and/or anyone on their behalf, including their employees, officers, agents, or any other persons for whom the foregoing may be contractually or legally responsible or accountable, on any information contained in the Pre-Qualification Documents or provided in connection therewith, and the making of any deductions, interpretations or conclusions from information which is made available by the Tender Committee or anyone on its behalf, is at the Participants' sole and full responsibility. Accordingly the foregoing confirm they shall refrain from any claim against the Tender Committee and/or against anyone on its behalf with respect thereto.

2.13.5. The Tender Committee shall not be responsible in any respect for any loss or damage whatsoever suffered by a Participating Entity and anyone on its behalf (including their employees, officers, agents, or any other persons for whom Participants may be contractually or legally responsible or accountable), by reason of any use of the information contained in the Pre-Qualification Documents or provided in connection therewith, or any action or forbearance in reliance thereon.

2.14. Advisors to the Tender Committee

2.14.1. **Annex B** of this Invitation contains a list of the Advisors to the Tender Committee (the “**Advisors**”). Subject to the provisions of any and all applicable Laws, the Tender Committee may exercise its rights under this Invitation through its advisors. The Tender Committee reserves the right, from time to time, to release any advisor or to engage additional advisors, update or otherwise amend **Annex B** or any part thereof as it shall deem appropriate under the circumstances.

2.14.2. Any Entity or person listed in **Annex B**, shall not participate in the Pre-Qualification Process, the Tender Process or the Project on behalf of any third-party other than the Tender Committee and shall not advise, directly or indirectly, any Participating Entity with respect to the Pre-Qualification Process, the Tender Process or the Project.

For avoidance of doubt, the foregoing shall apply: (a) if the Advisor is an Entity – to any person employed by such Entity; and (b) if the Advisor is a person – to any Entity Controlled by such person.

2.14.3. By no later than 45 days prior to the Pre-Qualification Submission Date, each Participating Entity shall provide details of all its previous and existing engagements with any of the Advisors for any purpose which is not connected to the Pre-Qualification Process, the Tender Process or the Project (“**Notification**”). To the extent that the Participating Entity does not notify the Tender Committee of such, the engagement of the Advisor shall be deemed not approved and shall give rise to suspicion of a conflict of interest.¹⁸

2.14.4. Without derogating from its rights and prerogatives pursuant to this Invitation or any Law, following receipt of a Notification, the Tender Committee may, at its sole discretion: (i) require additional details; (ii) notify the relevant Advisor or Participating Entity that it

¹⁸ Addendum no. 2; Item no. 9.

does not approve such engagement if it considers that such engagement creates or appears to create a conflict of interest; or (iii) impose certain restrictions with respect to such engagement in order to avoid any conflict of interest or appearance thereof, in each case, as the Tender Committee shall deem fit.

2.14.5. Without derogating from the provisions of this Section ~~2.14.52.14.5~~ [Advisors to the Tender Committee] and from the Tender Committee's rights, discretion and authorities under the Invitation and any Law, the Tender Committee may, at its sole discretion, take any action required to ensure the absence of a conflict of interests. In this context, it may, *inter alia*, (i) request to amend or amend the terms of any engagement of an Advisor or consultant; (ii) disqualify Participating Entities from participating in the Pre-Qualification Process; or (iii) impose conditions and restrictions with respect to their participation in the Pre-Qualification Process, in each case, as the Tender Committee shall deem fit.

3. GENERAL PROVISIONS RELATING TO PARTICIPANTS

3.1. The Participant

3.1.1. A Participant shall mean: (i) a single Entity which complies with the provision of Section ~~3.23-2~~ [~~Members of the Participant~~Members of the Participant]; or (ii) a number of Entities, each of which complies with the provision of Section ~~3.23-2~~ [~~Members of the Participant~~Members of the Participant], associated for the purpose of submitting a Pre-Qualification Submission (“Participant”).

3.1.2. The incorporation of a Participant as a sole purpose company for purposes of the Project will only be required during the Tender Process pursuant to Section ~~8.98.9~~ [Formation of a Single Purpose Company].

3.1.3. **Form of Submission.** In order to demonstrate compliance with this Section ~~3.13-1~~ [~~The Participant~~The Participant], each Participant and each of the Entities associated in relation therewith (its Members) shall complete, execute and submit **Pre-Qualification Form [“1”]** and **Pre-Qualification Form [“2”]**.

3.2. Members of the Participant

3.2.1. Members of a Participant shall mean each of the Entities committed to hold Anticipated Holdings in the Participant, as detailed in **Pre-Qualification Form [“2”]**, and which comply with:

(a) all of the requirements of Section ~~3.53-5~~ [~~Participation - General Requirements~~Participation — General Requirements]; and

(b) all of The Financial Pre-Qualification Requirements in accordance with the provisions of Sections ~~4.2.14.2-1~~ [Financial Pre-Qualification Requirements – Turnover],

4.2.24.2.2 [Financial Pre-Qualification Requirements - Operating Cash Flow] and 4.2.34.2.3 [Financial Pre-Qualification Requirements – Equity] (all subject to the provisions of the aforementioned sections);

(c) if the Entity is a Private Investment Fund – all of the Financial Pre-Qualification Requirements in accordance with the provisions of Section 4.2.54.2.5 [Financial Pre-Qualification Requirements; Private Investment Fund];

(d) if the Entity is a Banking Corporation or Institutional Investor – all of the Financial Pre-Qualification Requirements in accordance with the provisions of Section 4.2.64.2.6 [Financial Pre-Qualification Requirements; Banking Cooperation or Institutional Investor].

(a “**Member**”).

3.2.2. Cancelled¹⁹.

3.2.3. **Form of Submission.** In order to demonstrate compliance with, *inter alia*, the provisions of this Section 3.23.2 [~~Members of the Participant~~Members of the Participant], each Member shall complete, execute and submit **Pre-Qualification Form [“2”]**.

3.3. Experience Provider

3.3.1. An Experience Provider shall mean an Entity which complies with:

(a) all of the requirements of Section 3.53.5 [~~Participation - General Requirements~~Participation – General Requirements]; and

(b) any of the Technical Pre-Qualification Requirements set forth under Section 4.14.1.

¹⁹ Addendum no. 1; Item no. 4.

Compliance with the Technical Pre-Qualification Requirements (no. 1 – Section 4.1.1 and no. 2 – Section 4.1.2) shall not be demonstrated by a Financial Entity.²⁰

(an “**Experience Provider**”).

For the avoidance of doubt, an Experience Provider does not have to be a Member.

3.3.2. **Form of Submission.** In order to demonstrate compliance with Section ~~3.33.3~~ [~~Experience Provider~~], each Experience Provider shall complete, execute and submit **Pre-Qualification Form [“2”]**.

3.4. **Guarantor**

3.4.1. A Guarantor shall mean a Member (which acts as a Guarantor for another Member), or an Entity which Controls a Member and complies with:

- (a) all of the requirements of Section ~~3.53.5~~ [~~Participation - General Requirements~~]; and
- (b) the Financial Pre-Qualification Requirements in accordance with the provisions of Section ~~4.2.44.2.4~~ [Reliance on a Guarantor].

(“**Guarantor**”).

3.4.2. **Form of Submission.** In order to demonstrate compliance with this Section ~~3.43.4~~ [~~Guarantor~~], each Guarantor shall complete, execute and submit **Pre-Qualification Form [“2”]**.

3.5. **Participation - General Requirements**

²⁰ Addendum no. 1; Item no. 15.

Each Participant (if such is a single Entity, already incorporated on the Pre-Qualification Submission Date), Member, Experience Provider, Guarantor and Professional related Entity²¹ must comply with and satisfy all of the following requirements:

- 3.5.1. It is a duly organized and a validly existing single Entity under the laws of the jurisdiction in which it is organized.
- 3.5.2. It has all requisite corporate power and authority for the ownership and operation of its properties and for the carrying on of its business as currently conducted or proposed to be conducted for the purposes of the Project (including the participation in this Pre-Qualification Process).
- 3.5.3. There are no actions or proceedings pending ,voluntary or involuntary, with respect to dissolution, liquidation, freezing of assets, bankruptcy, insolvency, appointment of a trustee, a liquidator or a receiver (including temporarily), or any other analogous situation, nor are there, to the best of its knowledge, any actions or proceedings which might result in dissolution, liquidation, freezing of assets, bankruptcy, insolvency, appointment of a trustee, a liquidator or a receiver (including temporarily), or any other analogous situation.
- 3.5.4. Its Financial Statements for 2019 shall not include a "*going concern notice*" or a notice of similar effect.

In the event Financial Statements for year 2019 were not yet published at the time of Pre-Qualification Submission, the respective Entity shall submit a statement by its CFO, CEO or external auditor²² stating the following:

"I hereby confirm that _____ [*name of the Entity*] is not under any voluntary or involuntary bankruptcy process

²¹ Addendum no. 2; Item no. 10,

²² Addendum no. 3; Item no. 3.

(liquidation or reorganization), or receivership or commencement of a similar insolvency proceedings, and there are no real doubts as to its ability to continue as a "Going Concern" (as such term is defined in the _____ Standard no. __ [the Accounting Standards applicable to the Entity])".

- 3.5.5. It and any Interested Party, including the office holders thereof involved in the Pre-Qualification Process, in the Tender Process or in the Project (including individuals), are not residents or citizens of a state which does not have diplomatic relations with the State of Israel.
- 3.5.6. It (including its CEO and directors)²³, have not been convicted of an Offence and no indictment (criminal charges) with respect to an Offence has been filed (submitted) against any of such.
- 3.5.7. To the extent required under Law, each Entity incorporated in the State of Israel, or registered in Israel as a Foreign Company as defined under the **Companies Law, 5759 1999**, shall provide all relevant approvals required in accordance with the provisions of the **Public Entities Transactions Law 1976** in addition to the Entity's statement in the form of **Pre-Qualification Form "3"**.

A Foreign Company registered in Israel which cannot provide such approvals due to its lack of activities in Israel or is not registered in the Israeli tax authorities, shall include within its Pre-Qualification Submission, under cover of **Pre-Qualification Form "3"** (1) a declaration by an external²⁴ auditor; and (2) an affidavit of a representative of the Participating Entity's management, both testifying to such status.²⁵

²³ Addendum no. 2; Item no. 11.

²⁴ Addendum no. 3; Item no. 4.

²⁵ Addendum no. 1; Item no. 5.

- 3.5.8. The Tender Committee may instruct an Entity that is neither incorporated in the State of Israel nor registered in Israel as a Foreign Company as defined under the Companies Law, 5759-1999²⁶ to supplement its Pre-Qualification Submission with approvals and statements equivalent to the approvals and statements in Section ~~3.5.73-5.7~~, as required by law within the Entity's domicile.
- 3.5.9. It is not a Declared Entity and it is not a Related Entity of a Declared Entity; and the office holders thereof involved in the Pre-Qualification Process, in the Tender Process or in the Project (including individuals), are not Declared Entities or Related Entities of Declared Entities.
- 3.5.10. Each Entity shall provide an authenticated copy of its certificate of incorporation and articles of association, or if an Entity is not incorporated in the State of Israel, it shall provide the equivalent approvals and statements regarding its corporate registration in accordance with the laws in its domicile.
- 3.5.11. In the event such foreign Entity is registered in Israel as a Foreign Company under the Israel **Corporation Law 5759-1999**, or as a foreign partnership under the Israeli **Partnership Ordinance, 1975**, such Entity shall also attach the appropriate certification of registration accordingly. A Member which is a Private Investment Fund shall also attach to its submission the Private Investment Fund's partnership agreement. All such documents of incorporation shall be submitted under the relevant Pre-Qualification Forms, as indicated therein.

3.6. **An Entity Charged with, or Convicted of an Offence**²⁷

- 3.6.1. In the event that a Participating Entity does not comply with the requirement of Section ~~3.5.63-5.6~~, the Authorized Representative, on behalf of the Participating Entity, shall submit to the Tender

²⁶ Addendum no. 3; Item no. 4.

²⁷ Addendum no. 2; Item no. 12.

Committee, 45 days prior to the Pre-Qualification Submission Date, relevant information with respect to the filing (submission) of an indictment (criminal charges) in an Offence or with respect to a conviction (as applicable) of an Offence. In the event an indictment or conviction of an Offence occurred afterwards- a notice of such shall be made immediately by the Participating Entity to the Tender Committee.

3.6.2. Without derogating from the Tender Committee's rights and prerogatives pursuant to this Invitation (including under Section ~~8.108-10~~ [Reservation of RightsReservation of Rights] or any Law, if a Participating Entity does not comply with the provisions of Section ~~3.5.63-5-6~~ the Tender Committee may, at its sole discretion, (i) disqualify the Participating Entity from participating in the Pre-Qualification Process; or (ii) impose conditions and restrictions with respect to its participation in the Pre-Qualification Process, in each case, as the Tender Committee shall deem fit.

3.6.3. Any decision reached by the Tender Committee prior to the Pre-Qualification Submission Date shall be provided to the Participant. In addition, an Addendum shall be published in accordance with the provisions of Section ~~2.102-10~~ [AddendaAddenda], conveying to all other Participants that the Tender Committee has approved, rejected or otherwise conditioned the participation of a Participating Entity who does not comply with the provisions of Section ~~3.5.63-5-6~~, without disclosing the identity of such Entity or the nature of the Offence (unless otherwise determined by the Tender Committee, at its sole discretion).

3.7. **Authorized Representative**

3.7.1. Each Participant shall appoint one of its Members, through one individual on its behalf, as an authorized representative for: (i) conducting correspondence with the Tender Committee; and (ii) receiving instructions from the Tender Committee for and on

behalf of all the Participating Entities. (an “**Authorized Representative**”).

3.7.2. A Participant may replace its Authorized Representative by giving prior written notice to the Tender Committee, signed by all Members of the Participant. The appointment of an Authorized Representative shall not be terminated other than by the appointment of a replacement and the receipt of notice thereof by the Tender Committee.

3.8. **Participation in a Pre-Qualification Submission**

3.8.1. General

- (a) Each Participant may participate in only one Pre-Qualification Submission.
- (b) Each Member may participate in only one Pre-Qualification Submission.
- (c) Each Experience Provider may participate in only one Pre-Qualification Submission.
- (d) Each Guarantor may participate in only one Pre-Qualification Submission.
- (e) Each Professional Related Entity may participate in only one Pre-Qualification Submission.²⁸

3.8.2. **Interpretations**

For the purpose of the provisions of Section ~~3.8.13-8.1~~, the terms “**Participant**,” “**Member**,” “**Experience Provider**,” “**Guarantor**” and “**Professional Related Entity**”²⁹ (if applicable), shall be deemed to include any incorporated Entity which exercises Control over such entity, is under the common Control of such entity or is Controlled by such entity.

²⁸ Addendum no. 2; Item no. 13.

²⁹ Addendum no. 2; Item no. 14.

3.8.3. **Exceptions**

The limitations on participation in accordance with Section ~~3.8.13-8.1~~, shall not apply to Entities which are under the direct common Control of a government or government authority or department.

3.9. **Government Companies**

Companies budgeted by the State as defined under Section 21 of the State Budget Law, 1985 ["גוף מתוקצב"], Municipal Companies or subsidiaries thereof as defined under Section 21 of the State Budget Law, 1985, Companies supported by the State as defined under Section 32 of the State Budget Law 1985 ["גוף נתמך"], and/or Companies subject to the provisions of the Government Companies Law, 1975 and/or any Entity incorporated by Law (a statutory corporation), are not permitted to participate in the Pre-Qualification Process either as a Participant, as a Member of a Participant, as a Guarantor, nor as an Experience Provider or Professional Related Entity. For the removal of doubt, the above does not apply to non-Israeli public entities.

The above shall not apply to an Institution of Higher Education if such institution only participates in the Pre-Qualification Process in the capacity of an investor in a Private Investment Fund.³⁰

3.10. **Additional Requirements, including Security Considerations**

Without derogating from any of its rights and prerogatives pursuant to this Invitation or any Law, the Tender Committee reserves the right to impose additional or new conditions, limitations, prohibitions, or restrictions, *inter alia*, with respect to the participation of a Participating Entity in the Pre-Qualification Process, the Tender Process or the Project, which relate to:

3.10.1. security considerations (including National Security); or

3.10.2. competition, including pursuant to the Law for the Promotion of Competition and Minimization of Centralization, 2013 (if applicable).

³⁰ Addendum no. 2; Item no. 15.

Without derogating from any of its rights and prerogatives pursuant to this Invitation or Law, the Tender Committee reserves the right to include additional requirements with respect to the presentation of valid registration and certifications pursuant to the Registration of Contractors for Construction Engineering Works Law, 1969 and other applicable Laws (including Approval of a Recognized Contractor for Governmental Works) (or the presentation of applicable exemption).

3.11. Participating in Multiple Capacities

It is clarified that an Entity may participate in a Pre-Qualification Submission in more than one role (e.g. Member, Guarantor, Experience Provider, etc.), and in such case said Entity will be required to comply with all requirements pertaining to each of its various roles.

4. PRE-QUALIFICATION REQUIREMENTS

4.1. Technical Pre-Qualification Requirements

Each Participant is required to demonstrate compliance with both Technical Pre-Qualification Requirements set forth under Sections ~~4.1.14.1.1~~ and ~~4.1.24.1.2~~ and per the stipulations provided therein -

4.1.1. Technical Pre-Qualification Requirement no. 1 - Design of a Biological Treatment System –

4.1.1.1 The Experience Provider has Executed the Design of a BTS which has operated for at least 24 consecutive months between 1 January 2007 and the Pre-Qualification Submission Date (“**Consecutive Operation Period**”).

In this regard reference is made to the stipulation provided under Section ~~4.1.1.34.1.1.3(a)(a)~~.

4.1.1.2 **Definitions** - for the purpose of the Technical Pre-qualification Requirement of this Section ~~4.1.14.1.1~~:

"Executed" –

Means (i) the Design of the BTS was executed by the Experience Provider, either by itself or jointly with others, but not exclusively via others; and (ii) the Experience Provider was responsible towards the respective client, alone or jointly with others, for the BTS' Design.

“Design” –

A *Complete Process Design*, as defined below, based on which the BTS operated, completely or materially. Design adaptations executed during the BTS' constructions, commissioning or operation, as applicable, shall not be considered as violating this

stipulation provided such design adaptations were implemented.

“**Complete Process Design**” – includes, at least, the following components:

- BTS process unit design which includes, at least, the following components:
 - hydraulic loads; and
 - kinetics calculations; and
 - design loads; and
 - contaminants removal rates.
- Preparation of the BTS Process Flow Diagram (PFD).
- Preparation of the BTS mass balance.
- Supervision of the BTS performance per its intended design, at least, as of and during its commissioning tests and until issuance of the BTS permit to operate (PTO)³¹.

"BTS" –

Means a biological treatment system designated for removal of at least Perchlorate or Nitrate from either groundwater or surface water (excluding wastewater) and which, during at least 85% of the Consecutive Operation Period, has -

- (i) Treated at least 20 m³/hr (“**Flow Rate**”) of inlet feed water, with at least:
 - 15 mg/l of Perchlorate; **or**

³¹ May have been referred to or titled by the respective client in a different manner – provided the essence was an approval for the Facility's commencement of routine operation.

- 45³² mg/l of Nitrate as NO₃³³;

and

- (ii) Removed at least 70% of the Perchlorate or Nitrate concentrations in the feed water (“**Removal Ratio**”). The removed Perchlorate or Nitrate were to have been decomposed by micro-organisms to elementary components by means of an engineered system which included, at least: **(i)** one vessel; **(ii)** one pump; **(iii)** centralized control system which includes measurement device(s), monitoring (device(s) and control devise(s) (a device may serve for one or more of the 3 objectives – measurement, monitoring and control)³⁴; and **(iv)** pipes and valves.

With regard to the "BTS", see the stipulations provided under Section [4.1.1.34.1.1.3\(b\)\(b\)](#).

4.1.1.3 Notes:

(a) **Consecutive Operation Period** –

- (1) Applicable period during which compliance with the Technical Pre-Qualification Requirement must be demonstrated.

In the event the presented BTS has operated consecutively for more than one duration of 24 months as required under the Technical Pre-Qualification Requirement, then the Experience Provider shall be entitled to indicate at its own discretion:

³² Addendum no. 2; Item no. 18 (a),

³³ Addendum no. 1; Item no. 7.

³⁴ Addendum no. 1; Item no. 9.

- (i) The applicable 24-month consecutive period (of the BTS' entire operation period(s)) which shall be evaluated for the purpose of determining compliance with the requirements of this Technical Pre-Qualification Requirement; or
 - (ii) A consecutive operation period of the BTS' entire operation period(s) whose duration exceeds 24-months, which shall be evaluated for the purpose of determining compliance with the requirements of this Technical Pre-Qualification Requirement; or
 - (iii) That the entire operation period be evaluated for the purpose of determining compliance with the requirements of this Technical Pre-Qualification Requirement.
- (2) It is not mandatory for the BTS to be operational on the Pre-Qualification Submission Date.
- (3) The BTS may have commenced its operation before 1 January 2007 provided the BTS has operated, at least, during the Consecutive Operational Period as stipulated in Section [4.1.1.14.1.1.1](#) above.
- (4) (i) In the event of a disturbance(s) to the BTS' operation (whether temporary, permanent, partial or complete, scheduled or not) which duration exceeds 15% of the Consecutive Operation Period – the period(s) of time in

excess shall not be considered as consecutive operation for the purpose of determining compliance with the Consecutive Operation Period requirement.

(ii) In the event disturbance(s) to the BTS' operation occurred due to an instruction(s) given by the facility's client, the cumulative duration of such disturbance(s), will be considered as consecutive operation for the purpose of determining compliance with the Consecutive Operation Period requirement provided the total of such duration and the 15% duration set forth under subsection (i) above (as applicable) has not exceeded 40% of the Consecutive Operation Period. In the event the total duration has exceeded 40% of the Consecutive Operation Period – the period of time in excess shall not be considered as consecutive operation for the purpose of determining compliance with the Consecutive Operation Period requirement.

Notes to item (ii):

(a) The duration to be considered as consecutive operation for the purpose of determining compliance with the Consecutive Operation Period requirement, shall not exceed 36 months. Accordingly, under the circumstances of this subsection the duration set forth under sections 4.1.1.3.(a)(1)(ii) and 4.1.1.3.(a)(1)(iii) will not exceed 36 months.

(b) During the period(s) the BTS operation was disturbed due to instruction(s) of the facility's client as set forth above – there was no prevention (other than the aforesaid instruction(s)) for the BTS to operate per the Flow Rate, Perchlorate or Nitrate concentration, and Removal Ratio requirements set forth under the subsection 4.1.1.2. “BTS” and section 4.1.1.3.(b), as applicable.³⁵

(b) BTS – applicable Flow Rate and Removal Ratio Requirements -

- (1) In the event the facility's client³⁶ required a flow rate or removal ratio and those were **greater** than the Flow Rate or Removal Ratio (as defined above) – then the Experience Provider shall be required to have met, at least, the clients' flow rate and removal ratio requirements.
- (2) In the event the facility's client³⁷ has required a flow rate greater than the defined Flow Rate (with no removal ratio requirement or required a ratio which is lesser than the defined Removal Ratio) – then the applicable flow rate will be that required by the client (and not the 20 m³/hr Flow Rate defined above) while the applicable removal ratio shall remain the defined 70% Removal Ratio.

³⁵ Addendum no. 2; Item no. 20.

³⁶ Addendum no. 2; Item no. 22.

³⁷ Addendum no. 2; Item no. 22.

Similarly, In the event the facility's client³⁸ has required a removal ratio greater than the defined Removal Ratio (with no flow rate requirement or required a flow rate which is lesser than the defined Flow Rate) – then the applicable removal ratio will be that required by the client (and not the 70% Removal Ratio defined above) while the applicable flow rate shall remain the defined 20 m³/hr Flow Rate.

The Experience Provider shall complete and sign **Pre-Qualification Form “2” Attachments A & Section A of Attachment A(1)** - *Information for Determining Compliance of the³⁹ Experience Provider with the Technical Pre-Qualification Requirements.*

4.1.2. **Technical Pre-Qualification Requirement no. 2 – Design, Construction and Operation of a Facility**

4.1.2.1 The *Design, Construction and Operation* of a *Facility* were executed by up to 2 Experience Providers each serving as a Main Contractor, as stipulated below.

4.1.2.2 **Definitions** - for the purpose of the Technical Prequalification Requirement of this Section [4.1.24.1.2](#):

“Design” –

Means, at least, execution of the Facility's:

- (a) Process design; and
- (b) Civil works design; and

³⁸ Addendum no. 2; Item no. 22.

³⁹ Addendum no. 1; Item no. 24.

- (c) Electrical and control design; and
- (d) Mechanical and piping design.

In accordance with all of the above designs, the construction and operation of the Facility were completely or materially executed. Design adaptations executed during the Facility's construction, commissioning or operation (as applicable) shall not be considered as violating this stipulation provided such adaptations were implemented.

“Construction” –

Means, at least, execution of the Facility's:

- (a) Civil engineering works; and
- (b) Electrical Mechanical works; and
- (c) Process and control works; and
- (d) Obtainment of the Facility's permission to operate (PTO)⁴⁰ including in the event such was issued subject to remedying deficiencies.

“Operation” –

Means **(a)** the execution of operation and maintenance of the Facility during for at least 24 consecutive months between 1 January 2007 and the Pre-Qualification Submission Date (**“Consecutive Operation Period”**); and **(b)** at least 85% of the time during months 1 – 12 of the Consecutive Operation Period **and** 85% of the

⁴⁰ May have been referred to or titled by the respective client in a different manner – provided the essence was an approval for the Facility's commencement of routine operation.

time during months 13 – 24 of the Consecutive Operation Period, the following accumulative requirements were met:

- (i) Treatment of at least 200 m³/hr of inlet feed water which contained at least one of the contaminants set forth under the definition “Removal Ratio,” save for TSS and Turbidity, with a flow rate of at least 2,000 m³/hr (“**Flow Rate**”).
- (ii) Removal Ratio of contaminants of concern in the inlet stream.

“Removal Ratio” –

- In the event of **water treatment** - compliance, at least, with **one of the following** requirements.
 - **Nitrate** – removal of at least 70% of Nitrate from contaminated groundwater or surface-water.
 - **VOCs** (Volatile Organic Compounds) – removal of at least 90% of VOCs from contaminated groundwater or surface-water.
 - **Detergents** – removal of at least 90% of detergents from contaminated groundwater or surface-water.
 - **Chloride (salinity)** – removal of at least 95% of Chloride (Total Dissolved Solids) in the feed water.
 - **TDS (Total Dissolved Solids) (salinity)** – removal of at least 95% of TDS in the feed water.

- **TSS (Total Suspended Solids) (solids)**
 - removal of at least 90% of the TSS in the feed water.
- **Turbidity (solids)** – removal of at least 90% of the turbidity in the feed water.
- In the event of **wastewater treatment** – removal of at least 70% of the organic materials, measured as BOD or COD, in the feed.

In the event of a Facility which output's stream includes any form of mixing, for the purpose of evaluating compliance with the Flow Rate and Removal Ratio requirements, both will be determined before any mixing thereof.⁴¹

With regard to the Consecutive Operation Period, Flow Rate and Removal Ratio requirements see the stipulations provided under Sections [4.1.2.34.1.2.3\(i\)\(i\)](#) and [\(ii\)\(ii\)](#).

“Facility” –

A facility, or an expansion of an existing facility^{42,43}, designated for water or wastewater treatment by means of an engineered system. For this purpose engineered system shall include, at least: **(i)** one vessel; **(ii)** one pump; **(iii)** centralized control system which includes measurement device(s), monitoring device(s) and control devise(s) (a device may serve for one or more of the 3 objectives – measurement, monitoring and control); and **(iv)** pipes and valves⁴⁴.

⁴¹ Addendum no. 1; Item no.11.

⁴² Addendum no. 1; Item no.13.

⁴³ To be read in conjunction with clarification item no. 13 of Addendum no. 1.

⁴⁴ Addendum no. 1; Item no.14.

"Main Contractor" –

(a) **Execution** - the Design, Construction and Operation works of the Facility (as applicable) were:

(i) All executed by the respective Experience Provider (or joint venture which the Experience Provider was a member of, as applicable)⁴⁵; or

(ii) Partially executed by the respective Experience Provider (or joint venture which the Experience Provider was a member of, as applicable)⁴⁶ with the remaining portion executed by its (or the joint venture's, as applicable)⁴⁷ subcontractors; or

(iii) All executed by the respective Experience Provider's subcontractors (or joint venture's subcontractors which the Experience Provider was a member of, as applicable)⁴⁸.

(b) **Responsibility** - the respective Experience Provider was responsible towards the respective client (or in the event of a joint venture which the Experience Provider was a member of – it was jointly and severally responsible, with the other joint venture's members, towards the respective client⁴⁹, or in the event of an incorporated joint venture which the Experience Provider was a member of – the joint venture was responsible

⁴⁵ Addendum no. 1; Item no.15.

⁴⁶ Addendum no. 1; Item no.15.

⁴⁷ Addendum no. 1; Item no.15.

⁴⁸ Addendum no. 1; Item no.15.

⁴⁹ Addendum no. 1; Item no.15.

towards the respective client),⁵⁰ for the Design, Construction and Operation executed (as applicable).

In the event the Main Contractor was (or is) comprised of a joint venture (see items 1 (Execution) and 2 (Responsibility) above, then in order for the joint venture's experience to be attributed to the Experience Provider,⁵¹ the Experience Provider must have⁵² held, directly or indirectly, at least 30% of the Main Contractor's Means of Control, at least during the time the respective experience was obtained.⁵³

4.1.2.3 Notes

(i) **Applicable Flow Rate and Removal Ratio Requirements:**

- (1) In the event the Facility's client⁵⁴ required a flow rate or removal ratio and those were **greater** than the applicable Flow Rate or the applicable Removal Ratio (as defined above) – then the Experience Provider shall be required to have met, at least, the clients' flow rate and removal ratio requirements.
- (2) In the event the Facility's client⁵⁵ has required a flow rate greater than the defined Flow Rate (with no removal ratio requirement or requiring a ratio lesser than the defined Removal Ratio) – then the applicable flow rate will be that required by the client (and not the

⁵⁰ Addendum no. 3; Item no. 10.

⁵¹ Addendum no. 3; Item no. 11.

⁵² Addendum no. 3; Item no. 11.

⁵³ Addendum no. 1; Item no.15.

⁵⁴ Addendum no. 2; Item no. 23.

⁵⁵ Addendum no. 2; Item no. 23.

200 m³/hr **or** 2,000 m³/hr Flow Rate (as applicable) defined above) while the applicable removal ratio shall remain the defined Removal Ratio.

Similarly, In the event the Facility's client⁵⁶ has required removal ratio greater than the defined Removal Ratio for the respective contaminant (with no flow rate requirement or requiring a flow rate lesser than the defined Flow Rate) – then the applicable removal ratio for the respective contaminant will be that required by the client (and not the removal ratio defined above for the respective contaminant (as applicable)) while the applicable flow rate shall remain the defined Flow Rate.

(ii) Consecutive Operation Period - Applicable period during which compliance with the Technical Pre-Qualification Requirement is evaluated –

- (1) Regardless of whether the Facility has operated for a consecutive period exceeding the 24-month consecutive period – the Experience Provider shall indicate the applicable 24-month consecutive period presented for the purpose of determining compliance with the requirements of this Technical Pre-Qualification Requirement.
- (2) It is not mandatory for the Facility to be operational on the Pre-Qualification Submission Date.

⁵⁶ Addendum no. 2; Item no. 23.

- (3) The Facility may have commenced its operation before 1 January 2007 provided the Facility has operated, at least, during the Consecutive Operational Period as stipulated above.
- (4) In the event of a disturbance(s) to the Facility's operation (whether temporary, permanent, partial or complete, scheduled or not) which duration exceeds 15% of the Consecutive Operation Period – the period(s) of time in excess shall not be considered as consecutive operation for the purpose of concluding compliance with the Consecutive Operation Period requirement.

(iii) **Technical Pre-Qualification Requirement no. 2**
(Section 4.1.24.1.2) – Manner of Demonstration
by Experience Provider(s)

The experience required may be demonstrated by one Experience Provider **or** by two Experience Providers, as stipulated in the Table provided under **Section B – item 2 of Pre-Qualification Form “2”** - **Attachment A(1)** - *Information for Determining Compliance of the ⁵⁷ Experience Provider with the Technical Pre-Qualification Requirements*. In the event the experience required is demonstrated by one Experience Provider then such experience shall have been obtained by the Experience Provider within the framework of one or 2 projects. In the latter event (experience obtained within the

⁵⁷ Addendum no. 1; Item no. 24

framework of 2 projects) the Design or Design and Construction experience was obtained within the framework of one project and the Construction and Operation or Operation experience (as applicable) was obtained within the framework of a second project. In the event the experience required is demonstrated by 2 Experience Providers then the experience obtained by each of them shall have been obtained within the framework of one project each (2 projects in total – 1 project for each Experience Provider)⁵⁸.

(iv) **Professional Related Entity** - the experience required under Technical Pre-Qualification Requirement no. 2, may have been obtained, per its stipulations, by a related entity which is:

- (a) A single Entity which holds, directly or indirectly, 100% of the ⁵⁹ Experience Provider's Means of Control; **or**
- (b) A single Entity which 100% of its Means of Control and 100% of the Experience Provider's Means of Control are held, directly or indirectly, by the same single Entity **or**⁶⁰;
- (c) A single Entity which 100% of its Means of Control are held, directly or indirectly, by the Experience Provider⁶¹.

Each of the Entities referred to under the aforesaid sub-sections ~~4.1.2.34.1.2.3(iv)(iv)(a)(a)~~, ~~(b)(b)~~ or ~~(c)(c)~~ shall be referred to as a "**Professional Related Entity**". In the

⁵⁸ Addendum no. 1; Item no.16.

⁵⁹ Addendum no. 1; Item no.17.

⁶⁰ Addendum no. 1; Item no.17.

⁶¹ Addendum no. 1; Item no.17.

event that experience of a Professional Related Entity is presented, its details shall be included in Clause 1(c) of **Section B of Pre-Qualification Form “2” - Attachment A(1)**⁶².

A Professional Related Entity’s experience may be relied upon to demonstrate compliance with this Technical Pre-Qualification Requirement no. 2 only.

The Experience Provider(s) / Professional Related Entity/ies shall complete and sign **Pre-Qualification Form “2” Attachments A & Section B**⁶³ of **Attachment A(1)** - *Information for Determining Compliance of the*⁶⁴ *Experience Provider with the Technical Pre-Qualification Requirements.*

⁶² Addendum no. 1; Item no.17.

⁶³ Addendum no. 1; Item no.17.

⁶⁴ Addendum no. 1; Item no. 24.

4.2. **Financial Pre-Qualification Requirements**

Each Participant is required to demonstrate its and its Members' (or a Guarantor on their behalf) compliance (as applicable), with all of the applicable Financial Pre-Qualification Requirements:

4.2.1. **Financial Pre-Qualification Requirements; Turnover**

Each Participant is required to demonstrate that the Participant's Weighted Turnover (as such term is defined in Section ~~(a)~~(a) below), is not lower than the Minimal Turnover Required (as such term is defined in Section ~~(c)~~(e) below).

(a) **Participant's Weighted Turnover**

The Participant's Weighted Turnover shall be calculated in the following manner:

$$Participant\ Turn\ Over = \sum_{i=1}^{i=n} ATO_i \cdot HS_i$$

Where:

ATO_i = Member (i)'s Average Turnover (as such term is defined in Section ~~(b)~~(b) below).

HS_i = the Anticipated Holdings of Member (i) in the Participant.

n = the number of Members in the Participant.

("Participant's Weighted Turnover").

(b) **Member's Average Turnover**

The Average Turnover of each Member in the Participant shall be calculated in the following manner:

4.2.1.b.1. For: (i) any Member in the Participant who is a Financial Entity; and (ii) any Member in the Participant whose Anticipated Holdings in the Participant are lower than 10% – the Member's Average Turnover shall be deemed as Zero (0);

4.2.1.b.2. For any Member in the Participant who is not a Financial Entity and whose Anticipated Holdings in the Participant ~~exceeds are~~⁶⁵ 10% or more – the Member's Average Turnover shall be calculated as an average of the Member's annual turnover for the three (3) most recent consecutive, audited annual Financial Statements, as follows:

$$ATO_i = \frac{TO_c + TO_{c-1} + TO_{c-2}}{3}$$

Where:

TO_c = Member (i)'s annual turnover for year c.

c = year 2019. If audited annual Financial Statements for year 2019 were not yet published - then its audited annual Financial Statement for⁶⁶ year 2018.

("Member's Average Turnover")

(c) **Minimal Turnover Required**

The minimal turnover required of the Participant is:

⁶⁵ [Addendum no. 5; Item no. 2.](#)

⁶⁶ Addendum no. 1; Item no.19.

4.2.1.c.1. In the event that all Members of the Participant are not Financial Entities – not be less than NIS 60,000,000.

In the event that one or more of the Members of the Participant is a Financial Entity – the minimal turnover required of a Participant shall not be less than the product of NIS 60,000,000 multiplied by Anticipated Holdings of all Members who are not Financial Entities.

("Minimal Turnover Required").

Form of Submission. In order to demonstrate compliance with this Section ~~4.2.14.2.1~~ [Turnover], the applicable Entities shall complete, execute and submit **Pre-Qualification Forms "4" and Pre-Qualification Forms "5"**.

4.2.2. **Financial Pre-Qualification Requirements; Operating Cash Flow**

(a) Each Member of the Participant who is not a Financial Entity, is required to demonstrate that its Average Operating Cash Flow, as this term is defined in Section ~~4.2.24.2.2(b)(b)~~ below, is not negative (either positive or equal to zero).

(b) For the purpose of this Pre-Qualification Requirement, the Average Operating Cash Flow of each Member who is not a Financial Entity, shall be calculated in the following manner:

Average Operating Cash Flow

$$= \frac{CF_{(c)} + CF_{(c-1)} + CF_{(c-2)}}{3}$$

Where:

CF_c = the Member's Operating cash flow for year c.

c = year 2019. If audited annual Financial Statements for year 2019 were not yet published - then its audited annual Financial Statement for⁶⁷ year 2018.

("Average Operating Cash Flow")

or:

- (c) In the event that the Average Operating Cash Flow of a Member who is not a Financial Entity, is negative, then that Member is required to demonstrate that the ratio between (A) and (B) below is less than 25%, so that-

$$\frac{A}{B} < 0.25$$

Where:

$$A = |\text{Min}(\text{Average Operating Cash Flow}, CF_c)|$$

$$B = E_c - RE$$

Average Operating Cash Flow = as calculated pursuant to the provisions of section (b) above.

CF_c = the Operating Cash Flow of year c.

E_c = the equity of the Member, who is not a Financial Entity, on 31 of December 2019, based on its Financial Statements for the year 2019. If audited annual Financial Statements for year 2019 were not yet published - then the equity of the

⁶⁷ Addendum no. 1; Item no.19.

Member on 31 of December 2018 based on its Financial Statements for the year 2018.

RE = the minimal required equity of the Member according to section [4.2.34.2.3](#) below.

c = year 2019. If audited annual Financial Statements for year 2019 were not yet published - then its audited annual Financial Statement for⁶⁸ year 2018.

Form of Submission - In order to demonstrate compliance with this Section [4.2.24.2.2](#) [Operating Cash Flow], the applicable Entities shall complete, execute and submit **Pre-Qualification Form "4"**.

4.2.3. **Financial Pre-Qualification Requirements; Equity**

Each Member who is not a Financial Entity is required to demonstrate equity of not less than NIS 400,000, for each one percent (1%) of Anticipated Holdings in the Participant, based on its audited annual Financial Statement for 2019 unless such was not yet published - then its audited annual Financial Statement for 2018.

(“Minimal Required Equity”).

Form of Submission. In order to demonstrate compliance with this Section [4.2.34.2.3](#) [Equity], the applicable Entities shall complete, execute and submit **Pre-Qualification Form "4"**.

4.2.4. **Reliance on a Guarantor**

⁶⁸ Addendum no. 1; Item no.19.

(a) Each Member who is not a Financial Entity, may demonstrate compliance with the Financial Pre-Qualification Requirements by relying on a Guarantor, provided that the Guarantor itself complies with all Financial Pre-Qualification Requirements, and provided that both the Member and its Guarantor comply with the requirement under Section ~~3.53.5~~ [Participation - General Requirements] above.

(b) For the purpose of determining a Guarantor's compliance with all Financial Pre-Qualification Requirements (including in the event that the Guarantor is also a Member of the Participant), the Anticipated Holdings of such Guarantor in the Participant will be deemed to include all Anticipated Holdings of the Member(s) seeking to rely on such Guarantor, as well as the Guarantor's Anticipated Holdings as a Member (if relevant).

~~(b)(c)~~ If a Member relies on a Guarantor for the purpose of demonstrating compliance with the Financial Pre-Qualification Requirements, such Guarantor shall duly execute, complete and sign Pre-Qualification Form "5" in place of the Member which relies upon it.⁶⁹

4.2.5. **Financial Pre-Qualification Requirements; Private Investment Fund**

Any Member, who is a Private Investment Fund, is required to demonstrate that as of the date commencing fourteen (14) days prior to the Pre-Qualification Submission Date, the amount of Unutilized Commitments under its management is not less than

⁶⁹ Addendum no. 5; Item no. 3.

1,200,000 NIS⁷⁰, for each one percent (1%) of Anticipated Holdings in the Participant.

Form of Submission. In order to demonstrate compliance with this Section [4.2.54.2.5](#) [Private Investment Fund], the applicable Entities shall complete, execute and submit **Pre-Qualification Form "6"**.

4.2.6. **Financial Pre-Qualification Requirements; Banking Corporation or Institutional Investors**

Any Member, who is a Banking Corporation or Institutional Investor, is required to demonstrate that:

(a) Its equity (excluding minimal equity required by Law, to the extent relevant) is not less than NIS 600,000 for each one percent (1%) of Anticipated Holdings in the Participant, based on the Member's its audited annual Financial Statement for 2019 unless such was not yet published - then its audited annual Financial Statement for 2018;

or

(b) It manages assets with a net worth of not less than NIS 10,000,000 for each one percent (1%) of Anticipated Holdings in the Participant, based on the Member's audited annual Financial Statement for 2019 unless such was not yet published - then its audited annual Financial Statement for 2018.

Form of Submission. In order to demonstrate compliance with this Section [4.2.64.2.6](#) [Banking Corporation or Institutional Investors],

⁷⁰ Addendum no. 1; Item no.21.

the applicable Entities shall complete, execute and submit **Pre-Qualification Form "7"**.

4.2.6A Financial Pre-Qualification Requirements; Investment Entity⁷¹

Any Member who is an Investment Entity is required to demonstrate equity of not less than 1,200,000 NIS, for each one percent (1%) of Anticipated Holdings in the Participant, based on its audited annual Financial Statements for 2019. If audited annual Financial Statements for year 2019 were not yet published – then its audited annual Financial Statement for 2018.

Form of Submission. In order to demonstrate compliance with this Section 4.2.6.A (Investment Entity), the applicable Entities shall complete, execute and submit **Pre-Qualification Form "9"**.

4.2.7. **Content and Submission Form**

- (a) In order to demonstrate compliance with the Financial Pre-Qualification Requirements, each Entity required to submit its Financial Statements (for purpose of this Section, "**Demonstrating Entity**"), shall submit its relevant Financial Statements duly prepared and presented in accordance with one of the following:

4.2.7.a.1. Israeli GAAP (including Standard No. 51 of the Institute of Certified Public Accountants in Israel);

4.2.7.a.2. US GAAP (published by the FASB);

4.2.7.a.3. International Financial Reporting Standards (including, with respect to the cash flow statements, IAS (International Accounting Standards) No. 7 and IFRS updates);

⁷¹ Addendum no. 1; Item no. 2(d).

4.2.7.a.4. Germany IFAD GAAP;

4.2.7.a.5. French GAAP;

4.2.7.a.6. Spanish GAAP;

4.2.7.a.7. Honk Kong Financial Reporting Standards (HKFRS);

4.2.7.a.8. Chinese Accounting Standards (CAS);

and duly executed by the Member/Guarantor's management (or the equivalent thereof) and by its external auditors.

Demonstrating Entities whose Financial Statements are presented based on acceptable accounting principles in their domicile, which are different than those specified in Sections ~~4.2.7.a.14.2.7.a.1 - 4.2.7.a.84.2.7.a.8~~ above, are required to submit at least thirty (30) days prior to the Pre-Qualification Submission Date a specific request to the Tender Committee in accordance with the provisions of Section ~~2.92.9~~ [Requests for Clarifications] in order to receive its approval for submission of such Financial Statements.

The Tender Committee will consider each request on a case by case basis, at its sole discretion, and may issue an Addendum as a result thereof.

- (b) Without derogating from the generality of Section ~~(a)(a)~~ above, the Financial Statements must include a balance sheet, a profit and loss statement, a cash flow, and an auditor's report and notes.

The above shall not apply to Financial Entities which the accounting principles applicable thereto do not require

cash flow statements to be included in their audited annual Financial Statements

- (c) A Entity whose Financial Statements do not include cash flow statements, shall provide such statements in accordance with one of the accounting principles set out in Sections ~~4.2.7.a.14.2.7.a.1-~~ ~~4.2.7.a.84.2.7.a.8~~ above, duly executed by the Entity's external auditors.
- (d) The Financial Statements will be provided either in English or in Hebrew, but in no other language.
- (e) In the event of a reliance by a Participant or by a Member on a Guarantor, the Financial Statements of such Guarantor shall be included (instead of those of the Member), and shall be subject to the provisions of Section ~~4.2.44.2.4~~ [Reliance on a Guarantor] above.
- (f) In order to demonstrate compliance with the Financial Pre-Qualification Requirements specified in Section ~~4.2.54.2.5~~ [Financial Pre-Qualification Requirements; Private Investment Fund] above, a Member, who is a Private Investment Fund, is required to submit its investment agreements and appointment agreements demonstrating the overall Commitments, as required pursuant to the provisions of Section ~~4.2.4(a)4.2.4(a)~~ above, and to submit a statement by its CFO depicting the overall amount of the Unutilized Commitments, as required pursuant to the provisions of Section ~~4.2.4(b)4.2.4(b)~~ above.
- (g) In order to demonstrate compliance with the Financial Pre-Qualification Requirements, each Member who is not a Financial Entity, or its Guarantor (as applicable)

⁷²shall complete, execute and submit **Pre-Qualification Form [“4”]**, duly signed by the CEO or CFO of the Member (as applicable)⁷³; in addition, to the extent applicable, each Member shall complete, execute and submit **Pre-Qualification Form [“6”]** and⁷⁴ **Pre-Qualification Form [“7”]**.

- (h) In the event of a discrepancy between the Financial Statements and the Pre-Qualification Forms, the provisions of the Financial Statements shall prevail.

4.2.8. **Exchange of Currency**

- (a) The financial figures included in the Pre-Qualification Forms must be submitted using New Israeli Shekels (NIS) and, to the extent indicated in relevant Pre-Qualification Forms, in the applicable original currency.
- (b) Financial information (such as Contract Value) and the figures included in the Financial Statements, presented in any currency other than NIS, will be converted to NIS in accordance with the following:

4.2.8.b.1. **Turnover and Operating Cash Flow**

The values of the Turnover and Operating Cash Flow shall be converted to NIS based on the exchange rates for the relevant calendar fiscal year as are published by the National Bureau of Statistics and Economical Research data:

Calendar Fiscal	Currency	NIS (₪)
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⁷² Addendum no. 3; Item no. 13.

⁷³ Addendum no. 3; Item no. 13.

⁷⁴ Addendum no. 3; Item no. 13.

Year		
January 1, 2016, until December 31, 2016	1 USD (US\$)	3.8406
	1 EUR (€)	4.2496
	1 GBP (£)	5.2101
	1 HKD (HK\$)	0.4945
	1 CNY(¥)	0.5779
January 1, 2017, until December 31, 2017	1 USD (US\$)	3.5997
	1 Euro (€)	4.0622
	1 GBP (£)	4.6324
	1 HKD (HK\$)	0.4617
	1 CNY(¥)	0.5328
January 1, 2018, until December 31, 2018	1 USD (US\$)	3.5970
	1 Euro (€)	4.2442
	1 GBP (£)	4.7973
	1 HKD (HK\$)	0.4587
	1 CNY(¥)	0.5434
January 1, 2019, until December 31, 2019	1 USD (US\$)	3.5643
	1 Euro (€)	3.9926
	1 GBP (£)	4.5508
	1 HKD (HK\$)	0.4547
	1 CNY (¥)	0.5160

4.2.8.b.2. Equity and assets/commitments under management and Unutilized Commitments

An Entity's equity and a Financial Entity's Assets/Commitments under management ⁷⁵shall be converted to NIS, in accordance with the following exchange rates, as are published in the National Bureau of Statistics and Economical Research data:

Day	December 31, 2019	December 31, 2018
Currency	NIS (₪)	NIS (₪)
1 USD (US\$)	3.4560	3.7480
1 Euro (€)	3.8782	4.2916
1 GBP (£)	4.5597	4.7934
1 HKD (HK\$)	0.4435	0.4783
1 CNY (¥)	0.4961	0.5998

For the purpose of converting Unutilized Commitments to NIS (see Section 4.2.5), the Tender Committee shall publish the exchange rates, accurate as of fourteen (14) days prior to the Pre-Qualification Submission Date, by no later than ten (10) days prior to the Pre-Qualification Submission Date.⁷⁶

- (c) An Entity whose financial data is presented in currencies other than NIS/US\$/€/£/HK\$/¥ (the exchange

⁷⁵ Addendum no. 4; Item no. 2.

⁷⁶ Addendum no. 4; Item no. 2.

rates of which are presented above) is required to submit a specific request to the Tender Committee for other currency conversion to US Dollars, at least thirty (30) days prior to the Pre-Qualification Submission Date. Such a request shall contain all the relevant information, including exchange rate tables and a reference to the source thereof. The Tender Committee will consider each request on a case by case basis and may issue an Addendum as a result thereof.

The foregoing does not derogate from the requirements of Section ~~4.2.84.2.8(a)~~(a).

- (d) An Entity whose fiscal year, according to its place of registration, ends on a day other than December 31, is required to request the Tender Committee's approval to use alternative exchange rates, at least thirty (30) days prior to the Pre-Qualification Submission Date. The request must specify all the relevant information and exchange rate tables, on which the Entity relies. The Tender Committee will consider each request on a case by case basis and may issue an Addendum as a result thereof.

4.3. Information required for the purpose of Pre-Qualification Submission Review and Determination of Compliance with Technical and Financial Requirements -

- 4.3.1. The Tender Committee may request the Pre-Qualification Submission is supplemented with supporting documentation provided that such documentation proves the respective requirement was met by the Pre-Qualifications Submission Date and determine, based thereon, the Participant's compliance with any of the Pre-Qualification Requirements.

- 4.3.2. The Tender Committee also reserves its right to request, at its sole discretion, additional documentation to be submitted for the purpose of determining compliance with any of the requirements, including those set forth under Sections ~~4.14.1~~ [Technical Pre-Qualification Requirements] and ~~4.24.2~~ [Financial Pre-Qualification Requirements], in the event such documentation was prepared after the Pre-Qualification Submission Date provided they demonstrate compliance upon the Submission Date.
- 4.3.3. In addition, and without derogating from the Tender Committee's right to request any clarifications to Pre-Qualification Submissions, the Tender Committee may consider any information included in the Pre-Qualification Submissions for the purpose of determining compliance with any requirement even if such information was not submitted for the purpose of the given requirement.
- 4.3.4. The Tender Committee may consider additional supporting documentation provided by the Participant in reply to the Tender Committee's requests for clarifications, at its discretion and subject to the content of such documentation. Such additional supporting documentation may include resubmitted Pre-Qualification Forms and certifications, whether relating to the demonstrated projects or to other projects not originally included within the Pre-Qualification Submission but which demonstrate compliance with the respective requirement as of the Pre-Qualification Submission Date.
- 4.3.5. Accordingly, as part of the Pre-Qualification Submission review, and without derogating from any other prerogatives of the Tender Committee, it may, at any time, conduct an independent inquiry regarding any matter connected with the Pre-Qualification Submission, including, without limitation, compliance with the Technical and Financial Pre-Qualification Requirements.

5. ANTICIPATED REQUIREMENTS FOR THE TENDER STAGE

Without derogating from the Tender Committee's rights under Section [8.108.10](#) [Reservation of Rights] and under any applicable Law, it is expected that, within their proposals during the Tender Process, the Participants will be required to meet the following requirements:

5.1. Anticipated Scope of Works of the Project's Engineering Procurement & Construction (EPC) Company –

5.1.1. **EPC's Holdings - Experience Provider(s) Anticipated Holdings of the EPC** – at least **51%** the EPC's Means Of Control shall be held by part or all of the Experience Providers whose experience was demonstrated for the purpose of complying with **Technical Pre-Qualification Requirements**.

5.1.2. **Design and Construction works** - the EPC shall execute – on-behalf of and at the SPC's responsibility (referred to under Section [8.98.9](#) [Formation of a Sole Purpose Company]) - all works relating to the design and construction of the Project. The EPC shall commence its works upon the signature of the Agreement by the State and complete them by the date intended for receiving the permit to operate (“PTO”) –

(a) **Treatment Plant BTS Design** - the Experience Provider who demonstrated compliance with the Technical Pre-Qualification Requirements set forth under Section [4.1.14.1.1](#) [Technical Pre-Qualification Requirement no. 1 - Design of a Biological Treatment System] shall engage in an agreement with the EPC (irrespective of whether or not it holds any of the EPC's holdings per Section [5.1.15.1.1](#) [EPC's Holdings - Experience Provider(s) Anticipated Holdings of the EPC]), according to which the Experience Provider shall be directly responsible for the execution of the treatment plant's BTS design and performance of any adjustment or

adaptation which may be required, at least, until the commencement of the O&M stage.

The Experience Provider's signature upon **Pre-Qualification Form "2" and Attachments A & A(1)** shall testify to its complete and irrevocable undertaking to fulfil its aforesaid obligation.

(b) **Treatment Plant Design** - the Experience Provider who has demonstrated the *Design* experience required within the framework of the Technical Prequalification Requirement stipulated under Section 4.1.24.1.2 [Technical Pre-Qualification Requirement no. 2 – Design, Construction and Operation of a Facility] shall engage in an agreement with the EPC Company ⁷⁷~~(irrespective of whether or not the Experience Provider holds any of the EPC's holdings per Section 5.1.1 [EPC's Holdings – Experience Provider(s) Anticipated Holdings of the EPC])~~ according to which the Experience Provider shall be directly responsible for the execution of the design of all aspects of the Project other than the BTS - and shall bear all the risks related to the design thereof, on a back-to-back basis,⁷⁸ including the employment and coordination of all the required contractors and employees.

However, in the event that said Experience Provider itself holds at least 30% of the EPC Company's Means of Control per Section 5.1.1 [EPC's Holdings – Experience Provider(s) Anticipated Holdings of the EPC], then it shall not be required to enter into the aforesaid agreement with the EPC Company, provided that all members of the EPC Company be jointly and severally responsible for the design works, while maintaining the Experience Provider's direct

⁷⁷ Addendum no. 5; Item no. 6.

⁷⁸ Addendum no. 3; Item no. 15.

responsibility for the execution of the design of all aspects of the Project other than the BTS, and shall bear all risks related thereto as stated above.

~~(b) The foregoing is no way derogates from the requirement of Section 5.1.1 [EPC's Holdings – Experience Provider(s) Anticipated Holdings of the EPC] with respect to Experience Providers' minimum holdings of the EPC Company's Means of Control.~~⁷⁹

The Experience Provider's signature upon **Pre-Qualification Form "2" and Attachments A & A(1)** shall testify to its complete and irrevocable undertaking to fulfil its respective obligations as set forth under the Invitation.

(c) **Construction** – the Experience Provider who has demonstrated the *Construction* experience required within the framework of the Technical Prequalification Requirement stipulated under Section ~~4.1.24.1.2~~ [Technical Pre-Qualification Requirement no. 2 – Design, Construction and Operation of a Facility] shall engage in an agreement with the EPC Company ⁸⁰~~(irrespective of whether or not the Experience Provider holds any of the EPC's holdings per Section 5.1.1 [EPC's Holdings – Experience Provider(s) Anticipated Holdings of the EPC])~~ according to which the Experience Provider shall be directly responsible for the execution of the Project's Construction and shall bear all the risks related to the construction thereof, on a back-to-back basis,⁸¹ including the employment and coordination of all the required contractors and employees.

However, in the event that said Experience Provider itself holds at least 30% of the EPC's Company's Means of

⁷⁹ Addendum no. 5; Item no. 6.

⁸⁰ Addendum no. 5; Item no. 7.

⁸¹ Addendum no. 3; Item no. 16.

Control per Section 5.1.1 [EPC's Holdings – Experience Provider(s)s Anticipated Holdings of the EPC], then it shall not be required to enter into the aforesaid agreement with the EPC Company, provided that all members of the EPC Company be jointly and severally responsible for the construction works, while maintaining the Experience Provider's direct responsibility for the execution of the Project's Construction, and shall bear all risks related thereto as stated above.

(e) The foregoing in no way derogates from the requirement of Section 5.1.1 [EPC's Holdings – Experience Provider(s)s Anticipated Holdings of the EPC] with respect to Experience Providers' minimum holdings of the EPC Company's Means of Control.⁸²

The Experience Provider's signature upon **Pre-Qualification Form "2" and Attachments A & A(1)** shall testify to its complete and irrevocable undertaking to fulfil its respective obligations as set forth under the Invitation.

5.1.3. **Initial Operation Period** – it is anticipated that an Initial Operation Period of the Plant may be required. In such event the Initial Operation Period shall commence upon the State's confirmation of commissioning of the Treatment Plan, and last for a period of 4 years. The PTO, indicating the commencement of the Operation and Maintenance Stage, as defined in Section 5.2.15.2.1 [Commencement of O&M Stage], shall be issued following the State's confirmation of the Initial Operation Period's completion.

5.1.4. **Initial Operation Period Execution** – in the event an Initial Operation Period will be required, then either⁸³ the Experience Provider who has demonstrated the *Operation* experience required within the framework of the Technical Prequalification

⁸² Addendum no. 5; Item no. 7.

⁸³ Addendum no. 5; Item no. 8.

Requirement stipulated under Section 4.1.24.1.2 [Technical Pre-Qualification Requirement no. 2 – Design, Construction and Operation of a Facility] or the O&M Company⁸⁴ shall engage in an agreement with the EPC Company according to which the Experience Provider shall be directly responsible for the execution of the Project's Initial Operation Period, and shall bear all the risks related thereto, on a back-to-back basis, including the employment of all the required contractors and employees and the coordination thereof.

Should such agreement be entered into by the O&M Company, the Experience Provider directly shall bear the aforementioned responsibilities and risks jointly and severally with the other members of the O&M Company.

However, if said Experience Provider holds at least 30% of the EPC Company's Means of Control per Section 5.1.1 [EPC's Holdings – Experience Provider(s) Anticipated Holdings of the EPC], then the Experience Provider shall be entitled to undertake the above risks and responsibilities without it or the O&M Company entering into the abovementioned agreement with the EPC Company. In such case, the Experience Provider shall remain directly responsible for the execution of the Project's Initial Operation Period, and shall bear all risks related thereto as stated above.

5.1.4. The foregoing in no way derogates from the requirement of Section 5.1.1 [EPC's Holdings – Experience Provider(s) Anticipated Holdings of the EPC] with respect to Experience Providers' minimum holdings of the EPC Company's Means of Control. (irrespective of whether or not the Experience Provider holds any of the EPC's holdings per Section 5.1.1 [EPC's Holdings – Experience Provider(s) Anticipated Holdings of the EPC]) according to which the Experience Provider shall be directly

⁸⁴ Addendum no. 5; Item no. 8.

~~responsible for the execution of the Project's Initial Operation Period and shall bear all the risks related thereto, on a back-to-back basis,⁸⁵ including the employment of all the required⁸⁶ contractors and employees and the coordination thereof.~~

5.2. Operation and Maintenance (O&M)

5.2.1. **Commencement of O&M Stage** - the Operation and Maintenance Stage of the Project, which shall be performed by or on-behalf of the Project's O&M Company, shall commence after issuance of the PTO (referred to in the aforesaid Section 5.1.35.1.3 [Initial Operation Period]) and last for the entire period stipulated for this in the Tender Process Documents (unless shortened by the State).

5.2.2. **Operation and Maintenance as of PTO** – all Operation and Maintenance works shall be under the responsibility of⁸⁷ the Experience Provider who has demonstrated the *Operation* experience required within the framework of the Technical Prequalification Requirement stipulated under Section 4.1.24.1.2 [Technical Pre-Qualification Requirement no. 2 – Design, Construction and Operation of a Facility] and shall hold at least **51%** of the O&M Company's Means of Control. This Experience Provider shall ⁸⁸~~irrespective of its said holdings engage in an agreement with the O&M Company, according to which the Experience Provider shall~~ be directly responsible for all Operation and Maintenance and shall bear all the risks related thereto, on a back-to-back basis,⁸⁹ including the employment and coordination of all the required contractors and employees.

⁸⁵ ~~Addendum no. 3; Item no. 17.~~

⁸⁶ ~~Addendum no. 5; Item no. 8.~~

⁸⁷ Addendum no. 3; Item no. 18.

⁸⁸ ~~Addendum no. 5; Item no. 9.~~

⁸⁹ Addendum no. 3; Item no. 18.

5.2.2. The above shall not derogate from the joint and several responsibility of all members of the O&M Company for the Operation and Maintenance of the Project.⁹⁰

In the event the SPC or O&M Company wishes to replace the aforesaid Experience Provider with a different entity who shall hold 51% of the O&M Company, enter into the agreement provided above and execute the Operation and Maintenance works – it shall submit an appropriate request. The time by which such request may be made, its contents and all associated stipulations, including the completion of the Construction Stage and commencement of the O&M Stage and reallocation of responsibility from the EPC Company to the O&M Company, shall be defined within the Tender Process Documents. The replacing entity will be required to meet the respective terms and conditions which shall be stipulated in the Tender Process Documents, *mutatis mutandis*. This requirement shall primarily be based on the *Operation* experience required within the framework of the Technical Prequalification Requirement stipulated under Section 4.1.24.1.2 [Technical Pre-Qualification Requirement no. 2 – Design, Construction and Operation of a Facility] which shall apply *mutatis mutandis*. The Experience Provider who has demonstrated the *Operation* experience required within the framework of the Technical Prequalification Requirement stipulated under Section 4.1.24.1.2 [Technical Pre-Qualification Requirement no. 2 – Design, Construction and Operation of a Facility] shall be released of its roles and duties only after the State approves the requested replacement. In the event the replacement is not approved – the Operation and Maintenance shall be executed by the Experience Provider who executed the Initial Operation Period, as per Section 5.1.45.1.4 [Initial Operation Period Execution].

The Experience Provider's signature upon **Pre-Qualification Form "2" and Attachments A & A(1)** shall testify to its complete and

⁹⁰ Addendum no. 5; Item no. 9.

irrevocable undertaking to fulfil its respective obligations as set forth under the Invitation.

- 5.3. The Tender Process Documents shall also detail requirements relating to Registration of Contractors per the **Construction Engineering Works Law, 1969**, and the regulations promulgated thereunder, as well as "**Approval of a Recognized Contractor for Governmental Works**" in accordance with the Registration of Contractors Law or a contractor approval issued by the approved contractors administration (מנהלת קבלנים) (מוכרים) within the inter-ministerial committee established to determine the criteria for awarding works for contractors שבמסגרת מנהלת קבלנים מוכרים (מוכרים) הוועדה הבין-משרדית לקביעת סדרי מסירת עבודות ממשלתיות לקבלנים).
- 5.4. The respective roles and responsibilities of the Experience Provider(s) shall apply thereto irrespective to their holdings in the EPC or O&M Companies.
- 5.5. It is, again, emphasized that the aforesaid requirements are not final and provide only a current estimation of the concession's framework. Accordingly, all anticipated requirements are subject to a final determination as shall be elaborated and reflected in the Tender Process Documents.

6. PRE-QUALIFICATION SUBMISSION

6.1. Pre-Qualification Submission Letter

Each Participant shall attach to its Pre-Qualification Submission the Pre-Qualification Submission Letter provided in **Pre-Qualification Form [“1”]** duly completed and signed by the Participant and each of its Members (“**Pre-Qualification Submission Letter**”).

6.2. Description of the Participant, Members, Experience Providers and Guarantors

In order to demonstrate compliance with the provisions of Sections ~~3.13.1~~ [The Participant], 3.2 [Members of the Participant], ~~3.33.3~~ [Experience Provider] and ~~3.43.4~~ [Guarantor], each Participant shall submit all of the Pre-Qualification Forms duly completed and signed.

6.3. Receipt of Payment for the Participation Fee

Each Participant shall include in its Pre-Qualification Submission a copy of the receipt for payment of the Participation Fee.

6.4. Identification of Sensitive or Classified Information

Without derogating from the generality of the provisions of Regulation 21(e) of the Regulations (and the discretion granted thereunder to the Tender Committee), Participants will detail, within **Pre-Qualification Form “1”**, in a clear, complete and legible manner, all information contained in their Pre-Qualification Submissions, which they consider to be of a commercially sensitive or confidential nature and which, in their opinion, should not be disclosed to other Participants (a request with respect to “**Privileged Information**”). The Tender Committee may allow the review of information which the Participant considers to be of commercial sensitive or confidential nature and to act in accordance with the provisions of Section ~~8.78.7~~ [Disclosure of Documents].

7. METHOD OF SUBMISSION

The Pre-Qualification Submission shall be submitted in accordance with the following provisions:

7.1. **Compliance with the Requirements of the Pre-Qualification Documents**

Participants shall prepare their Pre-Qualification Submissions in strict conformity with the requirements of this Invitation. Participants shall complete all applicable parts of the Pre-Qualification Submission in an accurate and detailed manner, disclosing all the information required, as well as any additional information or data required to clarify, substantiate and generally support the Pre-Qualification Submission.

Without derogating from the generality of the foregoing, Participants shall submit all Pre-Qualification Forms attached to this Invitation duly executed. In the event the Participant is of the opinion it is prevented from submitting any of the information required under this invitation, or prevented from doing so in the form required, or from complying with any of its terms or requirements, it shall submit a Request for Clarification, per the provisions of Section 2.92.9 [Requests for Clarifications of this Invitation], above, to the Tender Committee in which it shall explain the reasons it believes to be so prevented. The Tender Committee shall consider said Request for Clarification and may provide its response to all Participants within the framework of an Addenda.

7.2. **No Unauthorized Modification**

7.2.1 Participants shall not modify or supplement the instructions of this Invitation (including the Pre-Qualification Submission Forms). Unauthorized conditions, limitations, modifications, supplements, reservations, disclaimers or provisions attached to a Pre-Qualification Submission may result in the disqualification of the Pre-Qualification Submission and of the Participant. For the avoidance of doubt, any conditions, amendments, limitations, modifications, supplements, reservations, disclaimers or provisions attached to the Pre-Qualification Submission, which were not submitted by the Participant to the Tender Committee in

accordance with the provisions of Section ~~2.92.9~~ [Requests for Clarification of this Invitation] and approved by the Tender Committee in the form of an Addendum, issued in accordance with the provisions of Section ~~2.102.10~~ [Addenda], may be deemed as unauthorized and may result in the disqualification of the Pre-Qualification Submission and of the Participant.

7.2.2 Whether a statement, condition, limitation, modification, supplement, reservation, disclaimer or provision attached to the Pre-Qualification Submission will be considered to be “unauthorized” as referred to above will be determined by the Tender Committee. Thus, a statement expressed as an “assumption”, a “request for a change”, a “clarification” or “we suggest to discuss at a later stage” (or any comparable words or expressions), may be treated by the Tender Committee as “unauthorized modifications”.

7.3. Language of the Pre-Qualification Submission

All Pre-Qualification Submissions, including Pre-Qualification Forms and statements contained therein, shall be in either English or Hebrew. Supporting documents and printed literature submitted by a Participant in any other language should be accompanied by a translation into English or Hebrew (authenticated by a Public Notary) in which case, for purposes of interpretation, the translation to English shall prevail.

Notwithstanding the above, official documents and authenticated certificates of Israeli corporations may be submitted in Hebrew.

7.4. Signing of the Pre-Qualification Submission

7.4.1. Each page of the Pre-Qualification Submission, including all Pre-Qualification Forms and appendices, shall be duly signed by the Participant (if the Participant is a single Entity already incorporated on the Pre-Qualification Submission Date) or by

each of the Members of the Members of the Participant (if the Participant is not a single Entity).

7.4.2. Without derogating from the generality of the foregoing, in the event a document or a set of documents constituting part of the Pre-Qualification Submission is set in binders, the Participant (if the Participant is a single Entity already incorporated on the Pre-Qualification Submission Date) or each of the Members of the Participant (if the Participant is not a single Entity) are only required to sign the first and last pages of each of the binders and clearly indicate the number of pages of such binder. The Participant shall seal the original and each of the Pre-Qualification Submission' copies in separate envelopes. The envelopes shall then be sealed in an outer envelope or box.

7.5. Table of Contents

All pages of the Pre-Qualification Submission will be enumerated, and the Pre-Qualification Submission will include a detailed table of contents.

7.6. Authorization of Signatures by an Attorney

Adjacent to each signature (excluding signatures by initials) on the signature page of each Pre-Qualification Form within the Pre-Qualification Submission of the Participant, its Members, Experience Providers, and Guarantors (if applicable), there shall be a confirmation by an attorney that the signatory (i) was cautioned that he/she is required to state the truth, and that if he/she fails to do so he/she shall be liable to the punishments prescribed by law; and (ii) is authorized to submit the required information on behalf of the Participating Entity and to commit such Participating Entity in relation to the document on which such signature appears.

7.7. Number of Pre-Qualification Submission Copies

7.7.1. Pre-Qualification Submissions must be submitted, and each copy must be clearly marked as either the (1) original or one of the five (5) identical copies (6 altogether). Notwithstanding the foregoing, Financial Statements which are part of the Pre-Qualification Submissions, shall be submitted in only (1) original or

authenticated copy of the original,⁹¹ and (1) photocopy, which shall be attached to the original Pre-Qualification Submission.

In the event of submission of an authenticated copy of the Financial Statements in place of the original, such copy shall be authenticated by a Notary or by the external auditor of the Financial Statements.⁹²

7.7.2. In addition, the Pre-Qualification Submission shall include (5) USB storage devices each containing a copy of the Pre-Qualification Submission (including the Financial Statements) in PDF format.

7.7.3. In the event of a discrepancy between the original and the other Pre-Qualification Submission documents, or the USB storage device, the original shall prevail.

7.8. Sealing and Marking of Pre-Qualification Submissions

7.8.1. The Pre-Qualification Submissions shall be submitted at the allocated tender box to be placed in the address Indicated in Section ~~2.9.12.9.1~~.

7.8.2. Each envelope or box submitted as part of the Pre-Qualification Submission shall be clearly marked with the name of this Invitation:

‘Pre-Qualification Submission for Pre-Qualification Process No. [•] for the Tender for the design, financing, construction, operation and maintenance of a biological plant for treatment of contaminated groundwater in the vicinity of Ramat Ha’sharon IMI.

No other details shall be indicated on the outer envelope or box.

7.9. Pre-Qualification Submission Date

⁹¹ Addendum no. 3; Item no. 19.

⁹² Addendum no. 3; Item no. 19.

7.9.1. Without derogating from the Provisions of Section ~~2.102-10~~ [~~Addenda~~ ~~Addenda~~] above, Pre-Qualification Submissions should be submitted at the address provided in Section ~~7.87-8~~ [~~Sealing and Marking of Pre-Qualification Submissions~~ ~~Sealing and Marking of Pre-Qualification Submissions~~] above **on** the date designated for such submission, as set forth in Section ~~1.61-6~~ [~~Anticipated Schedule~~ ~~Anticipated Schedule~~] above, as of 09:00 (9a.m) (ISR time) and by no later than 14:00 (2p.m.) (ISR time), (the “**Pre-Qualification Submission Date**”).

7.9.2. Pre-Qualification Submissions submitted after the Pre-Qualification Submission Date may be opened by the Tender Committee solely for the purpose of identifying the relevant Participant. Such Pre-Qualification Submissions shall be rejected and promptly returned to the Participants who shall consequently be disqualified from participating in the Tender Process.

7.10. **Opening of Pre-Qualification Submissions**

All Pre-Qualification Submissions shall be kept in the tender box until the opening thereof. For the purpose of this Section the "tender box" may also mean a closed and locked room. The opening of any Pre-Qualification Submission shall be documented.

8. REVIEW AND EVALUATION OF PRE-QUALIFICATION SUBMISSIONS

8.1. Review and Evaluation by the Tender Committee

8.1.1. The Tender Committee, with the assistance of any of its Advisors and experts, shall review and evaluate the Pre-Qualification Submissions in order to determine whether each of the Participants meets the Pre-Qualification Requirements in this Invitation, including all professional and financial requirements and all other applicable provisions and requirements of this Invitation.

8.1.2. The Pre-Qualification Submissions will not be graded by the Tender Committee. Pre-Qualification Submissions shall either “pass” or “fail” the Pre-Qualification Process.

8.2. Requests for Clarifications

8.2.1. Without derogating from any of its rights and prerogatives pursuant to this Invitation or Law, the Tender Committee may conduct an independent evaluation of and in connection with any Pre-Qualification Submission. In its independent evaluation, the Tender Committee may rely on any information available to it, including information provided by any third-party, *inter alia*, with respect to information provided for the purpose of demonstrating compliance with any of the Pre-Qualification Requirements.

8.2.2. The Tender Committee may request additional information and clarifications from a Participant or any other Entity or person, including through meetings in accordance with the provisions of Section ~~09~~.

The Tender Committee may request a Participant or any other Entity or person to clarify any item included in any Pre-Qualification Submission and to submit any additional information, clarification, document, reference etc. which is necessary in the opinion of the Tender Committee for the evaluation of the Pre-

Qualification Submission or any part thereof. In doing so, the Tender Committee may hold meetings with any of the Participants, address any of the clients mentioned in any of the Pre-Qualification Forms, and visit any site operated by the Participating Entity.

8.2.3. Participants will comply with the requests of the Tender Committee and will submit all requested clarifications and additional information by email and in original hardcopy to be delivered by hand, within the time period which shall be stipulated by the Tender Committee.

8.2.4. The requests for clarifications from Participants will be in writing and delivered to the Participants by email, and the receipt thereof shall be confirmed by the Participant by return mail, to the address noted in Section ~~2.9.12.9.1~~ above, within forty-eight (48) hours of receipt unless otherwise instructed by the Tender Committee.

8.2.5. The responses of Participants to the requests for clarifications from the Tender Committee will form an integral part of their Pre-Qualification Submissions. In the event of a discrepancy between the Pre-Qualification Submission and the response of the Participant to the requests for clarifications, the response of the Participant to the requests for clarifications shall prevail.

8.2.6. The Tender Committee may exercise its right under this Section ~~8.28.2~~ [Requests for Clarifications] any number of times during the evaluation of the Pre-Qualification Submissions.

8.3. Deviation

8.3.1. In any event that a Pre-Qualification Submission contains an unauthorized modification or a Deviation, the Tender Committee may act as it deems appropriate, including without limitation, in any one or more of the following ways:

- (a) disqualifying the Participant and the Pre-Qualification Submission;

- (b) ignoring the unauthorized modification or the Deviation or any part thereof;
- (c) deem the unauthorized modification or the Deviation or any part thereof as a technical error;
- (d) request of the Participant to amend the unauthorized modification or the Deviation by resubmitting its Pre-Qualification Submission or any part thereof, by providing a notice of absolution to the Tender Committee, or by any other means deemed necessary in the opinion of the Tender Committee.

8.3.2. The Tender Committee shall be entitled, at its sole discretion, to determine whether or not to act in accordance with any of the alternatives specified in items ~~8.3.1(a)8.3.1(a)~~ - ~~8.3.1(d)8.3.1(d)~~ above.

8.3.3. The approval of the Tender Committee to correct a certain type of Deviation shall not be deemed as approval to correct any other type of Deviation.

8.3.4. In the event that a Participant refuses to comply with a request of the Tender Committee, without derogating from any of its rights and prerogatives pursuant to this Invitation or Law, the Tender Committee may disqualify the Participant's Pre-Qualification Submission.

8.3.5. Under exceptional circumstances, the Tender Committee may amend or waive any requirement herein, if the Tender Committee is of the opinion that it beneficial for the Project.

8.4. **Announcement of Eligible Participants**

8.4.1. Upon the completion of its evaluation of the Pre-Qualification Submissions, the Tender Committee will announce those Participants whom the Tender Committee deemed to have: (i) successfully demonstrated compliance with the requirements of the

Pre-Qualification Documents, including with all Pre-Qualification Requirements; and (ii) were not otherwise disqualified thereby (“**Eligible Participant**”).

8.4.2. Without derogating from the generality of the provisions of Section ~~8.108-10~~ [~~Reservation of Rights~~Reservation of Rights] below, the Tender Committee intends to publish the Tender Process Documents to the Eligible Participants, who will be allowed to submit their Bids in accordance with the provisions of the Tender Process Documents.

8.4.3. The Pre-Qualification Submission shall be deemed an integral part of the Bid submission submitted by any Eligible Participant (to the extent that such was submitted).

8.4.4. Upon the completion of the Pre-Qualification Process and the selection of Eligible Participants, the Tender Committee may publish the identity of the Eligible Participants (including the Members, Experience Providers and Guarantors thereof) to all Participants and in a press release.

8.4.5. **Voluntary Preliminary Tests and Analysis by Eligible Participants**

(a) Eligible Participants may be afforded the opportunity to independently perform preliminary tests and an analysis of groundwater.

(b) The interested Eligible Participants shall be provided with groundwater extracted from the Perchlorate contamination source area.

(c) This procedure is non-mandatory and as such the submission of the Bid is not dependent on the execution of the tests and analysis. Without derogating from the above, the Tender Committee encourages Eligible Participants to exercise this option.

- (d) For further information regarding the execution of this voluntary process and the terms and stipulations associated therewith, see the provisions of **Annex A6** (Groundwater Supply for Voluntary Preliminary Tests and Analysis by Eligible Participants).
- (e) The Tender Committee may distribute further information and stipulations regarding these Voluntary Preliminary Tests and Analysis by within the framework of Clarification notices.
- (f) Each Participant shall include within its Pre-Qualification Submission **Pre-Qualification Form “8”** - Voluntary Preliminary Tests and Analysis – Application Form. The information provided within the form is intended to enable the Tender Committee and IMI to commence preparations with respect to the future Voluntary Preliminary Tests and Analysis.

8.5. **Rejection of the Pre-Qualification Submissions**

Without derogating from the Tender Committee’s rights under the Law:

- 8.5.1. The Tender Committee reserves the right to reject any or all Pre-Qualification Submissions.
- 8.5.2. The Tender Committee reserves the right to reject a Pre-Qualification Submission if the Tender Committee is of the opinion that, based on the financial and professional information provided in its Pre-Qualification Submission, the Participant is prima facie unable to execute the Project.
- 8.5.3. Without derogating from the rights and prerogatives pursuant to this Invitation or Law, the Tender Committee reserves the right to waive or amend any clerical error, arithmetic error or accidental omission in the Pre-Qualification Submission.

8.5.4. Without derogating from the Tender Committee's rights, discretion and authorities pursuant to the provisions of the Pre-Qualification Documents and Law, the Tender Committee reserves the right to reject Pre-Qualification Submissions which do not comply with the Pre-Qualification Requirements, or any other applicable provision of this Invitation, or which are partial, reserved, lacking, conditional, or are false or based on false or misleading information.

8.5.5. The Tender Committee may disqualify any Participant, or impose conditions, limitations or restrictions, or issue any instruction with respect to its participation in the Pre-Qualification Process or the Tender Process in any of the following events:

- (a) Any changes to a Participating Entity, or to the organizational structure presented by the Participant, including a Member's Anticipated Holdings in the Participant without the prior approval of the Tender Committee;

Notwithstanding the foregoing, changes to a Participating Entity which is a publicly listed stock company shall not be subject to the prior written approval of the Tender Committee, provided that such changes do not result in the creation of a new "principal shareholder" ("בעל עניין") (as such term is defined in the Securities Law, 1968);

- (b) The commencement of insolvency, bankruptcy, receivership, liquidation or reorganization proceedings against a Participating Entity or against any Entity which a Participating Entity relied upon or presented, or any similar proceeding which may have the same effect, as determined by the Tender Committee, unless such proceedings are discharged within a reasonable period of time, as determined by the Tender Committee;

- (c) The appointment of a temporary or a permanent receiver or liquidator over a Participating Entity;
- (d) A change in circumstances following which a Participating Entity has a “going concern notice” or a notice of similar effect, in its most recent Financial Statements;
- (e) Any engagement of an Advisor other than in accordance with the provisions of Section [2.142-14](#) [Advisors to the Tender Committee];
- (f) Any event which, the Tender Committee deems, has an adverse effect on the ability of the Participant or any other Entity demonstrating compliance with any of the Pre-Qualification Requirements, to execute the Project;
- (g) The Financial Statements of a Participant, a Member or a Guarantor which were submitted in accordance with Section [4.2.44.2.4](#) [Reliance on a Guarantor] include a notice by an auditor with respect to the ability of such Entity to perform its activity;
- (h) Any Participating Entity (or CEO or directors), has been convicted of an Offence, or an indictment (a criminal charge) has been served against such; or

If a criminal investigation has been initiated or is taking place against any Participating Entity (or CEO or directors) either with respect to an Offence or a criminal investigation with respect to: (i) dishonest conduct; (ii) grave professional misconduct; (iii) fraud and breach of trust; or (iv) any offence which effects the integrity and/or credibility of the Participating Entity; including where the Tender Committee

is of the opinion that such may result in a material or adverse change in the business of such Participating Entity.⁹³

- (i) In the event that any Participating Entity is or becomes a resident of, or domiciled in, a country which does not have diplomatic relations with the State of Israel;
- (j) Any material breach of the provisions of the Invitation or failure to comply with an instruction of the Tender Committee, including, but not limited to, the submission of any false, incomplete or misleading information to the Tender Committee;
- (k) Any material change in, or exceptional circumstances with respect to, a Participating Entity or any Entity which a Participating Entity relied upon or presented, which, in the Tender Committee's opinion, may hinder its participation in the Pre-Qualification Process or the Tender Process, or its involvement in the Project.
- (l) Any other reason for which the Tender Committee deems that a Participating Entity will not be capable of executing the Project (or its respective role therein, as applicable), should the Participant be invited to participate in the Tender Process, or any other event or exceptional circumstances which the Tender Committee may consider (at its sole discretion), as justifying disqualification, or conditioning or limiting the further participation of a Participating Entity;
- (m) Any other reason for which the Tender Committee deems that a Participant is not eligible to be announced as a Successful Bidder including due to dishonesty of such Participant during the Pre-Qualification Process. The Tender

⁹³ Addendum no. 2; Item no. 27.

Committee reserves its right to take any action, at its sole discretion, at such circumstances.

8.5.6. The Participant shall be required to notify the Tender Committee of the existence of any of the events described in Section ~~8.5.58.5.5~~ within a period of time reasonable under the circumstances.

8.5.7. Notwithstanding the foregoing, the Tender Committee may initiate and request the submission of applicable information with respect to any of the above.

8.5.8. The Tender Committee may base its decision under this Section ~~8.58.5~~ [~~Rejection of the Pre-Qualification Submissions~~~~Rejection of the Pre-Qualification Submissions~~] on the information provided by the Participant as well as on any other information available to it, and may request the Participant to provide it with additional information and act according to its rights pursuant to Section ~~8.28.2~~ [~~Requests for Clarifications~~~~Requests for Clarifications~~], as the Tender Committee deems necessary.

8.6. **Intended Decision**

In the event that the Tender Committee intends to disqualify a Pre-Qualification Submission submitted by a Participant or otherwise impose conditions or restrictions with respect to its participation (either in the Pre-Qualification Process or the Tender Process) pursuant to the provisions of Section ~~8.58.5~~ [~~Rejection of the Pre-Qualification Submissions~~~~Rejection of the Pre-Qualification Submissions~~], the Tender Committee will allow such a Participant to present its case with respect to such intended decision.

8.7. **Disclosure of Documents**

8.7.1. Each Participant shall be entitled within thirty (30) days of the Tender Committee's announcement of the Eligible Participants to review the relevant protocols of the Tender Committee, correspondence with the Participants and any of the other Pre-

Qualification Submissions submitted by other Eligible Participants and to receive a copy thereof.

8.7.2. Participants shall not be entitled to review Pre-Qualification Submissions submitted by other Eligible Participants before a decision is issued by the Tender Committee with respect to those parts of the Pre-Qualification Submissions which are commercially sensitive or confidential under this Invitation or Law. The procedure (including the time schedule), with respect to disclosure of documents and review by other Participants shall be determined solely by the Tender Committee.

8.7.3. The Tender Committee shall evaluate, as it deems necessary, the commercially sensitive or confidential nature of parts of the Pre-Qualification Submission which were identified as such by the Participant in accordance with the provisions of this Invitation. The decision of the Tender Committee with respect thereto will be issued to such Participant.

8.7.4. Participants shall not be entitled to claim that any part of the Pre-Qualification Submission other than those parts identified by them as being of a commercially sensitive or confidential nature cannot be reviewed by other Participants and each Participant shall be deemed to have waived any claims it may have with respect thereto.

8.7.5. If a Participant identified parts of its Pre-Qualification Submission as Privileged Information, such Participant:

(i) will not be entitled to claim that the other parts of its Submission (which have not been identified by it as Privileged Information) are of a commercially sensitive or confidential nature and cannot be reviewed by other Participants; and (ii) shall not be entitled to review the Privileged Information or information which is of the same type or character as the Privileged Information in the Pre-Qualification Submissions of other Participants, unless otherwise

determined by the Tender Committee and each Participant shall be deemed to have waived any claims it may have with respect thereto.

8.7.6. The foregoing shall apply **(i)** even if the request of a Participant with respect to Privileged Information was rejected by the Tender Committee and the Privileged Information subject matter of the request not approved as such by the Tender Committee; and **(ii)** even if the Tender Committee will decide to apply its decision with respect to information it considers to be of a commercially sensitive or confidential nature (in a consistent manner) with respect to all Pre-Qualification Submissions (even if not specifically requested to apply such measures by a particular Participant).

8.7.7. A Participant which has not submitted any request with respect to Privileged Information in accordance with the provisions of Section ~~6.46.4~~ [Identification of Sensitive or Classified Information] shall not be construed, or interpreted as derogating from the discretion and prerogatives of the Tender Committee.

8.8. **Issuance of the Tender Process Documents; Update Statement**

8.8.1. General

(a) Without derogating from the generality of the provisions of the Tender Process Documents, it is expected that each Participant, Member, Experience Provider, member in the Experience Provider and Guarantor, will be required to provide a statement detailing any and all changes with respect to the Participant, its Members its Experience Providers, and its Guarantors, which occurred after the Pre-Qualification Submission Date, immediately upon occurrence, or at the latest, within its Bid submission. It is expected that even in the absence of any changes, a statement to that effect will be required (“**Update Statement**”). Without derogating from the

foregoing, the Tender Committee may request all or any Eligible Participants to submit an Update Statement at any time.

(b) The Tender Committee will review the information provided in the Update Statement and, without derogating from its rights under Law, shall be entitled to request a Participant to provide further clarifications and/or documents and/or any other information as shall be deemed necessary at the sole discretion of the Tender Committee, in order to examine and evaluate the Update Statement. The Tender Committee may, at any stage, disqualify any Eligible Participant in the event that such Eligible Participant no longer meets the requirements of the Pre-Qualification Documents, or impose any condition or instruction with respect to its participation in the Tender Process at such time as shall be deemed suitable by the Tender Committee.

(c) The Tender Committee reserves the right to evaluate the Update Statement with regards to, *inter alia*, the repercussions of the information contained therein on the Participant's eligibility, at any time, at its sole discretion. It is hereby clarified that the refraining of the Tender Committee from evaluating the Update Statement upon its receipt shall not derogate from the Tender Committee's right to disqualify the Participant at any later time due to a change specified in the Update Statement, and the Eligible Participant shall not have any claim against the Tender Committee with respect thereto.

8.8.2. Updated Financial Statements

(a) In addition to the Update Statement, it is expected that each Participant shall be required to submit its Members' and Guarantors' most recent available audited Financial

Statements, as applicable (the "**Updated Financial Statements**").

- (b) The Tender Committee shall evaluate the information in the Updated Financial Statements and, without derogating from its rights under Law, may request an Eligible Participant and/or any of its Members or Guarantors to clarify, complete or add any information or documents, as may be required, at its sole discretion, for the review of the Updated Financial Statements. The Tender Committee shall be entitled to disqualify any Eligible Participant, at any stage, in the event that such Eligible Participant no longer meets the requirements of this Invitation, or to impose any condition or instruction with respect to its participation in the Tender Process, including in the event that concerns regarding the capability of the Eligible Participant to execute the Project arise following the review of the Updated Financial Statements of any of its Members or Guarantor(s).
- (c) For the avoidance of doubt, nothing in the foregoing shall derogate from or limit the discretion of the Tender Committee in the occurrence of a materially adverse effect in the market conditions.

8.9. Formation of a Sole Purpose Company

- 8.9.1. Following completion of the Pre-Qualification Process, in order to submit a Bid thereunder, it is expected that each Eligible Participant will be required - by the time to be determined within the Tender Process Documents - to form a single purpose company, incorporated under the Laws, whose sole purpose shall be the participation in the Tender Process, the submission of a Bid therein and the execution of the Project (if eventually selected to do so ("**SPC**").

8.9.2. The shares and other interests in this SPC will be wholly held by the Member (if the Participant was a single Entity), or by the Members who participated, through the Participant, in the Pre-Qualification Submissions, and were approved by the Tender Committee pursuant to the Pre-Qualification Process. The shareholdings and the holdings of other interests by the Members in the SPC (or by the Member if the Participant was a single Entity) shall be as provided in **Pre-Qualification Forms [“2”]**, all as shall further be detailed in the Tender Process Documents. All shareholdings and the holdings of other interests by each single Entity Participant in the SPC shall be as provided in **Pre-Qualification Forms [“2”]**, all as shall further be detailed in the Tender Documents

8.10. **Reservation of Rights**

8.10.1. All Participants acknowledge that the description of the Project, as specified in this Invitation, is general and indicative only. All Participants further acknowledge that at the date of issuance of this Invitation, the Project has not been completely formulated and the Tender Documents have not been completed or approved. The issuance of this Invitation is not intended to give rise to or create any representation, undertaking or warranty on behalf of the State or Tender Committee or anyone on their behalf with respect to the Project or the Tender Process.

8.10.2. Participation in this Pre-Qualification Process shall not confer upon an Entity, a Participant or an Eligible Participant any right with respect to the Project, the scope or content thereof, or any future proceedings which will be conducted with respect thereto, including the Tender Process. The Tender Committee reserves all rights and prerogatives to determine the exact scope, the content, and the terms and conditions of the Tender Documents and for the execution of the Project.

- 8.10.3. The issuance of this Invitation is not intended to guarantee the initiation, execution or the implementation of the Project, or any part thereof.
- 8.10.4. It is expressly understood that any reliance by any Entity, a Participant or an Eligible Participant, and the making of any deductions, interpretations or conclusions with respect to the Project which is expressed hereby, or inferred from, any information provided hereby by The State and the Tender Committee, or by virtue of participation in this Pre-Qualification Process, is at the Entity's, Participant's or Eligible Participant's sole responsibility. The State and the Tender Committee and anyone on their behalf, shall not be responsible in any respect to any loss or damage whatsoever suffered by any Entity, Participant or Eligible Participant, their employees, officers, agents, or any other persons for whom any Entity or Participant may be contractually or legally responsible or accountable, by reason of any assumption, inference, conclusion or reliance on the information contained in this Invitation, in connection therewith, or any action or forbearance in reliance thereon.
- 8.10.5. Without derogating from the generality of the foregoing, the Tender Committee reserves the right not to proceed with this Pre-Qualification Process, or with the Tender Process for the execution of the Project or any part thereof, and may terminate or cancel this Invitation or any other proceedings which are conducted with respect thereto, or with respect to the Project or any part thereof, at any time, as it shall deem appropriate.
- 8.10.6. Under the circumstances described herein, the Tender Committee or anyone on its behalf shall not be responsible in any respect for any loss or damage whatsoever suffered by any Entity or Participant or anyone on their behalf, including their employees, officers, agents, or any other persons for whom any Entity or Participant may be contractually or legally responsible or

accountable, and shall not be required to compensate the Entity or the Participant, their employees, officers, agents, or any other persons for whom the Entity or Participant may be contractually or legally responsible or accountable.

- 8.10.7. The Tender Committee or anyone on their behalf may publish a new invitation to pre-qualify or other proceedings (including a tender) with respect the Project or any part thereof, which may include the same, similar or other pre-qualification requirements and may, or not, invite any Entity, Participant or Eligible Participant to take part in such process, or execute the Project or any part thereof, in any other way as shall be deemed appropriate by the State or the Tender Committee.

8.11. Prerogatives of the Tender Committee

Without derogating from any provision under the Tender Documents or any applicable Law, the Tender Committee reserves the right to act upon any of the following prerogatives, whether during the Pre-Qualification Process or during the Tender Process, and neither the Tender Committee nor anyone on its behalf shall be responsible in any respect to any loss or damage whatsoever suffered by any Entity or Participant as a consequence of exercising such prerogatives.

- 8.11.1. The Tender Committee reserves the right to determine or amend the requirements of the Pre-Qualification Process and the Tender Process at any stage.

Without derogating from the foregoing, the Tender Committee may, inter alia, determine new technical requirements and/or financial requirements or any other requirements it deems necessary under the circumstances, and may require a change in the composition of the Participant or Member or Experience Provider (including waiving a requirement for the participation of an Experience Provider of a certain discipline or request the addition of an Experience Provider of a certain discipline), at any stage (including during the Tender Process).

8.11.2. The Tender Committee reserves the right to evaluate, at any stage, the compliance of any Pre-Qualification Submission with the requirements herein, including the compliance of any Pre-Qualification Submission already reviewed by the Tender Committee (or any part thereof), to request additional information, to request the correction of any Deviation, to modify or nullify any decision of the Tender Committee, all for any reason the Tender Committee may deem fit.

8.11.3. Without derogating from any of its rights and prerogatives pursuant to this Invitation or Law the Tender Committee may:

- (a) in requests for clarification issued by it pursuant to the provisions of this invitation, request the demonstration of the Pre-Qualifications Requirements by a form of submission other than that which is specified pursuant to the provisions of this Invitation, including by providing documents which have been prepared following the Pre-Qualification Submission Date;
- (b) demonstrate compliance with the Pre-Qualifications Requirements or raise questions and requests for clarifications with respect to lack of compliance with the Pre-Qualifications Requirements or other provisions of this Invitation based on information available to it;
- (c) for the purpose of any of the Technical Pre-Qualification Requirement, accredit the qualifications of one Entity to another:
 - (i) following a Merger as such term is defined under the Companies Law 1999 (or, with respect to Entities established outside the State of Israel, a similar amalgamation, which, in accordance with the applicable law under the applicable jurisdiction, has

substantially the same outcome), which was completed prior to the Pre-Qualification Submission Date; or

- (ii) following an acquisition of 100% of all Means of Control of another Entity prior to the Pre-Qualification Submission Date; or
- (iii) following a transfer of some or all assets of an Entity, a business or a division of an Entity (in this Section, the “**Former Holding Entity**”), as part of a corporate reorganization, to a newly formed Entity or an existing Entity; provided that (i) the Former Holding Entity no longer holds any of the transferred assets, business or division (as applicable), and (ii) the transfer was completed prior to the Pre-Qualification Submission Date.

together with a confirmation of the date of the completion of the merger, acquisition, or the transfer of assets, business or division (as the case may be), and a description of the main features of the said merger, acquisition, or the transfer of assets, business or division (as the case may be), issued by the Entity’s external auditor or legal advisor.

8.11.4. The Tender Committee may exercise any of the prerogatives pursuant to this Invitation, including this Section ~~8.118.11~~ [Prerogatives of the Tender Committee] at any time (including following the issuance of the Tender Documents), any number of times as it deems required.

8.11.5. For the avoidance of doubt the Tender Committee shall not be obligated to exercise any of the prerogatives pursuant to this Section ~~8.118.11~~ [Prerogatives of the Tender Committee].

8.12. Participants' Irrevocable and Complete Agreement and Acceptance of all the Tender Committee's Authorities and Discretion per the Pre-Qualification Documents and Laws

By submitting the Pre-Qualification Submission, the Participant warrants and declares, completely and irrevocably, its unlimited acceptance of all of the Tender Committee's prerogatives, rights, authorities and discretion as provided under the Invitation and Laws. Similarly, the Participant confirms the Tender Committee is not obligated to make any use of its prerogatives and in the event that it deems to make use of a certain prerogative – such does not require it to make repetitive use. Similarly, the Tender Committee's misuse or partial use of a prerogative in a certain event does not prevent it from making whole or part use of such prerogative in a following event. The decision to make use of a prerogative and the extent thereof shall, at all times, be at the Tender Committee's sole discretion.
