



**KARACHI WATER AND SEWERAGE BOARD**

**RESPONSES TO REQUESTS FOR CLARIFICATIONS / QUERIES SUBMITTED BY PROSPECTIVE BIDDERS  
IN RELATION TO THE REQUEST FOR PROPOSALS DOCUMENT**

**FOR**

**KARACHI HUB WATER CANAL PROJECT**

**DATED: 03 OCTOBER 2023**

## IMPORTANT NOTICE

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This RESPONSE TO PROSPECTIVE BIDDERS' QUERIES (this "**Response Document No. 3**") is in furtherance to the queries and requests for clarifications received from the prospective Bidders in respect of the Request for Proposals document issued on August 29, 2022 (the "**RFP**") by the Karachi Water and Sewerage Board ("**KW&SB**") for the KARACHI HUB WATER CANAL PROJECT (the "**Project**").

*Unless expressly specified otherwise, all capitalized terms used herein shall bear the meaning ascribed thereto in the RFP.*

This Response Document No. 3 is not to be construed as an addendum / corrigendum to the RFP; its sole purpose is to provide responses to the prospective Bidders' queries / requests for clarifications on the RFP, received by KW&SB. Bidders should independently satisfy themselves with the responses set out herein and should not rely on this Response Document No. 3. To the extent any changes to the RFP are required, such changes will be made through an addendum / corrigendum (as applicable) to the RFP, which will be issued prior to the Bid Submission Date.

No GoS Party makes any representation (express or implied) as to the accuracy or completeness of the information contained herein, or in any other document made available by any GoS Party to the prospective Bidders in connection with the Project (including with regards to the Bidding Process). No GoS Party shall have any liability for this Response Document No. 3 or for any other written or oral communication transmitted or made to the prospective Bidders.

No GoS Party shall be liable in any manner whatsoever to reimburse or compensate the prospective Bidders for any costs, fees, damages or expenses incurred by the prospective Bidders in evaluating or acting upon this Response Document No. 3. Each prospective Bidder should conduct its own independent investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the statements and information contained in this Response Document No. 3 or in any document issued by KW&SB in connection with the Project.

By submitting the Bids, Bidders shall be deemed to have independently examined and verified, understood and accepted, all the terms and conditions stated in the RFP (including any addendum / corrigendum issued by KW&SB to the RFP) and this Response Document No. 3.

KW&SB reserves its right, in its full discretion, to modify the RFP, the requirements of the Project and / or the information contained in this Response Document No. 3 at any time as per the applicable Law and shall not be liable to reimburse or compensate any prospective Bidder for any costs, taxes, expenses or damages incurred by the prospective Bidder in such an event.

**PROPOSED RESPONSES TO PROSPECTIVE BIDDER'S CLARIFICATIONS / QUERIES**

Sr. No.	CLAUSE REFERENCE	CLAUSE	QUERY / CLARIFICATION REQUESTED	PROPOSED RESPONSE
1.	<b>Payment Matters</b>	-	<p>It should be permissible for a lien to be marked in relation to the GoS Payment Account and the rights of the Company under the GoS Service Payment SBLC to be assigned, in each case, for the benefit of the Finance Parties.</p> <p>The relevant changes are to be made throughout the Concession Agreement based on GoS' response.</p>	<p>Lien on the GoS Payment Account will be allowed, however, enforcement of lien will be subject to compliance with the requirements of the Concession Agreement. Relevant and consequential changes will be made in the RFP.</p>
2.	<b>Termination</b>	-	<p>Currently, the Concession Agreement stipulates that the GoS will not be funding ten percent (10%) of the Financing Due in the case of a Company Event of Default. Please note that not a single transaction in the market has achieved financial close to date on the basis of the afore-stated stipulation set out in the Concession Agreement. In any case, the wiping of Sponsor's equity in the relevant termination scenario is sufficient penalty for such termination.</p> <p>As in the case of precedents, this provision should be amended to ensure that the entire risk of settling the Financing Due vests with the GoS in order to bring this provision in line with the norms and standards set out in Pakistan.</p> <p>The below-mentioned amendment is proposed in the definition of Value B:</p> <p><i>“Value B means an amount equivalent to:</i></p> <p><i>(a) <u>hundred percent (100%) of the Financing Due; less</u></i></p> <p><i>(b) <u>the Deductible Termination Amounts.</u>”</i></p>	<p>For Termination Payment with respect to Value B, 100% Financing Due will be covered. Relevant changes will be made in the RFP.</p>

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3.	<b>Termination</b>	-	<p>It is worth noting that Termination Payments may become subject to tax, in which case, if such tax is deducted from the overall amount due to the Company it might result in the Company receiving a reduced amount after such tax deduction.</p> <p>The following provision is proposed to be added in Clause 21.9 of the Concession Agreement, as is the case in precedents:</p> <p><i>“The Termination Payments shall be payable to the Company by the GoS on or prior to the Termination Payment Date. If the Termination Payments become subject to any tax (corporate tax, minimum tax or alternate corporate tax), the GoS shall pay to the Company such additional compensation (as determined by the Independent Auditor) such that the net amount received by the Company after deduction of any tax shall be equal to the total Termination Payment that would have been received had no such tax been paid or incurred.”</i></p>	No change.
4.	<b>21 (Concession Agreement) Volume III</b>	Termination	<p>We would request the Public Partner to clarify if Termination Payments are subject to any taxes. In that case, the Company will be receiving a reduced amount of Termination payment after such tax deduction as compared to amount specified in the CA. This is a bankability risk.</p> <p>We propose that, in the event Termination Payments become subject to tax, the GoS should pay to the Company additional compensation, as determined by the Independent Auditor, such that the net amount received by the Company after deduction of any tax shall be equal to the total Termination Payment.</p>	See response at sr. no. 3 above.
5.	<b>General Matters</b>	-	<p>Currently, the Concession Agreement stipulates that domestic arbitration shall be invoked to settle all disputes. Considering that the Project is to be financed through foreign equity and potentially foreign debt, it is proposed that all disputes should be settled through foreign arbitration.</p> <p>Please note that this is in line with the latest precedent of the GoS. Therefore, it is suggested that the rules of London Court of International Arbitration, with the venue</p>	No change.

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			<p>at Dubai, should be incorporated in the Concession Agreement as the dispute resolution mechanism.</p> <p>The relevant changes are to be made throughout the Concession Agreement based on GoS' response.</p>	
6.	<b>Indexations and Adjustments</b>	-	<p>Foreign debt (principal and interest) is not being adjusted with the USD/PKR exchange rate. This may result in a mismatch (in case of devaluation of the PKR) between the PKR amounts received on account of the foreign debt component and the corresponding USD being available (on the basis of the prevailing exchange rate component) for debt servicing. Therefore, it is proposed that foreign debt is indexed on account of the USD/PKR exchange rate.</p> <p>Additionally, indexation of foreign debt in relation to SOFR is also required to be conducted.</p> <p>The relevant changes are to be made throughout the Concession Agreement based on GoS' response.</p>	<p>The foreign exchange indexation shall be up to <u>USD 35,000,000/-</u>. Aggregate of foreign equity (upto maximum of 70% of total equity from Foreign Shareholder excluding VGF) and foreign debt (as specified in a Bidder's proposal) not to exceed the aforesaid amount. Relevant changes will be made in the RFP.</p> <p>With regards to query on SOFR, see response at sr. no. 17.</p>
7.	<b>Appendix 8 (Concession Agreement) Volume III</b>	Adjustments and Indexations	<p>Since USD indexation on foreign debt is not allowed as of now, we request the Public Partner that non-registration of EPC contract by SBP / non-permission for opening of LCs for foreign component of the project cost should be considered a GoS Event of Default under the Concession Agreement.</p>	<p>See response at sr. no. 6 above.</p>
8.	<b>Termination</b>	-	<p>For the import of foreign equipment, in case the State Bank of Pakistan does not fund USD or open a LC, it should trigger a GoS Event of Default.</p> <p>The change to be proposed shall be based on GoS' response.</p>	<p>No change.</p>
9.	<b>Termination</b>	-	<p>The Concession Agreement provides that in case the GoS fails to keep the GoS Termination SBLC valid until the relevant expiry period, the Company shall have the right to encash the GoS Termination SBLC to its full value. However, in the event the GoS re-establishes a valid GoS Termination SBLC, such encashed sums shall be</p>	<p>Relevant changes will be made in the Concession Agreement. However, return of encashed funds by GoS in relation to</p>

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			<p>returned by the Company to the GoS. Such principle of return of encashed sums does not, however, exist in relation to the Company's securities, which may be encashed by the GoS if the same are not kept valid as per the agreement.</p> <p>On the principle of reciprocity, it is proposed that similar provisions vis-à-vis return of encashed sums should be included in the Concession Agreement in respect of the Company's Performance Securities.</p>	<p>Performance Securities will be subject to GoS internal approvals, any Legal Requirements and any applicable deductions.</p>
10.	<b>Volume I: Bidding Procedure</b>	Bidding Form F3-H	<p>The international lenders (DFIs) are providing us with Financing Term Sheets (FTS) for the purposes of Bid submission which are different from the format given in the RFP. The reason being that the RFP format is different from their standard practice. We request the Public Partner to kindly consider accepting the FTS of the international lenders in their standard formats.</p> <p>In the case of one of the DFI's, they would be not able to provide the requested format of the FTS, however they can provide their signed standard LOI form which covers the following:</p> <ol style="list-style-type: none"> <li>1. Project description</li> <li>2. Borrower</li> <li>3. Use of proceeds</li> <li>4. Facilities</li> <li>5. Amount</li> <li>6. Currency</li> <li>7. Gearing</li> <li>8. Maturity</li> <li>9. Grace period</li> <li>10. Repayment</li> <li>11. Interest periods</li> <li>12. Interest rate</li> <li>13. Hedging</li> <li>14. Ratios and key covenants</li> <li>15. Security</li> </ol>	<p>Bidders are required to provide term sheet (or an equivalent internationally recognized document (e.g., LOI) in case of foreign lenders) accompanied with a signed cover letter (or signed term-sheet only) by the lenders, covering the following parameters:</p> <ol style="list-style-type: none"> <li>1. Project description</li> <li>2. Borrower</li> <li>3. Use of proceeds</li> <li>4. Facilities</li> <li>5. Amount</li> <li>6. Currency</li> <li>7. Gearing / Debt Equity Ratio</li> <li>8. Maturity</li> <li>9. Grace period</li> <li>10. Repayment</li> <li>11. Interest periods</li> <li>12. Interest rate</li> <li>13. Hedging</li> <li>14. Security</li> </ol>

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			<p>16. Fees and expenses 17. Validity</p> <p>In the case of another one of the DFI's , they would be able to provide the requested format of the TS, however they would not be able to sign it at this stage. We note your request for a signed TS and will take this up with the lender, but would also request the Public Partner to kindly deliberate this point.</p>	<p>15. Fees and expenses 16. Validity</p> <p>Relevant changes will be made in the RFP.</p>
11.	<b>Volume I: Bidding Procedure</b>	Bidding Form F3-H	Currently, the term sheet only caters for the indexation for local debt. It needs to be amended for indexation of foreign debt	See response at sr. no. 10 above.
12.	<b>Volume III: Concession Agreement</b>	GoS Account One	<p>In the last clarification on Mechanism for monitoring the Public Partner has responded that the mechanism cannot be specified. Whereas in precedent transactions such as Ghotki Khankot project, GoS Account One statement is being provided on monthly basis to lenders. As all the lenders are requesting for the Quarterly GoS One Account statements, We request the Public Partner to kindly consider the same and share the statements.</p>	<p>GoS will:</p> <p>(i) ensure availability of sufficient funds in GoS Account One to satisfy Company Demand; and</p> <p>(ii) share, on a semi-annual basis, a statement setting out the limits imposed by National Economic Council and any guarantees issued on the GoS Account One for the relevant period.</p> <p>Relevant changes will be made in the Concession Agreement.</p>
13.	<b>Bid Submission Date</b>	-	We will appreciate if prospect bidders can be given at least fourteen (14) days following the issuance of the revised RFP documents and responses to additional clarifications in order to have enough time to align the submission documents.	Bid Submission Date has been extended to October 19, 2023.

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14.	<b>Volume I: Bidding Procedure</b>	Financial evaluation criteria	<p>In the last clarification on Indexation of foreign debt component to SOFR, the Public Partner has requested to provide definition of SOFR and source of SOFR. Please find the details below:</p> <p>“SOFR” means the 3-month Term Secured Overnight Financing Rate (SOFR) published by the CME Group*.</p> <p>*The Federal Reserve’s Alternative Reference Rate Committee (ARRC) formally recommended Term SOFR produced by the CME Group on 29 July 2021.</p> <p><a href="https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/ARRC_Press_Release_Term_SOFR.pdf">https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/ARRC_Press_Release_Term_SOFR.pdf</a></p>	Proposed definition is acceptable. Relevant changes will be made in the RFP.
15.	<b>Termination</b>	-	<p>The Concession Agreement is unclear as to who operates KWC from the Termination Date until the date of issuance of the Handover Certificate (the <b>Transition Period</b>).</p> <p>As a result, the Concession Agreement is required to address this ambiguity and, in the event the Company operates the KWC for such Transition Period, the Company should be entitled to compensation for its services.</p> <p>The change to be proposed shall be based on GoS’ response.</p> <p>We propose that relevant Provisions must be inserted to address this ambiguity and in the event the Company operates the KWC for such Transition Period, the Company should be entitled to compensation for its services.</p>	During the period between the Termination Date and the date of issuance of Handover Certificate, Company will be required to operate KWC and GoS will make Output Payments (covering variable O&M and electricity costs only). However, GoS will operate KWC only in case of certain Company Events of Default (such as abandonment by the Company and winding up / liquidation of the Company) during such period. Relevant changes will be made in the Concession Agreement.
16.	<b>21 (Concession Agreement) Volume III</b>	Termination	For the purposes of calculating USD Net Equity, we propose that the prevailing USD / PKR exchange rate as of the date the Termination Payment Date should be considered, as opposed to the Termination Date.	No change. However, Termination Payment Date will be 60 days from the Termination Notice, as per the requirements of the Concession



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			This is to adequately cater to the USD/PKR exchange rate fluctuations between the Termination Date and the actual date on which termination payments are made (i.e., the Termination Payment Date).	Agreement. Relevant change will be made in the Concession Agreement.  Bidders to note that there will no change to the permitted extensions to the Termination Payment Date.
17.	<b>Securities (Concession Agreement) Volume III</b>	Performance Securities	<p>The Draft Agreement provides that in case the GoS fails to keep the GoS Termination SBLC valid until the relevant expiry period, the Company shall have the right to encash the GoS Termination SBLC to its full value, however, in the event the GoS re-establishes a valid GoS Termination SBLC such encashed sums shall be returned by the Company to the GoS.</p> <p>We request the Public Partner that such principle of return of encashed sums should also exist in relation to the Company's securities, which may be encashed by the GoS if the same are not kept valid as per the agreement.</p>	See response at sr. no. 9 above.
18.		Issuance of Provincial Guarantee in relation to the SBP Debit Authority.	We understand that a Provincial Guarantee is issued as a procedural requirement prior to the issuance of the SBP Debit Authority. Therefore, an express provision is required to be added into the Concession Agreement to reflect the issuance of the Provincial Guarantee.	No change.
19.	<b>Volume III: Concession Agreement</b>	-	<p>The following conditions are suggested as Site Handing Over Conditions:</p> <ol style="list-style-type: none"> <li>1. the Site shall be free from all Encumbrances, encroachments, thefts, existing trees, existing structures, utilities (as may be mutually agreed between the KW&amp;SB and the Company) and occupations;</li> </ol>	No change. However, a representation will be added in the License Agreement that the Site is free from Encumbrances at the time of handover of KWC to the Company.

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			<p>2. the grant of all Easementary Rights and all other rights appurtenant thereto such that the Company shall enjoy complete and uninterrupted possession and control of the Site; and</p> <p>3. the Company shall be granted all easements, reservations, rights-of-way, utilities and other similar facilities which are necessary or appropriate for the conduct of activities of the Company related to the Project.</p> <p>4. the GoS agrees not to grant any person access to the Site for the purposes of carrying out any construction, building or laying of any structures or utilities such as wires, pipes or for any other purpose which may, in the opinion of the Company, adversely affect the conditions of the Site.</p>	<p>With regards to point 4 of the query, Bidders are referred to clause 5 of the Concession Agreement.</p>
20.	Volume I: Bidding Procedure	Technical Evaluation Criteria	<p>We are preparing a technical and financial bid, wherein we are facing some hardship to meet the requirement of the O&amp;M Contractor. The one criteria of O&amp;M Contractor for the Project is mentioned below:</p> <p><i>“One (1) Water supply project which includes a canal with more than 5km length and with a design flow at least 10 MGD or one (1) large dam following the ICOLD (International Commission of Large Dams) definition or one (1) hydropower project of 25 MW or more that includes a spillway chute, a forebay or diversion structures”</i></p> <p>We have been trying to arrange foreign O&amp;M contractor but unfortunately we are unable to find any reputable firm which can qualify the above mentioned criteria. In the light of above issue it is requested to kindly waive this criterion for O&amp;M Contractor so as we could easily prepare our bid and submit accordingly.</p>	<p>Bidders to note that a Proposed O&amp;M Contractor, will be permitted to engage at least 2 individuals meeting the relevant canal experience (“<b>Canal Expert</b>”), and will undertake responsibility for the obligations of the said individuals. Such individuals will be part of the O&amp;M Contractor engaged by the Company.</p> <p>Company will be responsible for the works of the O&amp;M Contractors - Engagement of O&amp;M Contractors will not absolve the Company from its obligations under the Concession Agreement.</p> <p>Following documents for evidence for experience of each Canal Expert to be provided:</p>

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				<p>(i) signed CVs of each proposed Canal Expert covering the name, nationality, age, education, contact details, employment record (name of employer(s), designation and responsibilities), years of experience and summary of overall and relevant experience; and</p> <p>(ii) letter from their employers confirming their experience, required in terms of evaluation criteria for the canal operations, as specified in the RFP.</p> <p>In case, any Canal Expert is replaced, or resigns then a new person will be required to hired within the specified timeline, from the date of replacement / resignation, provided the new person meets the relevant criteria specified in the RFP (and other requirements as may be indicated by Independent Engineer and KW&amp;SB).</p> <p>Relevant changes will be made in the RFP.</p>

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21.	<b>Volume I: Bidding Procedure</b>	Technical Evaluation Criteria	<p>For ease of reference, the relevant project experience required for the Proposed O&amp;M Contractor under the RFP (the <b>Subject Criteria</b>) is reproduced below.</p> <p><i>“one (1) water supply project which includes a canal with more than 5km length and with a design flow of at least 10MGD, or one (1) large dam following the ICOLD (International Commission of Large Dams) definition, or one (1) hydropower project of 25 MW or more, that includes a spillway chute, a forebay or diversion structures”.</i></p> <p>In light of the foregoing, it is requested if the Subject Criteria may be amended to reflect the option of recruitment by the prospective bidders of two (2) senior engineers with requisite experience in relation to canal projects as an alternate, yet equivalent, substitute of the Subject Criteria. In the event the afore-stated request is accepted by the Public Partner, the prospective bidders may be obligated to share the necessary documents and curriculum vitae of the candidates for the position of senior engineers prior to the Scheduled Commencement Date. Therefore, the Public Partner is requested to consider the afore-mentioned request as one that sufficiently satisfies the level of experience required for operations and maintenance of the Project and amend the Subject Criteria to ensure the efficient and efficacious implementation of the Project.</p>	See response at sr. no. 20 above.
22.	<b>Mobilization Date and Commencement Date</b>	-	<p>The practicality of satisfaction of the following Mobilisation Conditions Precedent needs to be considered:</p> <p>(a) the execution of: the Independent Engineer Contract;</p> <p>i. the Independent Auditor Contract; and</p> <p>ii. the Concession and License Direct Agreement;</p>	<p>Mobilisation Conditions Precedent i.e.,</p> <p>(a) <i>“a copy of the Environmental and Social Impact Assessment (ESIA) report, duly approved by the Sindh Environmental Protection Agency, Government of Sindh”</i>; and</p>

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			<p>(b) the procurement of Environmental and Social Impact Assessment report from Sindh Environmental Protection Agency; and</p> <p>(c) the issuance of licenses by the Pakistan Engineering Council to the EPC Contractor and the O&amp;M Contractor.</p> <p>It is proposed that the afore-mentioned Mobilisation Conditions Precedent are removed and treated as Commencement Conditions Precedent.</p> <p>PEC licensing applications under Pakistani law often take between 60 – 90 days for the same to be processed, verified and for approval to be accorded.</p>	<p>(b) “two (2) certified copies of the signed Concession and License Direct Agreement”,</p> <p>will be removed and will be added as Commencement Date Condition Precedent. Relevant changes will be made in the Concession Agreement.</p>
23.	<b>Concession Agreement Volume III</b>	Mobilization and Commencement Dates	<p>There is a requirement that the Company has to comply with weekly reporting obligations vis-à-vis the Mobilisation Conditions Precedent and Commencement Conditions Precedent. Such a requirement has not been observed in precedent transactions.</p> <p>The obligation to provide weekly reporting imposes burdensome and unprecedented obligations on the Company and therefore, therefore we request the Public Partner to remove the same in its entirety.</p>	<p>Requirement for weekly reporting for Mobilisation Conditions Precedent and Commencement Conditions Precedents will be changed to bi-weekly reporting.</p> <p>Relevant changes will be made in the Concession Agreement.</p>
24.	<b>Definitions (Concession Agreement) Volume III</b>	Change in Law	<p>The applicability of Change in Law provisions commences from Bid Submission Date. However, it is globally recognized that Change in Law provisions are applicable from twenty-eight (28) days prior to Bid Submission Date and FIDIC also follows the same in its various contract books.</p> <p>We propose that the definition of Change in Law should be amended to cater to the internationally recognized standard.</p>	<p>Change in Law provisions will be applicable ten (10) days prior to the Bid Submission Date. Relevant changes will be made in the Concession Agreement.</p>
25.	<b>Site</b>	-	<p>In relation to the Site, the following matters are highlighted:</p> <p>(i) as is the case in all precedents, the condition (physical and legal) in which the GoS Parties are obligated to deliver and handover the Site should be clearly stipulated (the <b>Site Handing Over Conditions</b>) and the GoS Parties should be obligated to deliver it in accordance with the Site Handing Over Conditions as a conditions precedent to</p>	<p>No change. However, a representation will be added in the License Agreement that the Site is free from Encumbrances at the time of handover of KWC to the</p>

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			<p>Mobilisation Date. Such Site Handing Over Conditions are proposed to include delivery of Site to the Company free of any physical and legal encumbrances and encroachments and free of any defects in title. Further, it is suggested that the Independent Engineer should confirm compliance with the Site Handing Over Conditions and any costs resulting from a deviation from such conditions should be funded by the GoS;<sup>1</sup></p> <p><b>ABSENCE OF REPRESENTATIONS AND WARRANTIES IN RESPECT OF OWNERSHIP OF SITE</b></p> <p>(ii) the Concession Agreement does not contain a representation and/or warranty that the KW&amp;SB has the legal title of the Site and it is proposed that KW&amp;SB provides such a representation – such representation to be repeated on the Signing Date and the date of delivery of the Site to the Company (as part of Site Handing Over Conditions).<sup>2</sup> In absence of an effective and conclusive mechanism to conduct due diligence of the title of the Site, it is viewed to be quite critical that the current status and ownership of the Site, including KW&amp;SB’s right in the same, is known. The GoS Parties are requested to please appreciate that this is a key lender due diligence matter and concern.</p> <p><b>CONTINUING OBLIGATION TO ENSURE VALID TITLE TO SITE REMAINS VESTED WITH KW&amp;SB</b></p> <p>(iii) In addition to the representation requested in (ii) above, it is also proposed that the GoS Parties be under a continuing obligation to ensure that the title of the Site remains vested with the KW&amp;SB during the Concession Period. Further, a restrictive covenant and/or an obligation should be stipulated to ensure that the GoS Parties do not sell, mortgage or create any legal and/or physical impediment on the Site;</p>	<p>Company. Relevant change will be made in the License Agreement.</p>

<sup>1</sup> For reference, the concept of “Vacant Possession” has been observed in precedent transactions which entails the Site being handed over to the private party free from all Encumbrances, encroachments, physical and/or legal impediments etc. Therefore, a similar concept is required to be incorporated within the Concession Agreement.

<sup>2</sup> This is of critical importance as the rights granted to the Company are a function of the legal title that held by KW&SB.

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			<p><b>PROTECTION OF LICENSED INTEREST OF THE COMPANY</b></p> <p>(iv) while we note that a representation has been provided in relation to the power and authority of the KW&amp;SB to grant the License to the Company, a restrictive covenant and/or an obligation on the GoS Parties is required to ensure that the GoS Parties protect the licensed interest of the Company during the Concession Period;</p> <p><b>INDEMNITY</b></p> <p>(v) considering that the Company does not have any leasehold and/or ownership rights on the Site, the GoS Parties are requested to indemnify the Company for any third party claims and proceedings resulting from a defect in GoS Parties' legal interests in the Site – this request is being made in order to propose that land related indemnities that have been provided in precedent transactions are also given for the Site relating to the Project;</p> <p><b>AMENDMENTS TO THE CRITERIA FOR RELIEF EVENTS</b></p> <p>(vi) with regards to sub-clause (a) of the definition of Relief Event, the Relief Event should not be restricted to only breach of obligations but should cover any breach under the Relevant Agreements. By way of example, a breach of a representation under the Relevant Agreements should also be covered by the respective Relief Event;</p> <p><b>CIRCULAR EVENT OF DEFAULT</b></p> <p>(vii)Based on a reading of Clause 21.6.3 of the Concession Agreement and in light of Article 3 of the License Agreement, it is viewed that the process leading to a GoS Event of Default is circular; and</p> <p><b>ABSENCE OF EXPRESS OBLIGATION TO REMEDY ISSUES ON SITE IDENTIFIED BY THE COMPANY</b></p>	

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			<p>(viii) while clause 5.1 of the Concession Agreement allows the Company to investigate the Site, it does not follow any obligation of the KW&amp;SB to remedy any issue identified during the investigation. Therefore, KW&amp;SB should be under a positive obligation to remedy any issues identified by the Company on the Site.</p> <p>The below-mentioned amendments are proposed:</p> <p>(i) the term “Make Available and all grammatical variations” should be defined in the Concession Agreement as follows:</p> <p><i>“delivery to the Company by the KW&amp;SB of possession of the Site in accordance with this Agreement, in accordance with applicable laws, and in accordance with the License Agreement free from all Encumbrances, encroachments and utilities; and the grant of all easementary rights and all other rights appurtenant thereto, such that the Company enjoys complete uninterrupted and quiet possession and control of the Site from the grant of the License and throughout the Concession Period;”</i></p> <p><i>Further, the Making Available of Site should be incorporated in the Concession Agreement as a Mobilisation Conditions Precedent.</i></p> <p>(ii) Clause 2.2.3 is proposed to be added in the License Agreement, which reads as follows:</p> <p><u><i>“the KW&amp;SB represents and warrants that it has the legal title of the Site.”</i></u></p> <p>(iii) Clause 2.1.7 is proposed to be added in the License Agreement, which reads as follows:</p> <p><u><i>“the GoS Parties shall:</i></u></p>	



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			<p><u>(a) ensure that the title of the Site remains vested with the KW&amp;SB during the Concession Period;</u></p> <p><u>(b) protect the licensed interest of the Company during the Concession Period; and</u></p> <p><u>c) not sell, mortgage or create any legal and/or physical impediment on the Site;”</u></p> <p>(v) Clause 5.9 and 5.10 are proposed to be added in the Concession Agreement, which shall read as follows:</p> <p><u>“5.9 The GoS shall indemnify and shall hold the Company harmless from any costs, claims expenses or charges incurred (in respect of the time period falling prior to the Making Available of the Site to the Company) in relocating, rehabilitating or resettling persons in connection with Making Available the Site to the Company for implementation of the Project and for delivery of Making Available of the Site to the Company.</u></p> <p><u>5.10 The GoS hereby indemnifies and holds harmless the Company against all losses arising in connection with or relating to any defect in title in the Company’s licensed interest in the Site, which prevents, impedes or delays the Company from constructing or, operating and maintaining the KWC in accordance with this Agreement; provided, that such losses are not the consequence of any breach or non-compliance by the Company of this Agreement, the License Agreement; provided, further that such action is not a consequence of the Company’s failure to maintain the Site in its possession free from encroachments and Encumbrances by third parties and/or is not as a consequence or failure by the Company to meet its obligations under this Agreement.”</u></p> <p>(vi) Clause (a) of the definition of Relief Event is requested to be amended as follows:</p> <p><u>“(a) an act of impediment or prevention by the GoS Party(ies), Competent Authorities and/or third parties or a breach by a GoS Party <del>of any of its obligations</del> of this Agreement or any other Relevant Agreement.”</u></p>	

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			<p>(viii) A proviso to Clause 5.1 is proposed to be added in the Concession Agreement, which reads as follows:</p> <p><i>“provided, that <u>KW&amp;SB shall, at its own cost and expense, rectify and remedy any issue identified by the Company following its investigation in accordance with this Clause 5.1.</u>”</i></p> <p>It is proposed that the following clauses are added as part of the Operations Handover Conditions:</p> <p><b>1.1 INSPECTION OF THE EXISTING FACILITIES</b></p> <p>1.1.1 On and from the Effective Date, the KW&amp;SB shall provide the Company necessary access to the Site to enable the Company and any related party to inspect and survey the Existing Facilities<sup>3</sup> to assess the condition of the Existing Facilities and the Site, including equipment, spare parts, assets, and other materials and structures relating to the Existing Facilities and available at or existing on the Site.</p> <p>1.1.2 Upon completion of the survey of the Existing Facilities and the Site, the Concessionaire shall notify the KW&amp;SB of any: (i) equipment, material or structures that it would want to retain at the Site for the upgrade, operation or maintenance of the Existing Facilities; and (ii) equipment, material (including any hazardous materials and substances), temporary installations or structures that it would want the Contracting Authority to remove from the relevant Site prior to the Effective Date.</p>	

<sup>3</sup> Existing Facilities means collectively, the: (i) Water Treatment Plant; (ii) The water canal; (iii) The Pump house & water transmission line from pump house to water treatment plant; (iv) The Reservoir; (v) The Monitoring System for the water treatment plant; (vi) The on-site testing laboratory facilities; and (vii) The infrastructure facilities associated with the operation of the water treatment plant, Existing Facility" shall refer to any one of aforementioned facilities.

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			<p>1.1.3 Upon completion of the survey of the Existing Facilities and the Site, the Company shall notify the KW&amp;SB of any: (i) equipment, material or structures that it would want to retain at the Site for the upgrade, operation or maintenance of the Existing Facilities; and (ii) equipment, material (including any hazardous materials and substances), temporary installations or structures that it would want the KW&amp;SB to remove from the Site prior to the Commencement Date.</p> <p>1.1.4 Within seven (7) days from the Effective Date, the KW&amp;SB shall provide the Company with copies of all existing contracts, if any, for the Existing Facilities, including equipment supply contracts, agreements for supply of spare parts, consumables, chemicals and/or manpower, insurance contracts, technology license agreements and agreements for the operation and maintenance of the Existing Facilities ("Existing Facilities Contracts"). Within thirty (30) Business Days of the receipt of all the Existing Facilities Contracts, the Company shall notify the KW&amp;SB of the Existing Facilities Contracts that it wishes to take over, to the extent permissible under the respective Existing Facilities Contracts. The KW&amp;SB shall use all reasonable endeavours to effect the novation or transfer of the Existing Facilities Contracts to the Company.</p> <p><b>1.2 OPERATIONS HANDOVER CONDITIONS</b></p> <p>1.2.1 Prior to the Commencement Date, the KW&amp;SB shall fulfil the following Operations Handover Conditions:</p> <p>(i) grant to the Company all easementary rights and all other rights appurtenant thereto such that the Company shall enjoy complete and uninterrupted possession and control of the Site;</p>	

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			<p>(ii) clear the Site of all debris, hazardous materials, surplus construction materials, temporary works, work sheds, labour camps, and other equipment, materials, temporary installations, Encumbrances, encroachments, thefts, existing trees, existing structures, utilities (as may be mutually agreed between the KW&amp;SB and the Company) and occupations such that the Company enjoys complete uninterrupted and quiet possession and control of the Site from the grant of the license throughout the Concession Period;</p> <p>(iii) reinstate all temporary land taken on the Site (if any), except the spare parts maintained at the Site for the Existing Facilities, and any equipment, or material that the Company has elected to takeover;</p> <p>(iv) grant to the Company all easements, reservations, rights-of-way, utilities and other similar facilities which are necessary or appropriate for the conduct of activities of the Company related to the Project;</p> <p>(v) not grant any person access to the Site for the purposes of carrying out any construction, building or laying of any structures or utilities such as wires, pipes or for any other purpose which may, in the opinion of the Company, adversely affect the conditions of the Site;</p> <p>(vi) hand over all documents relating to the Existing Facilities, including the available designs and drawings, metering data, operating logs, O&amp;M manuals, reports and other records maintained in relation to the volume and characteristics of the Incoming Sewage treated by the Existing Facilities;</p> <p>(vii) transfer or cause to be transferred to the Company, any Existing Facilities Contract that the Company has chosen to take over and terminate all other Existing</p>	

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			<p>Facilities Contracts, except the technology license agreements, if any, entered into with the technology providers for the Existing Facilities and equipment supply contracts which have subsisting warranty obligations;</p> <p>(viii) provide copies of or transfer (wherever relevant) all Approvals (including the KW&amp;SB Approvals) obtained for the Existing Facilities to the Company;</p> <p>(ix) transfer all employees and workmen engaged by the KW&amp;SB that will not be transferred to the Company or any contractor of the KW&amp;SB that will not be transferred to the Company, from the Site;</p> <p>(x) provide to the Company, a list of all spare parts available at the Site for the Existing Facilities;</p> <p>(xi) obtain the consent of any equipment supplier to assign all subsisting warranties for the equipment comprising the Existing Facilities, to the Company; and</p> <p>(xii) obtain the consent of the relevant technology provider to transfer the license to use the relevant technology and other know-how relating to the Existing Facilities to the Company for the Concession Period.</p>	
26.	Payment Matters	-	<p>Presently, the GoS Payment Account Required Balance only accounts for such projected Service Payments as are due in a Contract Year. Based on all annuity-based precedent transactions, it is proposed that the balance standing to the credit of the GoS Payment Account is, at all times, equal to the projected Service Payments due for the twelve (12) consecutive months period from the funding date i.e. after deduction of the Service Payment due on the Service Payment date falling immediately after the relevant funding date.</p>	<p>Relevant changes in the definition of the term GoS Account Funding Date will be made to address this point.</p>

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			<p>The below-mentioned amendment is proposed in the definition of GoS Payment Account Required Balance:</p> <p><i>“GoS Payment Account Required Balance means an amount equal to the projected Service Payment due for the <u>twelve (12) consecutive months period from each GoS Account Funding Date</u>, where the projected Output Payments will be calculated based on Net Water Output equal to Contracted Availability (subject to deductions for Outages), as stated in the GoS Payment Account Certificate.”</i></p>	
27.	IFC Advisory Fee	-	<p>In terms of paragraph 7.3.4 of the RFP “The Successful Bidder shall be required to pay IFC Advisory Fee, in the manner specified in the Notification of Award, within thirty (30) days of issuance of the relevant invoice by IFC, after the issuance of Acceptance of Notification of Award. The IFC Advisory Fee shall be on-refundable”. The IFC Advisory Fee is an amount equal to USD 500,000/- (United States Dollars Five Hundred Thousand Only) or an amount (in USD) equivalent to one point five percent (1.5%) of the Total Project Cost indicated by the Successful Bidder, whichever is higher, accrued as a result of IFC’s services rendered to KW&amp;SB and the GoS in respect of the Project, to be paid by the Successful Bidder to IFC.</p> <p>Please note that the IFC Advisory Fee is likely to be a substantial amount, which is contemplated to be paid even before signing of the Concession Agreement. In accordance with the terms of the Concession Agreement (a) the IFC Advisory Fee is not payable to the Concessionaire if the Letter of Award is issued but the GoS Parties elect not to sign the Concession Agreement, (b) the IFC Advisory Fee does not seem to be included in computation of the Termination Payment, (c) no Termination Payment is payable to the Concessionaire in case of termination of the Concession Agreement prior to the Mobilisation Date, even if such termination is due to the GoS Parties, and (d) even if any termination of the Concession Agreement occurs between the Mobilisation Date and the Commencement Date, the Termination Payment is currently capped at USD 1,500,000, which is most certainly not sufficient for recovery</p>	<p>(a) IFC Advisory Fee to be paid 5 days prior to signing of Concession Agreement.</p> <p>(b) Bidders may consider including IFC Advisory Fee as part of the costs proposed in their bids.</p> <p>(c) Termination payment equal to the IFC Advisory Fee paid by the Company to be made in case of termination of the Concession Agreement prior to Mobilization Date.</p> <p>(d) Maximum amount of Value D will be USD 2.5 Mn, and will be paid to the Company subject to actuals.</p> <p>Relevant changes will be made in the RFP.</p>

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			<p>of the investment made by a Bidder on the Project till achievement of the Commencement Date. It appears that the ceiling set in the RFP is outdated and does not take into account recent inflation, currency devaluation etc. Therefore, it seems that the RFP does not adequately secure recovery of the IFC Advisory Fee by the Successful Bidder, even if the Project does not proceed due to the default of the GoS Parties. It is therefore recommended that:</p> <ul style="list-style-type: none"> <li>(a) the IFC Advisory Fee should be payable on signing of the Concession Agreement and not before;</li> <li>(b) the IFC Advisory Fee should be part of computation of the Termination Payment;</li> <li>(c) Termination Payment should be payable during the period from the Effective Date to the Mobilisation Date;</li> <li>(d) the ceiling of the Termination Payment from the Effective Date to the Commencement Date should be increased to account for recent inflation, currency devaluation etc.</li> </ul>	
28.	<b>Termination</b>	-	<p>The Financing Termination Date provides a long-stop date on the last repayment date of principal debt. However, the termination of the Concession Agreement immediately prior to such a long-stop date will result in the cessation of the Service Payments and the last debt repayment will remain outstanding in case the Termination Payment Date falls after the Long-Stop Date stipulated in the Concession Agreement. As a result, this may be a bankability issue since part of the Financing Due and other amounts due and payable by the Company to the Financing Parties will remain outstanding.</p> <p>The definition of “Financing Termination Date” should be amended as follows:  <i>“means <del>the earlier of (a) [●], and (b) the date on which no part of the Financing Due is outstanding and all amounts due and payable by the Company to the Financing</del></i></p>	<p>Relevant changes in the definition of the term Financing Termination Date will be made, taking into account any extension due to any delay in achievement of the Commencement Date in terms of clause 3.6.1 or permitted in accordance with clause 3.6.3 of the Concession Agreement.</p>

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			<i>Parties are paid in accordance with the Financing Documents, as confirmed in writing by the Independent Auditor;”</i>	
29.			The term “Schedule Mobilisation Date” has been defined in the RFP as a date occurring two (2) months from the Effective Date. By the Schedule Mobilisation Date, the Concessionaire is required to satisfy various obligations, including signing of the Financing Documents. Please note that this is a completely unrealistic timeline. Any proposed financier will engage in detailed due diligence of the Project before signing of the Financing Documents, especially due to the complexity of the Project. No PPP project in Pakistan has experienced signing of financing documents within such a short period of time. Therefore, the GoS Parties are requested to seriously reconsider this timeline.	Submission of Financing Documents will not be a condition precedent to Mobilisation Date. Financing Documents will need to be submitted as an additional condition to Commencement Date. Relevant and consequential change will be made in the RFP.
30.	<b>Volume III- Concession Agreement</b>	-	<p>The Mobilization Testing is scheduled to take place when 100 MGD are being received by the KWC. If that situation does not take place during the Mobilization Testing, the obtained values can be adjusted during the C&amp;O Period after measuring the real values when 100 MGD are received by the KWC.</p> <p>During the Mobilization testing, and after installation of Metering and Monitoring equipment; Flow rate and quality will be determined ex. (60 MGD) and Fixed.</p> <p>Accordingly, it will be the company's responsibility to maintain the same Flow rate throughout the C&amp;O period and any flow above the flow determined during the mobilization testing will be bypassed. We request the Public Partner to kindly confirm if our understanding is correct.</p>	<p>Mobilisation Testing will be done to determine the NRW, Water Quality and Electricity consumption, and will be locked.</p> <p>Any variation in the flow before the Head Regulator will be Company’s responsibility.</p>
31.	<b>Volume I: Bidding Procedure, Page 19/1688</b>	Bid submission Date Schedule	At present, the CONVID 19 in China is very serious. Many engineers have been infected and cannot work normally. Please consider the impact of the Virus and postpone the bid submission date for 8 weeks.	Any extension (if required) to the Bid Submission Date will be communicated to the prospective Bidders.



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32.	<b>Deductions and other Specific Matters</b>	-	<p>By way of definition, the Electricity Supply Failure covers any continuous disruption in the supply of Electricity needed to “start up, test, commission or operate” the KWC. While, it is envisaged that electricity will be required during the start-up, testing and commissioning phase of the KWC (i.e., the C&amp;O Period), it is unclear why the Company is not entitled to claim for Increased Costs in case such an Electricity Supply Failure occurs during the C&amp;O Period impacting the Company’s activities. Therefore, it is proposed that the Relief Event of an Electricity Supply Failure should also extend to the C&amp;O Period.</p> <p>Clause (b) in the definition clause of “Relief Event” under the Concession Agreement should be amended to read as follows:  <i>“(b) after the Project Commercial Operations Date, an Electricity Supply Failure;”</i></p>	No change. Bidders to note that the as per the RFP, no Availability Payments will be paid to the Company prior to the Project Commercial Operations Date.
33.	<b>Volume II: Technical Specifications Page 7</b>	Site Boundary Coordinate	Please provide the detail Site Boundary Coordinate, include the Canal, Pump station, Rising Mains, Filter Plant, Solar power plant.	Relevant details will be provided prior to the signing of the Concession Agreement.
34.	<b>Volume I: Bidding Procedure</b>		<p>Please note that the process for attaining notarization and attestation of documents, as applicable, in relation to foreign contractors <i>i.e.</i>, (1) Power of Attorney; (ii) Affidavit; (ii) English translation of the documents (that are translated from another language into English); and (iv) any other required documents (the <b>Documents</b>) is time consuming. In this regard, we seek permission to submit the documents in English the time being together with an undertaking that the Documents attested from the Embassy of Pakistan and Ministry of Foreign Affairs will be submitted at the earliest. We will submit the attested versions of the Documents immediately after receiving the same.</p> <p>Due to paucity of time, we would highly appreciate if our request is taken into consideration.</p>	<p>No change. Sufficient time has been given to the Bidders to ensure compliance with the relevant requirements.</p> <p>Bidders are required to ensure that: (i) Power of Attorney; (ii) Affidavit; and (iii) English translations of the documents (that are translated from another language into English), are duly notarized by notary public and attested by Pakistani Embassy (in the country where the</p>

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				<p>documents are issued / executed).</p> <p>Attestation by Ministry of Foreign Affairs, Pakistan is required for following documents when brought into Pakistan (after attestation by Pakistan Embassy): (i) English translations; and (ii) Power of Attorneys, whereby a person in Pakistan is being appointed as an attorney.</p> <p>With regards to the Power of Attorney and Affidavit, once the same are brought into Pakistan, the same are required to be adhesive stamped with the requisite amount of stamp duty, as specified in the RFP.</p>
35.	<b>Mobilization Date and Commencement Date</b>	-	<p>The stipulated timeline of thirteen (13) days to incorporate the special purpose vehicle (i.e., the Company) and subsequently execute the EFU Agreement and the Concession Agreement is quite ambitious. Specifically, in the context of entities to be incorporated by foreign promoters, the timeline seems insufficient. Therefore, it is requested that the timeline to execute the Concession Agreement and the EFU Agreement is extended to a period of sixty (60) days.</p> <p>Relevant and consequential changes are requested to be made in the RFP.</p>	No change. Bidders are referred to section 7.6.1 of the Instructions to Bidders.
36.	<b>Mobilization Date and</b>	-	As per the Concession Agreement, the Scheduled Mobilisation Date and Implementation Schedule are not adjusted due to a Natural FME. Therefore, it is	No change. For achievement of Mobilisation Date, Natural Force Majeure Events are not relevant.

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	<b>Commencement Date</b>		<p>proposed that the Scheduled Mobilisation Date and the Implementation Schedule be adjusted as a result of a Natural FME.</p> <p>The below-mentioned amendment is proposed in Clause 3.3.1.3:</p> <p><i>“If, the achievement of the Mobilisation Date has been delayed due to:</i></p> <p><i>3.3.1.3. the occurrence of a Political Force Majeure Event and <u>Natural Force Majeure Event.</u>”</i></p>	
37.	<b>Mobilization Date and Commencement Date</b>	-	<p>The remedies set forth in the Concession Agreement for a delay in the achievement of Mobilisation Date include only an extension in time granted for achievement of such milestones, and such remedies are classified, in each case, as the sole and exclusive remedies available to the Company.</p> <p>The Company should also be entitled to Increased Costs attributable to a delay in achieving Mobilisation Date due to any of the events detailed in the Concession Agreement. It needs to be appreciated that no contractor (including the EPC Contractors) will commit to hold prices for an indefinite time and, therefore, an adjustment mechanism should be incorporated to cater for the afore-mentioned delays.</p> <p>The below-mentioned amendment is proposed in Clause 20.1.1.2:</p> <p><i>“The Company believes that:</i></p> <p><i><u>(c) a failure to achieve the Mobilisation Date by the Scheduled Mobilisation Date (under the circumstances described in, and prior to any adjustment pursuant to clause 3.3.1.</u>”</i></p>	No change. Bidders are referred to clauses 20.1.1 and 20.1.5 of the Concession Agreement.
38.	<b>Payment Matters</b>	-	<p>The Financing Due is currently being calculated until the Termination Date. However, based on various GoS precedents, it is noted that the Financing Due is calculated until the Termination Payment Date since the Company is required to pay interest and/or markup under the Financing Documents until such date. Please also note that the date</p>	No change.

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			<p>by which the Financing Due can be paid is in the control of the GoS. Therefore, it is proposed that the Financing Due is calculated until the Termination Payment Date.</p> <p>The below-mentioned amendment is proposed in the definition of Financing Due:</p> <p><i>“<b>Financing Due</b> means the aggregate of the following sums outstanding and payable to the Financing Parties up to the date immediately preceding the <u>Termination Payment Date</u>:</i></p> <p>(a) <i>the Outstanding Principal Amount; and</i></p> <p>(b) <i>the interest or mark-up (or any other term connoting the return paid to Financing Parties on debt financing) accruing on the Outstanding Principal Amount.”</i></p> <p>The below-mentioned amendment is proposed in the definition of Financing Due:</p> <p><i>“<b>Financing Due</b> means the aggregate of the following sums outstanding and payable to the Financing Parties up to the date immediately preceding the Termination Payment Date:</i></p> <p>(a) <i>the Outstanding Principal Amount; and</i></p> <p>(b) <i>the interest or mark-up (or any other term connoting the return paid to Financing Parties on debt financing) accruing on the Outstanding Principal Amount.”</i></p> <p>Further, the proviso to the definition of Financing Due providing that <i>“notwithstanding anything to the contrary herein, no interest, mark up or profit, or default interest, mark up or profit accrued shall be paid by the GoS for any interest, mark up or profit that accrued under the Financing Documents from and after a default by the Company thereunder, unless such default results directly from a GoS Event of Default”</i> should be removed.</p>	

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39.	Payment Matters	-	<p>The Concession Agreement excludes Sponsor Loans extended to fund the debt component of the Project as part of the Financing Documents.</p> <p>This provision must be removed as it goes against all precedents where sponsor loans are provided. In fact, subordinated loan assignment deeds are categorized as Financing Documents.</p>	No change.
40.	Payment Matters	-	<p>The definition of ‘Financial Closing’ should include that all conditions to drawdown funds under the Financing Documents may either be satisfied, waived or deferred.</p> <p>The below-mentioned amendment is proposed in the definition of Financial Closing:  <i>“Financial Closing means that: (a) Financing Documents covering hundred percent (100%) of the total capital cost of the Project (other than the amounts to be funded by Sponsors or GoS in terms of the EFU Agreement) shall have been signed and are in full force and effect; (b) all funds under the Financing Documents are fully committed; and (c) all conditions to the first drawdown of funds under the Financing Documents have been satisfied, waived or <u>deferred</u> by the Financing Parties.”</i></p>	No change.
41.	Payment Matters	-	<p>Presently, it is stipulated in the Concession Agreement that any Termination Payment due to the Company shall be made by the GoS subject to the issuance of the Handover Certificate. Such linkage of Termination Payment to Handover Certificate creates ambiguity and uncertainty in the timing of payment and thus results in bankability issues. Consequently, the Financing Parties may remain unpaid for an indefinite period. Therefore, it is proposed that the Termination Payment is settled by the GoS within ninety (90) days of the Termination Date, as is the case in precedent transactions.</p> <p>Clause 21.10.5 of the Concession Agreement, which reads as follows, should be removed:</p>	No change.

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			<p><i>“Any Termination Payment due to the Company shall be made by the GoS subject to the issuance of the Handover Certificate.”</i></p> <p>Further, the definition clause of Termination Payment Date is proposed to be amended to reflect as follows:</p> <p><i>““Termination Payment IDate” means the date on which the GoS has made payment of the relevant Termination Payment to the Company, such date being within the period that is ninety (90) Days following the Termination Date, <del>as may be extended pursuant to clauses 21.10.4 and 21.10.5</del>”</i></p>	
42.	-	-	<p>Broadly, the Deductible Termination Amounts can be categorized as:</p> <p>(i) the amounts standing to the credit of the Project Accounts (the <b>Account Amounts</b>);</p> <p>(ii) the insurance Proceeds received but not used for restoration of the KWC (the <b>Received Insurance Proceeds</b>); and</p> <p>(iii) the amounts due to the Project Company from third parties including contractors (the <b>Amounts Received From Third Parties</b>).</p> <p>The afore-stated deductions (excluding in respect of Received Insurance Proceeds) being unprecedented, each of the same are discussed below:</p> <p>(i) <b>Received Insurance Proceeds:</b></p> <p>Based on our experience and bankable arrangements in Pakistan, only Received Insurance Proceeds have been used to reduce any Termination Payments to be made by the GoS. This is primarily based on the understanding that any application of Received Insurance Proceeds towards the Termination Payments shall also relieve the Company of any obligation and/or liability to restore an asset following occurrence of an insurable event and/or a Natural Force Majeure Event in case termination occurs. Furthermore, this will also have an effect on the Company’s handover</p>	<p>In the definition of the term “Deductible Termination Amounts”, point (a) will be revised as follows:</p> <p>(a) all credit balances on any bank accounts, held by or on behalf of the Company on the Termination Date, the value of any right of the Company and/or the Financing Parties <u>to any</u> insurance proceeds that <u>are receivable</u> and of any such proceeds actually received (save where such credit balances or proceeds are paid to the GoS, KW&amp;SB and/or <u>not</u> applied in reinstatement), sums due and payable from the Contractors and any third parties, proceeds from the liquidation of any authorized investment, and letters of credit issued in lieu of maintaining credit balance in any account.</p>

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			<p>obligations. In light of the foregoing, in the event Received Insurance Proceeds are used towards the reduction of Termination Payments, the Concession Agreement is proposed to be amended to reflect the above-stated understanding.</p> <p><b>(ii) Account Amounts:</b></p> <p>With regards to the Accounts Amounts, it is noted that, considering this is an annuity-based model, all amounts standing to the credit of the Project Accounts are accounted for various purposes and, upon termination, are utilized for such purposes. By way of example, the Project Accounts may hold amounts that:</p> <p>(i) are due to various operators on account of work that has already been performed;</p> <p>(ii) are due to utility providers until the termination date; and</p> <p>(iii) are dividends that have been declared but not yet been distributed due to procedural requirements of law.</p> <p>In essence, the revenues and funds generated prior to Termination Date and standing to the credit of the Project Accounts (excluding the Received Insurance Proceeds and any amounts representing un-implemented Change in Scope compensations that have been credited to a Project Account) should not be used/set-off to reduce the GoS' liabilities in respect of Termination Payments.</p> <p><b>(iii) Amounts Received From Third Parties:</b></p> <p>Lastly, the Amounts Received From Third Parties are also to be utilized for the purposes of settlement of liabilities of the Company in a termination scenario. By way of example, if the termination occurs during the C&amp;O Period, the delay liquidated damages that are received from the contractors are continuously being utilized for the settlement of various delay related liabilities of the Company i.e., payment to</p>	<p>Relevant change will be made in the RFP.</p>

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			<p>performance security issuing banks, payment of delay IDCs, payment of insurance premiums for the delay period, etc.</p> <p>The concept of Deductible Termination Amounts should be removed. In any case, if insurance proceeds that have been received and are not to be applied towards restoration or for funding any party that has already funded the corresponding restoration, such proceeds may be used for reducing Termination Payments. Consequently, as highlighted in the comment, relevant changes will need to be made to the provisions that obligate the Company to apply insurance proceeds towards restoration and/or obligate the Company to meet related handover conditions.</p>	
43.			<p>The condition of the assets prior to handing over should be determined (the Asset Delivery Conditions) as of the Bid Submission Date. Furthermore, the delivery of assets in compliance with the Asset Delivery Conditions should be the Commencement Conditions Precedent of KW&amp;SB and GoS. In the event of a breach of the aforementioned obligation, any additional costs arising as a result of restoring the assets in accordance with the Asset Delivery Conditions should be funded by the GoS Parties<sup>4</sup>.</p> <p>The physical conditions of the following components of the KWC should be determined as of Bid Submission Date<sup>5</sup>:</p> <ul style="list-style-type: none"> <li>(a) Existing Metering Systems;</li> <li>(b) Water capacity of the KWC;</li> <li>(c) Rising mains; and</li> <li>(d) Aqueducts;</li> <li>(e) Pumping Stations; and</li> <li>(f) Treatment Plant and Reservoir.</li> </ul>	<p>No change. Bidders are required to conduct their own independent assessment with regards to KWC (including all relevant assets) prior to Bid Submission Date. All assets (including license over Site) will be handed over on an “as is” basis.</p>

<sup>4</sup> Please note that this issue is to be read with Operations Handover Conditions enumerated above

<sup>5</sup> Please note that the Conditions highlighted herein are hypothetical in nature, for discussion purposes only, and the same shall be subject to inputs and/or confirmations from the Client’s technical advisors.



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44.	Termination	-	<p>Under the Concession Agreement, there is no clarity as to who bears the costs of the tests and inspections and issuance of the Remedial Report. Based on precedent transactions, it is proposed that:</p> <p>(a) in the event of termination (excluding termination due to Political Force Majeure Event or a GoS Event of Default) or expiry of the Concession Agreement on the Term Expiry Date, the Company shall bear the costs and expenses of tests and inspections; and</p> <p>(b) in the event of termination due to a GoS Event of Default or Political Force Majeure Event, the GoS shall bear the costs and expenses of tests and inspections.</p> <p>The below-mentioned amendment is proposed to Clause 21.10.2.2:</p> <p><i>“the KWC does not meet the Handover Conditions, making allowances for any Force Majeure Event or a GoS Event of Default that may have affected the KWC and for which the Company shall not be responsible, then as soon as reasonably practicable, and in any event within six (6) Months prior to the Term Expiry Date or within two (2) Months following the Termination Date (as applicable), the Independent Appointees shall issue a report (the “<b>Remedial Report</b>”) providing to the Parties (a) a list of the works and services required to be undertaken by the Company to meet the Handover Conditions (the “<b>Remedial Works</b>”), (b) a remediation plan, including the time period, for completing the Remedial Works (the “<b>Remedial Plan</b>”), and (c) an estimate of the costs of carrying out the Remedial Works (the “<b>Estimated Remedial Costs</b>”).</i></p> <p><u><i>provided, that, in the event of termination (excluding termination due to Political Force Majeure Event or GoS Event of Default) or expiry of this Agreement on the Term Expiry Date, the Company shall bear the costs and expenses of the tests and inspections and issuance of the Remedial Report.</i></u></p>	No change. Such costs are to be borne by the Company.

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			<u>provided further, that, in the event of termination due to a GoS Event of Default or Political Force Majeure Event, the GoS shall bear the costs and expenses of the tests and inspections and issuance of the Remedial Report.”</u>	
45.	Termination	-	<p>The Concession Agreement does not envisage any provisions in respect of “<i>Transfer Consideration</i>”. Such provisions are present in GoS precedents. Furthermore, for taxation purposes, it is highlighted that Termination Payments are not treated as “<i>Transfer Consideration</i>”.</p> <p>As is the case in precedents, it is proposed that provisions in respect of “<i>Transfer Consideration</i>” are added in the Concession Agreement.</p> <p>Clause 21.10.8 is proposed to be added in the Concession Agreement, which reads as follows:</p> <p><u>“The Parties agree that the KWC shall be transferred to the GoS for a sum of (as consideration) PKR 1/- (Pakistani Rupees One only).”</u></p>	No change.
46.	Termination	-	<p>The Concession Agreement does not provide any clarity as to who bears the costs incidental to the assets to be transferred by the Company to the GoS upon termination i.e., divestment costs as extensive provisions pertaining to the allocation of divestment costs are provided in precedent transactions.</p> <p>As is the case in precedents, in the event of termination (excluding termination due to a Political Force Majeure Event or a GoS Event of Default) or expiry of the Concession Agreement on the Term Expiry Date, the Company bears the divestment costs. However, in the event of termination due to a GoS Event of Default or Political Force Majeure Event, the GoS shall bear the cost for this purpose.</p> <p>Furthermore, it is proposed that the GoS should bear the costs associated with the payment of stamp duties on any deeds or documents executed in relation to such divestment as such costs have be borne by the GoS in precedent transactions.</p>	Such costs are to be borne by the Company. Bidders are referred to clause 21.10.7 of the Concession Agreement.

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			<p>Clause 21.10.8 is proposed to be added in the Concession Agreement, which reads as follows:</p> <p><i><u>“The Company shall bear and pay, in case of termination of this Agreement (excluding termination due to a Political Force Majeure Event or a GoS Event of Default) or expiry of this Agreement on the Term Expiry Date, all costs incidental to the divestment of all of the rights, title and interest of the Company in the KWC in favor of the GoS, save and except that all stamp duties payable on any deeds or documents executed by the Company in connection with such divestment shall be borne by the GoS. In the event of termination due to a GoS Event of Default or Political Force Majeure Event, the GoS shall bear and pay all the above-mentioned costs.”</u></i></p>	
47.	<b>Termination</b>	-	<p>The Outstanding Principal Amount is calculated with the caveat that any principal amount is actually “<i>applied</i>” for the purposes of financing the Project. This should be removed as the Outstanding Principal Amount should be calculated based on the disbursements claimed by the Company. The test of whether the Outstanding Principal Amount was actually applied towards the Project is quite onerous and, in the context of termination, it brings uncertainty to the Termination Payment mechanisms.</p> <p>It is proposed that the below-mentioned caveat be removed from the definition clause of “Outstanding Principal Amount”:</p> <p><i><del>“in each case, to the extent such principal amount was actually applied for the purposes of financing the Project.”</del></i></p>	No change.
48.	<b>Termination</b>	-	<p>Presently, the Termination Payment SBLC is secured to the extent of the outstanding debt. However, it is proposed that in consideration of the fact that foreign equity is involved, the Termination Payment SBLC should be enhanced to provide coverage for the equity component as well.</p> <p>The relevant changes are to be made throughout the Concession Agreement based on GoS’ response.</p>	No change.

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49.	Termination	-	<p>Precedents provide a wider cover in relation to events constituting a GoS Event of Default, with such events including breach of representation or warranty or provision of incorrect representation or warranty, termination, cancellation or revocation of the concessionaire's rights to the project site under the relevant instrument, failure to perform material obligations or effecting the assignment of the Concession Agreement in a manner other than as may be prescribed. Such events are seen to be missing from the Concession Agreement and, therefore, if such events were to transpire, the same may not constitute a GoS Event of Default.</p> <p>Therefore, the above-stated events should be expressly covered in the Concession Agreement.</p> <p>The following clauses are proposed to be added in Clause 21.6 of the Concession Agreement:</p> <p><i>"21.6.12 any statement, representation or warranty made by the GoS Parties in any Relevant Agreement proving to have been incorrect, in any material respect, when made or when reaffirmed and such incorrect statement, representation or warranty having a material adverse effect on the Company's ability to perform its obligations under this Agreement and/or on the Project;</i></p> <p><i>21.6.13 any termination, cancellation, resumption or revocation of the Company's interest established under the License Agreement in respect of the Site (otherwise than for a breach of the conditions of the License Agreement by the Company entitling such termination, cancellation, resumption or revocation);</i></p> <p><i>21.6.14 any change in any applicable laws:</i></p> <p><i>(i) making unenforceable, invalid, or void any material undertaking of the GoS under the Relevant Agreements; and/or</i></p> <p><i>(ii) making:</i></p>	No change. Bidders are referred to clause 21.6.11 of the Concession Agreement.

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			<p><i>(A) it unlawful for the Company, the Financing Parties or the Sponsors to make or receive any payment, to perform any material obligation or to enjoy or enforce any material right under any Relevant Agreement (other than a Change in Law for which compensation is provided in accordance with this Agreement); or</i></p> <p><i>(B) any payment, the performance of any material obligation or the enjoyment or enforcement of any material right unenforceable under any GoS Agreement, invalid or void as a result of any such change in Applicable Laws (other than a Change in Law for which compensation is provided in accordance with this Agreement);</i></p> <p><i>21.6.15 any change in, or any change in the interpretation of, any of the Applicable Laws (including the Constitution of Pakistan and any other Applicable Laws that gives effect to the injunctions of Islam, being in the case of a decision of a court, a decision which is no longer in suspense as a result of an appeal) from and after the date of this Agreement having the effect of making:</i></p> <p><i>(i) unlawful, unenforceable, invalid, or void any material undertaking of the GoS under any Relevant Agreement; or</i></p> <p><i>(ii) unlawful for the Company to make or receive or the Financing Parties or the Sponsors to receive any payment (including interest or return), for the Company to perform any material obligation or to enjoy or enforce any material right under this Agreement or any other Relevant Agreement in relation to the Project; or</i></p> <p><i>(iii) any such payment, the performance of any such material obligation or the enjoyment or enforcement of any such material right becoming unenforceable, invalid or void as a result of any such change in the applicable laws,</i></p> <p><i>which in the case of (i) (ii) or (iii) above, has a continuing effect for more than one hundred and eighty (180) days without an arrangement being provided to exempt the affected party from the effect of such Change in Law (other than a Change in Law for which compensation is provided in accordance with this Agreement).”</i></p>	

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50.	Termination	-	<p>With respect to the Concession and License Direct Agreement, it may be relevant to note that the Financing Parties may require further changes to be made in such Concession and License Direct Agreement.</p> <p>It is proposed that the Concession and License Direct Agreement should allow for amendments to be introduced to its provisions by the Financing Parties.</p>	No change. Bidders are required to submit any comments / clarifications from the proposed financing parties on the RFP, prior to the Bid Submission Date.
51.	Termination	-	<p>For a scenario where a default of the Company has occurred under the Financing Documents, but the Financiers have not stepped-in, it is proposed that, based on GoS precedents, an enabling provision must be included in the Concession and License Direct Agreement which captures the concept of “<i>deemed issuance of notice of intent to terminate</i>” and “<i>deemed issuance of termination notice</i>” as has been the case in precedent transactions. Similarly, an enabling provision also needs to be included in the relevant termination section of the Concession Agreement.</p> <p>The relevant changes are requested to be reflected based on precedents.</p>	No change.
52.	Termination	-	<p>The practicality of an upfront approval for a potential novation by the GoS of the EPC Contract and/or the O&amp;M Contract needs to be considered. In a scenario where the Concession Agreement is being terminated due to a GoS Event of Default or other reasons not attributable to the Company, achieving such novation may be impractical. Further, in case the Concession Agreement is being terminated due to a Company Event of Default on account of a sub-contractor’s default, the rationale for novation is unclear. Lastly, the Company has no control over the commercial decisions of the contractor (some of them international in this case) i.e., if the contractor would even wish to continue with the Project following the occurrence of a default.</p> <p>Clause 4.4.3 of the Concession Agreement should be amended to reflect as follows:  <i>“The Company shall ensure that the EPC Contract and O&amp;M Contract contain provisions required in terms of the appendix 12 <del>and which further provide for such contracts to be, at the option of the GoS, novated or assigned to the GoS or its nominee without any further consent or approval from the Company or the Contractor, or entitle the GoS or its nominee to step into such contract, in substitution of the</del></i></p>	No change. Bidders are required to ensure that relevant matters are agreed with the contractors prior to bid submission to ensure compliance with the RFP requirements.

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			<i>Company, if this Agreement is terminated prior to the Term Expiry Date, provided that the step in rights of the GoS shall be subject to any substitution rights of the Financing Parties under the Concession and License Direct Agreement."</i>	
53.	Termination	-	<p>As has been the case in precedent transactions, the cure periods for a Company Event of Default under the Concession and License Direct Agreement should supersede the Cure Periods provided under the Concession Agreement.</p> <p>Clause 21.7.2 of the Concession Agreement is proposed to be amended as follows:</p> <p><i>"Upon the occurrence of a Company Event of Default, the GoS may give notice (the "GoS Notice of Intent to Terminate") to the Company specifying in reasonable detail the relevant Company Event of Default giving rise to such notice and the date upon which the GoS proposes to terminate this Agreement, which date shall not be less than thirty (30) Days after the date of the GoS Notice of Intent to Terminate or such longer period as specified in this Agreement or such other time period as may be agreed in the Concession and License Direct Agreement (the "Company Cure Period"), provided that upon the occurrence of any of the Company Events of Default under clauses 21.5.17, 21.5.18, or 21.5.19, the GoS may terminate this Agreement immediately."</i></p>	No change.
54.	Termination	-	<p>Provisions to cater for delays made by the Independent Appointees in calculating the Termination Payments do not exist in the Concession Agreement. Based on precedent transactions, this is a key lender issue as Termination Payments include the Financing Due to be paid to the Financing Parties.</p> <p>It is proposed that the Independent Appointees should be under an obligation to calculate the Termination Payments within a specific time period following the Termination Date (the <b>Calculation Period</b>).</p> <p>In essence, where the Independent Appointees fail to calculate the Termination Payments within the Calculation Period, in such case, the Termination Payments should be paid in accordance with the calculations of the Financing Parties.</p>	No change. Company is responsible to timely liaise with Independent Appointees for obtaining relevant information / approvals. Bidders are referred to clauses 17.4.3 and 17.10.3 of the Concession Agreement.

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55.	Termination	-	<p>In the event of termination of the Concession Agreement prior to achievement of Mobilisation Date for reasons not attributable to the Company, the Company is not entitled to receive compensation for any activities that it has completed before such termination.</p> <p>It is proposed that the Company should be entitled to any costs that it may have incurred as a result of activities undertaken prior to the Mobilisation Date.</p>	No change.
56.	Termination	-	<p>The applicability of Handover Conditions in various scenarios such as a GoS Event of Default or a Political Force Majeure Event requires further consideration by the GoS as it may not be practical for the Company to meet such conditions in the afore-stated scenarios.</p> <p>The relevant changes are to be made throughout the Concession Agreement based on GoS' response.</p>	No change. Bidders are referred to clause 21.10.2 of the Concession Agreement.
57.	Termination	-	<p>As has been the case in precedent transactions, the PKR Equity Return and USD Equity Return should be calculated until the Termination Payment Date, as opposed to the Termination Date.</p> <p>The following changes are suggested in the definition clause of "PKR Equity Return" and "USD Equity Return":</p> <p><i>"t = total number of distinct twelve (12)-Month intervals in the period from the Effective Date until the Termination Payment Date <del>Termination Date</del>; provided that if the last interval is shorter than twelve (12)-Months, it shall be considered a twelve (12)-Month interval;"</i></p>	No change.
58.	Indexations and Adjustments	-	<p>In the event there is any reduction in the project cost due to any efficiencies derived, KIBOR variations and/or fluctuations in the PKR/USD exchange rate, it is proposed that the Service Payments are not reduced in accordance with Appendix 8 (<i>Service Payment Calculations</i>) of the Draft Agreement.</p>	No change. Service Payments will be locked at the Bid Submission Date, subject to indexation as allowed under the Concession Agreement.



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			It is proposed that the Service Payments should not be reduced in light of any reduction in project cost. <sup>6</sup>	
59.	Indexations and Adjustments	-	<p>In respect of the calculation of the PKR Equity Distribution and USD Equity Distribution in the definition of Equity Return, it is requested that any distributions calculated of any other income generated by the company (i.e., for efficiencies generated) should not form part of such calculations.</p> <p>Sub-clause (b) of the definition clause of PKR Equity Distribution is suggested to be amended as follows:</p> <p>“the sum of amounts <i>of the Local Equity Recovery Charge (and excluding all other income) declared paid to the Company and distributed</i> on any given date from time to time until the Termination Date in PKR by the Company for payment to the Shareholders against Class A Shares by way of return on capital, whether in the form of dividends, redemption of capital, payment of principal and interest on any indebtedness to such Shareholders”</p> <p>Similarly, Sub-clause (b) of the definition clause of USD Equity Distribution is suggested to be amended as follows:</p> <p>“the sum of amounts <i>of the Foreign Equity Recovery Charge (and excluding all other income) declared</i> distributed on any given date from time to time (the “Declaration Date”) until the Termination Date in PKR by the Company for payment to the Shareholders against Class A Shares (registered on a repatriable basis by the SBP) by way of return on capital, whether in the form of dividends, redemption of capital, payment of principal and interest on any indebtedness to such Shareholders.”</p>	No change.

<sup>6</sup> Please note that this reduction in the project cost or savings does not refer to the concept of “Savings” under the Concession Agreement.

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60.	Indexations and Adjustments	-	<p>Risks relating to fluctuation in KIBOR (by way of example, increase in project cost due to an increase in IDC resulting from KIBOR being higher than the assumed rate in the financial model) and LIBOR are missing in the Concession Agreement. Therefore, based on GoS precedents, it is proposed that risks relating to fluctuation in KIBOR and LIBOR should be passed through, as will also be the case in the Operating Period.</p> <p>The relevant changes are to be made throughout the Concession Agreement based on GoS' response.</p>	No change.
61.	Indexations and Adjustments	-	<p>For the C&amp;O Period, the Service Payments should be indexed and adjusted to take into account the fluctuations in the PKR/USD exchange rate.</p> <p>The relevant changes are to be made throughout the Concession Agreement based on GoS' response.</p>	No change.
62.	Indexations and Adjustments	-	<p>The Fixed O&amp;M Cost Recovery Charge and Variable O&amp;M Recovery Charge is not being adjusted with the US-CPI. This results in the risk of inflation being vested in the Company. Therefore, it is proposed that Fixed O&amp;M Cost Recovery Charge and Variable O&amp;M Recovery Charge are indexed in accordance with the US-CPI.</p> <p>The relevant changes are to be made throughout the Concession Agreement based on GoS' response.</p>	No change.
63.	Indexations and Adjustments	-	<p>The Concession Agreement does not provide for either adjustments in project costs or funding by GoS of escalation of prices of various items including, <i>inter alia</i>:</p> <ul style="list-style-type: none"> <li>(a) steel;</li> <li>(b) bitumen;</li> <li>(c) diesel; and</li> <li>(d) cement,</li> </ul>	No change. These are Bidder's risks.

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			<p>(hereinafter collectively referred to as “Escalable Items”).</p> <p>Considering the high volatility in the prices of the Escalable Items, the GoS is requested to either fund such Escalation Costs or make them a pass-through in project cost.</p> <p>The following provision is proposed to be added within the Concession Agreement:</p> <p><i>“In the event the Actual Cost<sup>7</sup> of Escalable Items (in aggregate) exceeds the Base Price<sup>8</sup> (the “Escalation Cost”), the [GoS]<sup>9</sup> shall bear and fund such portion of the Escalation Cost (provided that such Escalation Cost is duly verified by the Independent Engineer and the Independent Auditor with reference to the price set out in the monthly statistical bulletin issued by the Pakistan Bureau of Statistics). To the extent any Escalable Item is not mentioned in the bulletin issued by the Pakistan Bureau of Statistics, the same shall be determined by the Independent Engineer and the Independent Auditor.”</i></p>	
64.	<b>Increased Costs and Savings</b>	-	<p>The Company is required to fund / procure funding of any Increased Costs, with the GoS later adjusting the payments due to the Company or providing lump-sum / staggered payments to the Company.</p> <p>This poses serious bankability and sponsor support issues. It is worth noting that it may not be practical or possible for the Company to obtain additional financing for Increased Costs arising as a result of a Political Force Majeure Event or other reasons attributable to the GoS Parties as the lenders may not take a favorable view on the Project in that case. Further, it increases sponsor support obligations as the sponsors</p>	<p>No change. In case Increased Costs occur, such Increased Costs shall be paid in accordance with clauses 20.1.5 and 20.1.6 of the Concession Agreement.</p>

<sup>7</sup> Actual Cost means the actual cost of any Escalable Item(s), at the time of procurement of the same.

<sup>8</sup> Base Price means the price of the Escalable Items at the rate prevailing twenty-eight (28) days prior to the Bid Submission Date, as confirmed and notified by the Independent Engineer in accordance with the Price Escalation Agreement.

<sup>9</sup> Subject to whether the funding of the Escalation Costs will be a part of the Project Cost or a pass-through item.

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			<p>of the Project, due to no fault of their own, will be required to fund the Increased Costs.</p> <p>Therefore, it is proposed that the GoS should fund Increased Costs as and when they are incurred (as has been the case in precedent transactions).</p> <p>The relevant changes are to be made throughout the Concession Agreement based on GoS' response.</p>	
65.	<b>Increased Costs and Savings</b>	-	<p>Any conditions to disbursement of debt are not satisfied or waived, the same will translate into a default of the Company under the Concession Agreement. That should not be the case as it may result in a default being called for a condition precedent under the Financing Documents not being satisfied or waived.</p> <p>It is proposed that the Company Event of Default resulting from “<i>any conditions to disbursement of debt by the Financing Parties under the Financing Documents have not been satisfied (unless waived in terms thereof)</i>”<sup>10</sup> should be removed.</p> <p>In any case, such provision should also cater for deferrals of such conditions which may address the gap existing in the agreement presently.</p> <p>It is proposed that either Clause 21.5.25 be removed or, in any case, be amended to read as follows:</p> <p>“<i>Any conditions to disbursement of debt by the Financing Parties under the Financing Documents have not been satisfied (unless waived <u>or deferred</u> in terms thereof).</i>”</p>	No change.
66.	<b>Increased Costs and Savings</b>	-	<p>Presently, Clause 6.1 of part 2 (<i>Commencement Conditions Precedent</i>) of appendix 4 (<i>Conditions</i>) of the Concession Agreement provides that following the issuance of the Partial FC Letter, the GoS shall provide evidence to the Company of the establishment of the GoS Equity Account and funding of the same.</p>	No change.

<sup>10</sup> Clause 21.5.25 of the Concession Agreement.

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			<p>It is proposed that the GoS Equity Account should be established and funded prior to the issuance of the Partial FC Letter.</p> <p>It is proposed that the below-mentioned conditions precedent should be satisfied by the GoS prior to the issuance of the Partial FC Letter:</p> <p>i) the establishment of the GoS Equity Account and issuance of the GoS Equity Account Standing Instructions; and</p> <p>ii) the funding of the GoS Equity Account with the GoS Equity Amount.</p>	
67.	Increased Costs and Savings	-	<p>It is an industry practice that lenders of the project demand the application of insurance proceeds to be subject to the terms of the financing documents and the government's right to such insurance proceeds to be subordinate to the interests created in favor of the lenders of the project vis-à-vis such insurance proceeds.</p> <p>The following provisions are proposed to be added in the Concession Agreement:</p> <p><i>“(a) The GoS acknowledges and agrees that the interest of the GoS, its officers and employees in and to the insurances maintained by the Company pursuant to the Concession Agreement is in all respects subordinate to the interests in such insurances of the Financing Parties under the Financing Documents.</i></p> <p><i>(b) Following termination of the Concession Agreement, whenever the GoS is obligated to pay the Termination Payment to the Company, and if unutilized insurance proceeds under the insurance policies with respect to the Project are (a) deposited in and are standing to the credit of an account (that is under lien of the Financing Parties pursuant to the terms of the Financing Documents) of the Company, prior to the Termination Date; and (b) are not in relation to any third party claims, such insurance proceeds shall be used for payment of the Financing Due and the GoS's obligation to pay the Termination Payment shall be reduced by all such payments of the Financier Amount Due through the insurance proceeds.”</i></p>	No change.

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68.	Increased Costs and Savings	-	<p>In the case of uninsurable events, it is unclear as to who bears the risk for the same. Therefore, as in the case of international precedents, it is recommended that coverage should be provided for uninsurable events by GoS.</p> <p>It is proposed that the GoS should provide coverage for uninsurable events.</p>	No change.
69.	Relief Events	-	<p>It is proposed that the concept of “Increased Costs” also includes the effects of any matters enumerated in Clause 20.1.1 and the actualization and if any claims for Increased Costs are restricted to the cessation of such Relief Event.</p> <p>The definition clause of “RE Period” is suggested to be amended as follows:</p> <p>“means the duration of a Relief Event (<i>including the effects of such circumstance, event or condition</i>) as determined by the Independent Engineer, provided that if more than one Relief Event is ongoing at the same time, for the purposes of determining the RE Period, such Relief Events shall be considered as running concurrently;”</p>	No change.
70.	Relief Events	-	<p>In case of a Relief Event impacting the ability of the Company to meet the Contracted Availability, the GoS shall continue to make Availability Payments in respect of Deemed Availability only. However, the GoS should make Availability Payments on the basis of Contracted Availability, as opposed to Deemed Availability, for the RE Period.</p> <p>Clause 11.3.1.1 of the Concession Agreement should be amended to read as follows:</p> <p><i>“during the Operating Period, the Availability Payments in respect of <del>Deemed Availability</del> Contracted Availability (without applying the Deduction for Reduced Water Availability);”</i></p>	No change.
71.	Relief Events	-	<p>In case the occurrence of a Relief Event impacts the ability of the Company to perform any of its obligations, it is proposed that the Company should not be subject to any Deductions.</p>	No change.

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			The relevant changes are to be made throughout the Concession Agreement based on GoS' response.	
72.	<b>Relief Events</b>	-	<p>Events where the Hub Dam, WAPDA Canal and/or KIII Conduit no longer remain in a good working condition and adversely effects the performance by the Concessionaire of its obligations under the Concession Agreement should be categorized as a "Relief Event".</p> <p>It is proposed that the definition of Relief Event should be amended to reflect the same.</p>	No change. Water supply risk will be borne by GoS / KW&SB. The Company shall be compensated as long as KWC is available for supply of water in accordance with the requirements specified in the Concession Agreement.
73.	<b>Liquidated Damages and General Damages</b>	-	<p>The concepts of Abandonment and a delay in achieving Project Commercial Operations Date by the Scheduled Project Commercial Operations Date give rise to payment of liquidated damages. The afore-mentioned stipulation is unprecedented and has the effect of increasing the risk exposure of the Company.</p> <p>It is proposed that the imposition of liquidated damages in case of Abandonment and/or delays must be removed in its entirety.</p> <p>In any case, it is requested that the Company's liability to make payments of liquidated damages (whether for breach of contract or general damages) should be limited to an identified and pre-determined cap.</p>	No change.
74.	<b>Liquidated Damages and General Damages</b>	-	<p>The Concession Agreement allows the GoS to claim liquidated damages, encash the Performance Securities and exercise any other rights or remedies that the GoS may have pursuant to Clause 21 of the Concession Agreement including, <i>inter alia</i>, termination, transfer of the Project, seeking injunctive relief, or triggering the dispute resolution clause for any delay by the Company in achieving Project Commercial Operations Date or for abandoning the Project. This increases the form of penalties or consequences that the Company may be subject to for any delay or failure under the Concession Agreement.</p> <p>Therefore, where Liquidated Damages are being claimed as a remedy by the GoS, a general provision should be added in the Concession Agreement stipulating that such</p>	No change.

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			<p>claim of Liquidated Damages is the sole and exclusive remedy of the GoS for the relevant breach.</p> <p>Clause 7.3.5 should be inserted in the Concession Agreement which should read as follows:  <i>“The remedies set out in this clause 7.3 shall be the GoS’ sole and exclusive remedies with respect to any delay in achieving the Project Commercial Operations Date by the Scheduled Project Commercial Operations Date.”</i></p> <p>Additionally, Clause 7.4.5 should be inserted in the Concession Agreement which should read as follows:  <i>“The remedies set out in this clause 7.4 shall be the GoS’ sole and exclusive remedies with respect to any Abandonment.”</i></p>	
75.	<b>Liquidated Damages and General Damages</b>	-	<p>While the GoS is precluded from claiming special damages under Clauses 7.3.1 (<i>for delay in achieving Project Commercial Operations Date</i>) or 7.4.1 (<i>damages on account of abandonment by the Company</i>) of the Concession Agreement, the GoS has the right to claim for general damages at law. It is proposed that there should be a predetermined cap on the Company’s obligation to pay general damages.</p> <p>The relevant changes are to be made throughout the Concession Agreement based on GoS’ response.</p>	No change.
76.	<b>Deductions and other Specific Matters</b>	-	<p>As is the case in precedent annuity-based transactions, any Deductions of Availability Payments should only be made from the equity component and the O&amp;M component and should not affect the debt component.</p> <p>Appendix 8 should be amended to reflect Deductions from solely the equity component and the O&amp;M component of Service Payments.</p>	No change.
77.	<b>Deductions and other</b>	-	<p>There appears to be no obligation on the KW&amp;SB to provide water at the Input Water Connection Point, the same being left up to an inference to be drawn that such water will be supplied. This creates an ambiguity within the Concession Agreement and also is to the detriment of the Company which might be limited in the scope of remedies it can have recourse to in the absence of an express obligation.</p>	No change. Subject to Deductions, Company will be paid Availability Payments as long as KWC is available to meet the Contracted Availability,



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	<b>Specific Matters</b>		<p>Furthermore, the Concession Agreement does not impose a positive obligation on the KW&amp;SB to ensure provision of input water meeting required specifications, and in the absence of a positive obligation to that effect, the Company is exposed to an added risk of the Input Water not meeting requisite specifications which may lead to an impediment in the performance of the Company’s obligations or the KWC incurring damage. Considering an absence of an express provision in this regard, the Company is also limited to the form of remedies it may have a recourse to on account of such an event.</p> <p>Based on precedents, the KW&amp;SB should be under a positive obligation to ensure provision of Input Water meeting the required specifications, and the Company should be indemnified for any damages or losses incurred by the Company as a result of Input Water not meeting the requisite specifications.</p> <p>In the interest of clarity, a specific binding obligation must be created on the KW&amp;SB to provide input water (that meets the specifications) at the Input Water Connection Point that may be required by the Company for the purposes of its activities. Therefore, the below-mentioned amendment is proposed:</p> <p><i><u>“notwithstanding anything to the contrary, in respect of the water delivered and/or to be delivered by the KW&amp;SB at the Input Water Connection Point, such water shall comply with the requirements of Input Water Quality Specifications.”</u></i></p> <p>Further, it is proposed that the GoS Parties shall indemnify the Company in the event it incurs any damages or losses as a result of Input Water not meeting the requisite specifications.</p>	<p>regardless of the quantum of output water.</p> <p>With respect to the second point, no change. Input water quality parameters are specified in clause 5.1.1 of volume II of the RFP which is appendix 1 of the Concession Agreement.</p> <p>With respect to the third point, no change. Bidders may refer to treatment of off-spec water and bypass water in the Concession Agreement (including appendix 8).</p>
78.	<b>Deductions and other Specific Matters</b>	-	<p>It appears from a review of Appendix 8 that the GoS is sharing the savings for Electricity Reimbursement Payment but not sharing the risk if the actual electricity consumed is in excess of the projected electricity consumption. That is to say, in the event, the Company consumes more electricity than the project electricity consumption, any and all additional costs incurred by the Company for such increased</p>	No change.

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			<p>consumption shall be borne solely by the Company. Considering that the GoS is not assuming any risk, the GoS should not be entitled to such sharing.</p> <p>The relevant formula is proposed to be amended to reflect that the Company retains the benefits and is the sole beneficiary of any efficiencies that it introduces.</p>	
79.	<b>Deductions and other Specific Matters</b>	-	<p>It is proposed that the any utility companies that intend to carry out operations on the Site should be subject to the consent of the Company.</p> <p>The relevant changes are to be made throughout the Concession Agreement based on GoS' response.</p>	Bidders are referred to clause 9.1 of the Concession Agreement.
80.	<b>Deductions and other Specific Matters</b>	-	<p>By definition, Deductions seem to apply only on Availability Payments. However, Clause 1.2.2 of Appendix 8 stipulates that Output Payments will be subject to deductions in the C&amp;O Period.</p> <p>We understand that Output Payments secure Electricity Reimbursement Payment (Component CW) and Variable O&amp;M Cost Recovery Payment (Component DW), and as such it is unclear how the same could be subject to Deductions. Furthermore, the Concession Agreement does not stipulate or explore the modalities of such Deduction either.</p> <p>Based on an understanding of the modalities for Deductions otherwise through the Concession Agreement, it appears that Output Payments are not to be subject to Deductions, and such ambiguities must be removed from the Concession Agreement.</p> <p>It is proposed that Clause 1.2.2 of Appendix 8 should be removed.</p>	Deductions will apply on the Availability Payments and Output Payments. Bidders are referred to clause 2.3 of appendix 8 of the Concession Agreement.
81.	<b>Deductions and other</b>	-	Pursuant to clause 5.6.3.6, the Company bears the risk of ensuring: (i) safety and protection of owners or occupiers of Adjoining Property from any danger or nuisance; and (ii) protection of the Adjoining Property from any contamination or damage.	No change. Clause 5.6.3.6 is to be read in entirety.

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	<b>Specific Matters</b>		Considering that the afore-mentioned obligations are not typically present in a PPP transaction, such an obligation on the Company is requested to be removed.	
82.	<b>Deductions and other Specific Matters</b>	-	<p>Based on precedent transactions, a situation that is likely to endanger the security of the individuals on or about the project site, including the users thereof, or which poses an immediate threat or material damage to any of the project assets entitles the concessionaire to decommission the project assets for such time period as may be warranted on account of such situation. Presently, the Concession Agreement does not contain any provisions to this effect, and in fact, if on account of an emergency (such as the one described above), the Company did in fact de-commission the project assets, the same may make the Company liable for other penalties under the Concession Agreement.</p> <p>Therefore, for scenarios where the Company is required to decommission the project assets on account of an emergency situation, such emergency decommissioning should be considered to be a Relief Event.</p> <p>Based on GoS precedents, it is proposed that provisions relating to emergency decommissioning should be added in the Concession Agreement.</p> <p>Additionally, clause (e) is proposed to be added to the definition clause of “Relief Event” under the Concession Agreement which shall read as follows:</p> <p>“(e) an emergency decommissioning;”</p> <p>Furthermore, it is proposed that there should be no deductions in the event such a Relief Event occurs.</p>	No change. Relief Events specified in the Concession Agreement have been formulated based on this transaction.
83.	<b>Deductions and other</b>	-	We observe that Deductions are imposed on the Company in several cases, however, there is no limit on the nature of remedies that the GoS may opt for, in addition to Deductions, for each of the grounds on which deductions are being applied. This	No change.

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	<b>Specific Matters</b>		<p>merely increases the forms of liabilities the Company may be subject to and its risk exposure.</p> <p>For each of the matters identified in Appendix 8 of the Concession Agreement giving rise to a Deduction, it is proposed that the imposition of such deduction shall be the sole and exclusive remedy of GoS in such cases.</p>	
84.	<b>Deductions and other Specific Matters</b>	-	<p>It appears that Unavailability will immediately trigger and translate into a Deduction for reduced availability of water, which reduced availability could be on account of several factors (including an Unplanned Outage). This appears to be an unfair risk allocation where the Company can be immediately penalized (by Deductions) for any and all unavailability scenarios.</p> <p>It is proposed that a cure period should be added which would allow the Company to rectify the cause of Unavailability (if possible).</p>	No change. Bidders are referred to the definition of Unavailability in appendix 8 of the Concession Agreement, which is linked to Outages and not to the availability of water.
85.	<b>Deductions and other Specific Matters</b>	-	<p>Clause A.4 of Appendix 8 suggests that the Independent Engineer has an unfettered right to conduct an investigation into whether the Unavailability Notice had been provided at a suitable time, and, in case it is determined that an earlier notice was possible and provided the Company agrees with such determination, the GoS may reduce the Availability Payments for Unavailability. It is unclear why such a determination can have an impact on the Availability Payments payable to the Company. In any case, consider a scenario where Unavailability occurs on account of an Unplanned Outage, where the test becomes subjective as it is not clear as to how a determination on an earlier notice being possible could be made.</p> <p>As a result, clarity is required as to whether the notice requirement forms the basis of determining a deduction in Availability Payments on account of an Unavailability.</p> <p>The right of the Independent Engineer to make such a determination is requested to be deleted as the notice requirement should not form the basis of determining a deduction in Availability Payments on account of an Unavailability.</p>	No change. Notification requirement is to ensure that the Company timely issues the Unavailability Notice. Bidders are referred to part A.4 of Appendix 8 of the Concession Agreement.

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86.	Utilities	-	<p>The Company is currently absorbing the risk of unavailability of utilities required for the Project Activities, even if such utilities are not actually available or capable of being set up at the designated connection points due to any reason. Therefore, it is proposed that the risk of unavailability of utilities at the relevant connection points is borne by the GoS.</p> <p>It is proposed that the Company’s obligation should be subject to the availability of utilities at the relevant interconnection points and the GoS Parties should ensure availability of such utilities at the designated points.</p>	No change.
87.	Utilities	-	<p>The Concession Agreement places the obligation to relocate any utility infrastructure under or over the Site, on the Company, at its own cost and expense, whereas, typically this obligation rests with the government agency. However, based on precedent transactions, it is highlighted that the relocation of any utility infrastructure under or over the Site, if any, should be conducted by the GoS at its own cost and expense prior to the commencement of works by the Company. Therefore, it is proposed that the GoS should, in accordance with precedent transactions, be undertaking the relocation of utilities.</p> <p>It is proposed that Clause 9.1.1.2 of the Concession Agreement be deleted and Clause 9.1.4 be amended as follows:</p> <p><u>“KW&amp;SB shall, at its own risk and cost, relocate any utility infrastructure under or over the Site.”</u></p>	No change.
88.	Force Majeure	-	<p>Typically, politically motivated strikes, work-to-rule, go-slow or analogous labor actions are categorized as political force majeure events, which appear to be missing from the Concession Agreement. Categorization of the afore-stated events simply as Natural Force Majeure Events disregard a scenario where such actions take place on account of government policies or are motivated by political reasons, the risk for which should be borne by the government agency as opposed to the private party. Further, categorizing it as Natural Force Majeure Events basically translates into an adjustment of the Availability Payments of the Company.</p>	No change.

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			<p>Therefore, it is proposed that the afore-stated risks are borne by the GoS when such events take place on account of politically motivated factors.</p> <p>It is proposed that Clause 19.2.4 of the Concession Agreement be deleted and Clause 19.3.6 be added in the Concession Agreement, which reads as follows:</p> <p><i>“any strike, work-to-rule, go-slow, or analogous labour action that is politically motivated or is widespread or nationwide and that (or its effects) shall have existed.”</i></p>	
89.	Force Majeure	-	<p>The Concession Agreement does not envisage the consequences arising as a result of “<i>climate change</i>” as a Force Majeure Event, which has been observed as a major cause of catastrophe in the recent past. Therefore, it is proposed that Force Majeure Events also include events related to “<i>climate change</i>”.</p> <p>It is proposed that climate change and its consequences should be dealt with in the same manner as a Change in Law or a Political Force Majeure Event.</p>	<p>No change. The Company is required to ensure that KWC and the relevant components are designed in a climate resilient manner.</p> <p>Bidders are referred to clause 19.2.1 of the Concession Agreement.</p>
90.	Force Majeure	-	<p>The Force Majeure Event presently only covers the duration of the Force Majeure Event. Practically, while a Force Majeure Event may cease to be in effect earlier, its effects may continue for a longer time period, thereby continuing to affect the Company in its activities (for example, a flood may cease earlier but its effects may continue for a period of consecutive months). Therefore, it is proposed that the definition of Force Majeure Event also includes the duration during which the “<i>effects</i>” of the Force Majeure Event subsist.</p> <p>The below-mentioned amendment is proposed to Clause 19.1:</p> <p><i>“A “Force Majeure Event” means any circumstance, event or condition (or combination thereof) (including the effects of such circumstance, event or condition) beyond the reasonable control, directly or indirectly, of the Affected Party...”</i></p>	No change.

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91.	Force Majeure	-	<p>It appears that in case of a Political Force Majeure Event impacting the ability of the Company to meet the Contracted Availability, the GoS shall continue to pay Availability Payments in respect of Deemed Availability only.</p> <p>Further to the above, it is unclear why the Company bears the risk of getting payments on the basis of Deemed Availability in the case of a Political Force Majeure Event, an event for which governments typically take on all risks.</p> <p>Therefore, the GoS should continue to pay Availability Payments on the basis of Contracted Availability, as opposed to Deemed Availability, for the period constituting the Political Force Majeure Event (including the effects thereof).</p> <p>The below-mentioned amendment is proposed to Clause 21.8.1:  <i>“Subject to clause 21.8.4, the Company shall have the right to terminate this Agreement if a Political Force Majeure Event prevents KW&amp;SB from performing any of its obligations under this Agreement for a continuous period of one hundred twenty (120) Days, provided that, if the GoS elects in such event to continue paying the Availability Payments in respect of <del>Deemed Availability</del> <u>Contracted Availability</u> beyond such one hundred twenty (120) Day period, the Company shall not have the right to terminate this Agreement pursuant to this clause 21.8.1.”</i></p>	<p>No change. Bidders are referred to clauses 19.8.1.2 and 19.8.1.3 of the Concession Agreement. Compensation for Political Force Majeure Event will be based on whether Company’s ability to meet Contracted Availability is affected or Company’s ability to deliver Net Water Output is affected, as per the requirements specified in the Concession Agreement.</p>
92.	Force Majeure	-	<p>The Company bears the risk of any variations in its scope necessitated as a result of a Change in Law. However, in consideration of the fact that a Change in Law is categorized as a Political Force Majeure Event, the Company is subject to the tests prescribed vis-à-vis the occurrence of a Political Force Majeure Event.</p> <p>It is proposed that the Company should not be under an obligation to effect a Change in Scope on account of a Change in Law, as the latter, by virtue of being a Political Force Majeure Event, relieves the Company from the performance of its obligations.</p>	<p>No change.</p>

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			In any case, any Change in Scope that is required to be effected should be based on mutual consent.	
93.	<b>Force Majeure</b>	-	<p>In the event the GoS Parties propose a Change in Scope, and a Change in Scope Order is issued for the same, the Company shall not be under an obligation to proceed with the Change in Scope.</p> <p>It is proposed that a Change in Scope Order should be issued as mutually agreed between the Parties.</p>	No change.
94.	<b>General Matters</b>	-	<p>The test of what constitutes “Abandonment” under the Concession Agreement is subjective and deviates from precedent transactions.</p> <p>The definition clause of “Abandonment” is proposed to be amended to read as follow:  <i>“Abandonment or Abandoned means the voluntary cessation of the construction or Operation and Maintenance of the KWC by the Company and/or the withdrawal of all, or substantially all, personnel by Company from the Site for reasons other than a Relief Event and/or a Natural Force Majeure Event;”</i></p>	No change.
95.	<b>General Matters</b>	-	<p>In the event the GoS has encashed the Company’s Performance Securities (or any part thereof), it is proposed that the Company should not be required to top-up such Performance Securities (or any part thereof).</p> <p>The relevant changes are to be made throughout the Concession Agreement based on GoS’ response.</p>	No change.
96.	<b>General Matters</b>	-	Clarity is required on the precise legal mechanism (together with the timelines and approvals required) for the issuance of the SBP Debit Authority. Furthermore, clarity is required on whether the SBP Debit is to be renewed on a yearly basis under the Concession Agreement.	As a GoS condition precedent to Commencement Date, GoS shall issue the Debit Authority to SBP.



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			The relevant changes are to be made throughout the Concession Agreement based on GoS' response.	The SBP Debit Authority shall remain valid and effective until the Financing Termination Date.
97.	<b>General Matters</b>	-	<p>It is presently envisaged that there will be multiple classes of shares (i.e., Class A Shares and Class B Shares). However, in consideration of the fact that foreign and local equity will be involved, it is proposed that, in addition to the afore-stated classes of shares, the Company should be permitted to create further classifications.</p> <p>The relevant changes are to be made throughout the Concession Agreement based on GoS' response.</p>	No change. Bidders are referred to clause 7.1 of the Equity Funding and Utilisation Agreement, for matters relating to Class A Shares and Class B Shares.
98.	<b>20.1 (Concession Agreement) Volume III</b>	Increased costs and savings	<p>The Concession Agreement stipulates that the Company will initially be funding any Increased Costs which will be later adjusted by the GoS.</p> <p>We propose that such Increased Costs should be funded by GoS as an absolute obligation. Appropriate provisions should be inserted to cater for the funding of Increased Costs by the GoS.</p>	See response at sr. no. 64 above.
99.	<b>20.1 (Concession Agreement) Volume III</b>	Increased costs and savings	<p>There is an express limitation of time and benchmark amount for the Parties to claim Increased Costs. We request the Public Partner that this limitation should be removed.</p> <p>Additionally, Increased Costs are being adjusted by the GoS in the exercise of its discretion to adjust Availability or Output Payments. We propose that a clear mechanism with mandatory adjustment must be specified in the Concession Agreement.</p>	No change.
100.	<b>Appendix 8 (Concession Agreement) Volume III</b>	Adjustments and Indexations	<p>The CA does not provide for either adjustments in price costs or funding by GoS for funding of escalation of prices of various items including steel, diesel, bitumin and cement.</p> <p>As an industry practice, the government agency assumes the risk of funding the costs incurred on account of escalable items or, in the worst case, such costs may constitute</p>	No change. These are Bidder's risks. Bidders are required to assess the relevant costs, and build the same in their proposals accordingly.

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			a pass through and thus, result in an adjustment in the project cost. We request the Public Partner to kindly assume this risk.	
101.	<b>21.6 (Concession Agreement) Volume III</b>	Termination	<p>Precedents provide a wider cover in relation to events constituting a GoS Event of Default, with such events including breach of representation or warranty or provision of incorrect representation or warranty.</p> <p>We propose that the CA should incorporate all the GoS Events of Default as contained in the GoS precedents.</p>	No change. Bidders are referred to clause 21.6.11 of the Concession Agreement.
102.	<b>21 (Concession Agreement) Volume III</b>	Termination	<p>Provisions to cater for delays made by the Independent Appointees in calculating the Termination Payments do not exist in the CA. Based on precedent transactions, this is a key lender issue as Termination Payments include the Financing Due to be paid to the Financing Parties.</p> <p>We propose that, in view of precedent transactions, an enabling provision should be added within the CA to address the handling of the afore-stated delays in the Concession and License Direct Agreement.</p>	No change. Company is responsible to timely liaise with Independent Appointees for obtaining relevant information / approvals. Bidders are referred to clauses 17.4.3 and 17.10.3 of the Concession Agreement.
103.	<b>21 (Concession Agreement) Volume III</b>	Termination	<p>The CA currently stipulates that the Company shall complete the Remedial Works at its own costs and expense. It does not contain provisions allocating the cost of Remedial Works to the GoS for scenarios where termination occurs due to a GoS Event of Default or a Political Force Majeure Event.</p> <p>We propose that the provisions allocating the cost of for Remedial Works to the GoS including testing, inspection and issuance of Remedial Report for scenarios where the termination occurs due to a GoS Event of Default or a Political Force Majeure Event must be built in the CA.</p>	No change. Bidders are referred to clause 21.10 of the Concession Agreement.
104.	<b>21 (Concession Agreement) Volume III</b>	Termination	<p>The CA stipulates that any Termination Payment due to the Company shall be made by the GoS subject to the issuance of the Handover Certificate. This is not in line with precedent transactions and poses a severe bankability issue.</p> <p>In order to ensure bankability of the transaction, a fixed date for the payment of Termination Payments must be incorporated which should be set out as a function of Termination Date.</p>	No change.

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105.	21 (Concession Agreement) Volume III	Termination	<p>The CA stipulates that a Company Event of Default results from “any conditions to disbursement of debt by the Financing Parties under the Financing Documents have not been satisfied (unless waived in terms thereof)”.</p> <p>We would request the Public Partner to kindly remove this condition. As it will result in a default being called under the CA, if a CP to disbursement of debt under the financing agreement is not satisfied or waived.</p>	No change.
106.	21 (Concession Agreement) Volume III	Termination	<p>Currently, the Financing Due is being calculated until the Termination Date. However, in precedent transactions all sums due and payable to the financiers up until the termination payment date are calculated and form part of the Financing Due payable to the Financing Parties.</p> <p>We propose that for calculating the Financing Due, calculations should extend until the date the Termination Payments are actually received by the Company (the Termination Payment Date).</p>	No change.
107.	Definitions (Concession Agreement) Volume III	Termination	<p>The Outstanding Principal Amount is calculated with the caveat that it is actually “applied” for the purposes of financing the Project. The test of whether the Outstanding Principal Amount was actually applied towards the Project is quite onerous and, in the context of termination, it brings uncertainty to the Termination Payment mechanisms.</p> <p>We propose that, this test of application should be removed as the Outstanding Principal Amount should be calculated based on the disbursements claimed by the Company.</p>	No change.
108.	Annexure 8 (Concession Agreement) Volume III	Deductions	<p>The CA does not impose a positive obligation on the KW&amp;SB to ensure provision of input water meeting required specifications, and to that effect, the Company is exposed to an added risk of the Input Water not meeting requisite specifications which may lead to an impediment in the performance of the Company’s obligations. Considering an absence of an express provision in this regard, the Company is also limited to the form of remedies it may have a recourse to on account of such an event.</p>	See response at sr. no. 77 above.

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			We propose that KW&SB should be under a positive obligation to ensure provision of Input Water meeting the required specifications, and the Company should be indemnified for any damages or losses incurred by the Company as a result of Input Water not meeting the requisite specifications.	
109.	<b>1.2.2 of Appendix 8 (Concession Agreement) Volume III</b>	Deductions	<p>By definition, Deductions has to apply only on Availability Payments. However, Section 1.2.2 of Appendix 8 stipulates that Output Payments will be subject to deductions in the C&amp;O Period.</p> <p>We understand that Output Payments secure Electricity Reimbursement Payment (Component CW) and Variable O&amp;M Cost Recovery Payment (Component DW), and as such it is unclear how the same could be subject to Deductions. And further, the CA does not stipulate or explore the modalities of such Deduction either. We request the Public Partner to clarify on the same.</p>	Deductions will apply on the Availability Payments and Output Payments. Bidders are referred to clause 2.3 of appendix 8 of the Concession Agreement.
110.	<b>1.2.2 of Appendix 8 (Concession Agreement) Volume III</b>	Deductions	<p>In case the actual loss of water is more than the projected loss of water, the Company will bear the risk for such excess loss of water and the same will result in adjustments to its Availability Payments. However, if the actual loss of water is less than the projected loss of water, the GoS will share such benefit.</p> <p>Considering the GoS is not assuming any risk of actual loss of water exceeding the projected loss of water, it should only be rational that the GoS is not entitled to any savings in this case. We request the Public Partner to structure the risk sharing mechanism in an agreeable way for both the parties.</p>	No change.
111.	<b>1.2.2 of Appendix 8 (Concession Agreement) Volume III</b>	Deductions	<p>In case of Electricity Reimbursement Payment the GoS is sharing the savings but not sharing the risk if the actual electricity consumed is in excess of the projected electricity consumption. That is to say, in the event, the Company consumes more electricity than the project electricity consumption, any and all additional costs incurred by the Company for such increased consumption shall be borne solely by the Company.</p> <p>Considering the GoS is not assuming any risk of excess, it should not be entitled to any savings in this case either. We request the Public Partner to structure the risk sharing mechanism in an agreeable way for both the parties.</p>	No change.

Sr. No.	CLAUSE REFERENCE	CLAUSE	QUERY / CLARIFICATION REQUESTED	PROPOSED RESPONSE
112.	<b>19.3 (Concession Agreement) Volume III</b>	Force Majeure	<p>In general, politically motivated strikes, work-to-rule, go-slow or similar labor actions are categorized as political force majeure events, which appear to be missing from the Concession Agreement.</p> <p>Categorization of these events as a non-political FM event disregards a scenario where such actions take place on account of government policies or are motivated by political reasons, the risk for which should be borne by the Public Party as opposed to the Private Party. We request the Public Partner that such events should be categorized as Political Force Majeure Events.</p>	See response at sr. no. 88 above.
113.	<b>19.2 (Concession Agreement) Volume III</b>	Force Majeure	<p>The Draft Agreement does not envisage the consequences arising as a result of “climate change” as a Force Majeure Event, which has been observed as a major cause of catastrophe in the recent past. On account of such gap, it appears that the Company bears any risks occurring due to a climate change event.</p> <p>We request the Public Partner that the Force Majeure Events should include events related to “climate change” as well.</p>	See response at sr. no. 89 above.
114.	<b>21.2 (Concession Agreement) Volume III</b>	Termination due to Non-occurrence of the Mobilisation Date	<p>In the event of termination of the Draft Agreement prior to achievement of Mobilisation Date for reasons not attributable to the Company, it appears that the Company is not entitled to receive compensation for any activities that it has completed before such termination.</p> <p>We request the Public Partner that provisions should be included to allow the Company to recover such costs that the Company may have incurred as a result of activities undertaken prior to the termination of the Draft Agreement before Mobilisation Date</p>	No change.
115.	<b>Appendix 4, Part 2 (Concession Agreement) Volume III</b>	Commencement Conditions Precedent	<p>The Concession Agreement does not currently stipulate the funding of the GoS Equity Account as a Commencement Conditions Precedent of the GoS.</p> <p>We request the Public Partner that the funding of the GoS Equity Account should be a Commencement Conditions Precedent of the GoS.</p>	No change. Bidders are referred to clauses 3.1.3 and 3.2.3 of EFU Agreement.

Sr. No.	CLAUSE REFERENCE	CLAUSE	QUERY / CLARIFICATION REQUESTED	PROPOSED RESPONSE
116.	<b>Securities (Concession Agreement) Volume III</b>	Performance Securities	<p>The Concession Agreement imposes an additional obligation upon the Company to notify the GoS in respect of the expiry date of the C&amp;O Performance Security and the O&amp;M Performance Security.</p> <p>We request the Public Partner that such additional reporting obligations should be considered to removed from the Concession Agreement.</p>	No change.
117.	<b>Concession Agreement Volume III</b>	C&O Activities	<p>The Company is barred from undertaking any activities for the KWC until the Proposed Construction Documents have been approved. However, the Draft Agreement is silent on the eventuality where no comments are received from the Independent Engineer or the GoS Parties.</p> <p>A deemed approval clause should be inserted in the Draft Agreement whereby in the event no comments are received from the Independent Engineer, the Proposed Construction Documents shall be deemed to be approved by the Independent Engineer.</p>	No change. Company is responsible to timely liaise with Independent Appointees for obtaining relevant information / approvals. Please refer clauses 17.4.3 and 17.10.3 of the Concession Agreement.
118.	<b>Concession Agreement Volume III</b>	EPC and O&M Contractors	<p>The right of the GoS to novate or assign the EPC Contract and / or the O&amp;M Contract, at its option, should be removed considering that the same may not be practically possible in certain scenarios.</p> <p>The Company has no control over the commercial decisions of the contractor (some of them international in this case) i.e., if the contractor would even wish to continue with the Project if the Sponsors are not a part of it.</p>	No change. Bidders are required to ensure that relevant matters are agreed with the contractors to ensure compliance with the RFP requirements.
119.	<b>Concession Agreement Volume III</b>	Security Creation	We request the Public Partner to clarify further, on what all assets security can be created. What all assets are owned by the Private Partner and what all assets are owned by the Public Partner.	Bidders are referred to clauses 13.2 and 13.3 of the Equity Funding and Utilization Agreement.
120.	<b>4.7 (Concession Agreement) Volume I</b>	Bid Security	<p>We would request the Public Partner to clarify if Bid Securities has to be consolidated for all the Consortium Partners.</p> <p>We would propose that the consortium partners should be allowed to submit the Bid Securities separately in proportion to their shareholding in the SPV.</p>	No change. Only one (1) Bid Security (of the relevant amount specified in the RFP) is required to be submitted with the Bid. Bid Security may be issued by any Consortium Member.

Sr. No.	CLAUSE REFERENCE	CLAUSE	QUERY / CLARIFICATION REQUESTED	PROPOSED RESPONSE
121.	4.7 (Concession Agreement) Volume I	Bid Security	We would request the Public Partner to clarify if we can keep a buffer for expiry of the Bid Securities (i.e. Bid validity period + 28 days + buffer). This buffer should be helpful to cover for any changes in the timelines.	No change. As per the requirements of the Instructions to Bidders, the Bid Security shall be valid until twenty-eight (28) days following the Bid Validity Period.
122.	3.6 (Concession Agreement) Volume III	Commencement Date	<p>A delay in achievement of Commencement Date on account of a GoS / KWSB default or delay and / or the occurrence of a Force Majeure Event requires the Company to prove that such default or delay is solely attributable to the GoS Parties' delay and / or failure or a Force Majeure Event (as the case may be).</p> <p>We request the Public Partner that the Company should not be under an obligation to prove that the default or delay of the GoS Parties was solely attributable to the GoS Parties.</p>	No change.
123.	Concession Agreement Volume III	Mobilization and Commencement Dates	<p>The remedies set forth in the Draft Agreement for a delay in achievement of Mobilisation Date or Commencement Date include only an extension in time granted for achievement of such milestones.</p> <p>We request the Public Partner that the Company should also be entitled to Increased Costs attributable to a delay in achieving Mobilisation Date or Commencement Date due to any of the events detailed in the CA.</p>	No change. Bidders are referred to clause 20.1.1 of the Concession Agreement.
124.	Volume II: Technical Specifications Part 2 2.5.12, Technical Specifications	The main goal is the refurbishment of the existing rectangular Reservoir, built in	We request the Public Partner to kindly provide the specific information and as-built drawings for existing rectangular, especially for internal structural detail drawings. We could not find any related drawings in updated water treatment plant as built drawings package in the last version clarification feedback.	All available drawings have been shared. Bidders to conduct their own assessment and propose their solutions in their Bids to meet the requirements specified in Volume II of the RFP.

Sr. No.	CLAUSE REFERENCE	CLAUSE	QUERY / CLARIFICATION REQUESTED	PROPOSED RESPONSE
	n- <b>Volume II - Existing reservoir</b>	concrete and semi-buried, with 15 MG (68,170 m <sup>3</sup> ) capacity, including, if necessary, the refurbishment and upgrade of the existing equipment.		
125.	<b>Volume II: Technical Specifications</b> <b>Page 141/1688</b>	In the event that such land is not within the RoW, or the Company needs additional temporary land, it would be the Company's responsibility to carry	Temporary land acquisition for new pipelines is necessary, this part of the cost cannot be fully considered by the developer, and will lead to an increase in water tariff. The Government and KW&SB should be responsible for the temporary land acquisition. We request the Public Partner to assume this responsibility.	Any additional land is to be arranged by Company at its cost and risk.



Sr. No.	CLAUSE REFERENCE	CLAUSE	QUERY / CLARIFICATION REQUESTED	PROPOSED RESPONSE
		<p>out a study about the ownership, to make available the land through a direct agreement with the owner or assess the need to resort to an expropriation process in accordance with the Legal Requirements as well as the procedures set out in IFC's Performance Standard</p>		

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126.	<p><b>Volume I: Bidding Procedure Bidding Form T17 and T18</b></p>	<p>According to the Bidding Form T17 and T18, Bidders shall attach information that describes the Proposed EPC Contractor's and O&amp;M Contractor's background and experience in similar works. A summary table shall be provided for each project or reference, and relevant documents</p>	<p>We would like to kindly request Public Partner to clarify if the completion certificates will be sufficient to justify the relevant experience?</p>	<p>As specified in the RFP, summary table along with relevant documentation should be attached for evidence, which <i>inter alia</i> includes completion certificates.</p>

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		shall be attached herein as evidence (completion certificates, technical reports, etc.).		
127.	<p><b>Volume I: Bidding Procedure Page 12/Page 24/Page 73</b></p>	<p>In Page 12, it mentioned in 1.4 Overview of the water supply system from Hub Dam "a Treatment Plant (2005), initially designed for 100 MGD (5.26 m<sup>3</sup>/s), but with an actual treatment capacity of 80 MGD</p>	<p>Please confirm if the actual design capacity for WTP is 100MGD. And please provide the relevant drawing and dimension about the distribution chamber and holding tank.</p>	<p>The current capacity of the WTP is 80MGD, whereas after refurbishment and upgrade it shall be able to filter 100 MGD of water.</p>

Sr. No.	CLAUSE REFERENCE	CLAUSE	QUERY / CLARIFICATION REQUESTED	PROPOSED RESPONSE
		<p>(4.31 m<sup>3</sup>/s)"; while, In Page 24, 2.5.11 Rehabilitati on and Upgrade of the Treatment Plant for 100 MGD "The main goal is the refurbishme nt and upgrade from capacity of 80 MGD up to 100 MGD (5.26 m<sup>3</sup>/s)". Also,in Page 4 of 134 of HY6602-RP-TYP-Final Due Diligence-</p>		

Sr. No.	CLAUSE REFERENCE	CLAUSE	QUERY / CLARIFICATION REQUESTED	PROPOSED RESPONSE
		D02-IGALAN, "The existing Hub Water Treatment Plant (WTP) was built 20 years ago for a design flow of 80 MGD". The actual design capacity is quite confusing for understanding.		
128.	<b>Volume I: Bidding Procedure Page 437/Page 913</b>	The water level in Karachi canal at intake point is about 79.2 m.o.s.l. and the tank	The elevations for input and output of 9.8km pipelines are different in some places. If elevation is different in Hydraulic Calculation(Page 6 of 16) with New Pipeline Longitudinal Profile(sheet 1 and 7), Please clarify which shall be considered in design.	The elevations included in the drawings "New Pipeline Longitudinal Profile (sheets 1 to 7)" are the ones that prevail over the hydraulic calculations. However, Bidders are required to conduct their own independent due diligence and final detailed design.

Sr. No.	CLAUSE REFERENCE	CLAUSE	QUERY / CLARIFICATION REQUESTED	PROPOSED RESPONSE
		at final line, (on water treatment plant site) is about 113 m.o.s.l. Pumps are located at 59.5 m.o.s.l.		
129.	<b>Volume II: Technical Specifications Page 12</b>	three (3) rising mains between the pump houses and the Treatment Plant;	Please clarify are there 2 or 3 rising mains between the pump houses and the Treatment Plant?	There are 2 rising mains. Please refer to clause 2.5.10 of Volume II of the RFP.
130.	<b>Volume II: Technical Specifications 2.5.3 Page 20</b>	The bidder is required to guarantee at all the time the continuity of the service offered by the existing KWC	In our understanding, the service water provided by KWC during rehabilitation should be 80MGD.	NRW test will be conducted during Mobilization Period to determine the allowed water loss. Water supply can be 100 MGD at the Head Regulator.

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131.	<b>Volume II: Technical Specifications</b> NA	NA	Kindly provide information about the silt thickness so that we could estimated the amount of dredging.	Such information is not available. For determination of such information, KW&SB arranged visits to the Site to allow all potential Bidders to access the canal and determine the scope of rehabilitation and silt thickness during the days when the canal was empty.
132.	<b>Volume II: Technical Specifications 1.4</b> Page 12	eleven (11) concrete aqueducts and fifteen (15) culverts; a road bridge, and several drainage and pedestrian bridges;	1) Kindly confirm whether should bidder consider the rehabilitation of the culvert. 2) In CAPEX figures, the repair cost of Pedestrian Bridge and Cross Drainage Structure has been calculated. In the scope of work description, it does not mentioned. Please confirm whether the repair of crossing structure is still in bidders scope.	1. Bidders may consider the rehabilitation of the culvert, based on their own independent assessment.  2. Repair of crossing structure is included in the scope. Bidders are required to conduct their own independent assessment.
133.	<b>Volume II: Technical Specifications 2.5.5 &amp; hydrological study 1.4</b> <b>Technical Specifications</b>	K-III can provide up to 20 MGD to the system when Hub Reservoir is not capable	The data shows that the 80MGD water supply guarantee rate is only 55%. Moreover, dates show that the canal flow is 0 MGD. Hence, the water provide by K-III should consider more than 20MGD to ensure the output of treatment plant is 100MGD.	The Company will be required to develop the infrastructure to manage 20 MGD water from K-III.


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	<p><b>ns Page 20 &amp; hydrological study Page 7</b></p>	<p>of delivering 100 MGD into the KWC. for which the statistical analysis has been carried out considering a maximum capacity of 80 MGD, obtaining a guarantee of 55%.</p>		
<p><b>134.</b></p>	<p><b>Volume II: Technical Specifications 1.2 Page 10</b></p>	<p>The pump station area and the Treatment Plant have direct access from the Hub Dam road as can be seen in the</p>	<p>Kindly confirm the access road rehabilitation scope in bidding's scope. The road from Hub Dam Road to Treatment Plant is crossing the city, it is not sure this section bidder could renovate.</p>	<p>Yes, rehabilitation of the entire road is part of the scope for the Project.</p>



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		figures 5 and 6 provided below		
135.	<b>Volume II: Technical Specifications 2.5.11 Page 24</b>	Expand the filters area with four (4) new filters (total twenty (20) = sixteen (16) existing + four (4) news) + new pumps and blowers for these filters. (N° 2 layout below)	To ensure the treatment plant meets the requirements, it is recommended to consider one set for backwashing, one set for accident conditions, to increase the total number of filters to 22 sets.	Total number of filters is 20. However, Bidders may propose additional filters as backup in their Bids based on their independent assessment.
136.	<b>Volume II: Technical Specifications water quality analysis tests NA</b>	NA	If possible, we expect to receive continuously monitored water quality data over a period of time.	Such data is not available. For such information, Bidders are required to conduct their own independent assessment.  Bidders may refer to the due diligence report which has been attached with the

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				RFP, for reference and information purposes only.
137.	<p><b>Volume II: Technical Specifications 2.5.12 Page 25</b></p>	<p>The Company shall provide water from the Reservoir that meets the Output Water Quality Specifications for three (3) hours in any day to be used as back-up in the event of non-supply of water from the Head Regulator or KIII, or electricity outage.</p>	<p>In Due Diligence report, it is required to construct a bigger reservoir. The proposed drawing shows the reservoir only needs rehabilitation. As stated in documents, the capacity of the reservoir is enough to storage 3 hours back-up water. Please confirm the reservoir only needs rehabilitation.</p>	<p>It is Bidder's discretion if it wants to rehabilitate existing reservoir or make a new one.</p>

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138.	<p><b>Volume II: Technical Specifications 4.3 Page 50</b></p>	<p>A central administration building shall be established to accommodate the KWC management, the pump stations and the Treatment Plant administration, main technical staff, and the Treatment Plant laboratory. The final design solution for the central administration building shall be in</p>	<p>(1) Please confirm whether the admin building in pump station needs rehabilitation (2) Please clarify the central administration building could rebuild the current administration building in treatment plant or construct a new house.</p>	<p>1. Bidders are required to conduct their own independent assessment to determine whether admin building in the pump station requires rehabilitation.  2. Bidders may rebuild the current admin building in the treatment plant or construct a new one, based on their own independent assessment, provided the new building is constructed within the Site licensed under the License Agreement.</p>

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		compliance with the relevant design standards and shall be approved by KW&SB.		
139.	<b>Volume II: Technical Specifications 2.5.13</b> <b>Page 25</b>	-	Kindly provide more information about the transfer room, K-electric HT room (like layout, device information), which would help bidder to determine whether the substation needs to be expanded due to photovoltaic access.	Relevant information has already been provided in the Due Diligence Report attached with the RFP, which is for reference and information purposes only. However, Bidders are required to conduct their own assessment.
140.	<b>Volume II: Technical Specifications proposed drawing</b> <b>Page 39</b>	-	<p>After the photovoltaic is connected to the power supply system, the bidder believes that the diesel generator is unnecessary as a backup. Please confirm</p> 	In the RFP backup has been requested through reservoir with a capacity of 15 MGD.
141.	<b>Volume II: Technical Specifications proposed drawing</b>	-	Kindly confirm the position of the K-electric HT room. The proposed drawing shows the PV output will connect to the K-electric HT room. But the connect building marked as transfer room in "PUMPING STATION UPGRADE: GENERAL PLAN" in annex SITE VISIT REPORT Appendix A (Old & New Pump Station Equipment	K-Electric HT switch room is the room that is located further away from the pump station buildings and is clearly marked in the referred drawing. In the drawing the term "transfer room" is to be

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	Page 27&38		Layout) , and there is another building faraway from the pump station marked as K electric room. Please clarify.	read as “transformer room”, where the transformers for old pump house are located. The drawing at “03.01 (Pumping Station Upgrade: General Plan)” in the Due Diligence Report attached with the RFP (which has been included for reference and information purposes only) only includes the new PV plant switch room. The rehabilitation of the transformer rooms and the existing K-Electric switch room is included in the scope of work. Bidders are required to conduct their own independent assessment.
142.	Volume I: Bidding Procedure Part Two Bidding Forms Page 82	Bidders shall attach to any additional relevant technical data including process descriptions , designs calculations , drawings, specificatio	For the T16, the relevant technical document include process descriptions, designs calculations, drawings, specifications, data sheets etc, these documents will be more than 10 pages, please clarify if it is ok?	Yes, Bidders can further elaborate using additional pages.

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		<p>ns, data sheets etc., which should be summarized, clear and practically grouped per section of the proposed works for ease of evaluation, in each case as per the requirements of the RFP.</p> <p>The Bidder must attach relevant details as Bidding Form T16 (Other technical data submission)</p>		

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		, which should not be longer than 10 pages		
143.	<b>Volume I: Bidding Procedure</b> <b>Page 28</b>	For Proposed EPC Contractors relevant project experience ...	If the proposed EPC Contractor is a Consortium, for the relevant project experience of each party, can the qualifications criteria be shared to meet the RFP's requirement? So that the EPC consortium members can together meet all the qualification criteria.	In case the Proposed EPC Contractor is a consortium, the technical evaluation criteria specified in Volume I of the RFP is to be met jointly by the consortium members. In the case of the Proposed EPC Contractor is a single entity, such single entity will be required to meet the entire technical criteria specified in Volume I of the RFP.
144.	<b>Volume I: Bidding Procedure</b> <b>Page 26</b>	Language Of The Bids: In case any document / information furnished by the Bidder is in a language other than English, it will need to be	The EPC Contractors qualification criteria requires the collection of substantiation documents which are required to be collected from various offices spread all over the world. Moreover, the documents so collected are required to be attested by Embassy of Pakistan and Ministry of Foreign Affairs. Normally this procedure takes around 2 to 3 months. We request you to kindly reconsider this requirement by making any of the following changes: a) Allow local attestation by a Notary Public. Or b) Allow submission of an affidavit by the Proposed EPC Contractor that if it is qualified and selected as EPC Contractor, such documents shall be attested and submitted within three months if so required by the Employer.	No change.  Bidders are required to ensure that: (i) Power of Attorney; (ii) Affidavit; and (iii) English translations of the documents (that are translated from another language into English), are duly notarized by notary public and attested by Pakistani Embassy (in the country where the documents are issued / executed).  Attestation by Ministry of Foreign Affairs, Pakistan is required for following

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		<p>accompanied by an English translation (duly notarized by Notary Public and attested by Pakistan Embassy / Consulate and Ministry of Foreign Affairs, Pakistan) of its pertinent passages for the purposes of interpretation of the Bid.</p>		<p>documents when brought into Pakistan (after attestation by Pakistan Embassy): (i) English translations; and (ii) Power of Attorneys, whereby a person in Pakistan is being appointed as an attorney.</p> <p>With regards to the Power of Attorney and Affidavit, once the same are brought into Pakistan, the same are required to be adhesive stamped with the requisite amount of stamp duty, as specified in the RFP.</p>
145.	<p><b>Volume II: Technical Specifications Page 7</b></p>	<p>Site Boundary Coordinate</p>	<p>Please provide the detail Site Boundary Coordinate, include the Canal, Pump station, Rising Mains, Filter Plant, Solar power plant.</p>	<p>The ROW details for filtration plant, rising mains, pump house and solar plant have been uploaded on the websites of KW&amp;SB and PPP Unit. Details for Canal</p>



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				will be shared in due course prior to Bid Submission Date.
146.	<b>Volume II: Technical Specifications</b> Page 12	three (3) rising mains between the pump houses and the Treatment Plant;	Please clarify are there 2 or 3 rising mains between the pump houses and the Treatment Plant?	There are 2 rising mains. Please refer to clause 2.5.10 of Volume II of the RFP.
147.	<b>Volume I: Bidding Procedure</b> <b>Bidding Form F3 - Financial Forms</b>	Bidding Form F3-B: Cost Recovery Charges	In Form F3-B for Cost Recovery charges it is mentioned that, “In respect of Foreign Equity Recovery Charge (FE_RC) above, the foreign exchange indexation shall only be applied to lower of: (a) actual equity of the Foreign Sponsor (defined in Volume I/RFP); and (b) seventy percent (70%) of the total equity (excluding VGF)”.  Please confirm if the total equity (excluding VGF) here means sum of FE_RC and LE_RC.	Total equity is the sum of local and foreign equity excluding VGF.
148.	<b>Volume II: Technical Specifications</b> NA	General	We request the Public Partner to provide the location of the landfill or the allocated area within the site for sludge disposal.	This is to be analyzed and managed by the Company.
149.	<b>Volume II: Technical Specifications</b> NA	General	We request the Public Partner to kindly provide the currently generated sludge quality and quantity as per the operation logs.	This is to be analyzed and managed by the Company. Sludge characterization (hazardous or non-hazardous) and management to be followed as per WBG EHS guidelines on Water and Sanitation.

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				Sludge quality to be disposed for land application should be consistent with national regulations.
150.	<b>Volume II: Technical Specifications, Page 149/1688</b>	The main goal is the refurbishment of the existing rectangular Reservoir, built in concrete and semi-buried, with 15 MG (68,170 m <sup>3</sup> ) capacity, including, if necessary, the refurbishment and upgrade of the existing equipment. The Company shall	According to the requirements of the bidding documents, it is required to provide water storage for 3 hours. What is the rate or capacity of the water outlet?	Reservoir capacity is 15 MGD. Capacity of water outlet should be designed to ensure supply of 100 MGD water.


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		provide water from the Reservoir that meets the Output Water Quality Specifications for three (3) hours in any day to be used as back-up in the event of non-supply of water from the Head Regulator or KIII, or electricity outage.		
151.	<b>Volume II: Technical Specifications, Page 152/1688</b>	During the C&O Period, the Company shall execute the	The O&M work is the responsibility of the Company. Is the owner responsible for the related O&M material costs (Electricity bill from K-Electricity Company, Chemical etc.)?	Yes, the understanding is correct.

Sr. No.	CLAUSE REFERENCE	CLAUSE	QUERY / CLARIFICATION REQUESTED	PROPOSED RESPONSE
		operation and maintenance activities in accordance with Operating and Maintenance Procedure to ensure, at minimum, the KWC continues to comply with the results / parameters established during the Mobilisation Testing.		
152.	<b>Volume II: Technical Specifications</b>		Please provide the internal structure drawing of the reservoir in the filtration plant, this part of the drawing was not included in the drawing of the clarification document of the previous version (09-12-2022 Technical Attachments).	Relevant drawings have been uploaded on the website of PPP Unit.

Sr. No.	CLAUSE REFERENCE	CLAUSE	QUERY / CLARIFICATION REQUESTED	PROPOSED RESPONSE
153.	<p><b>Volume II: Technical Specifications, Page 264/1688</b></p>	<p>This proposed design is also considering the provision of fences along the canal alignment, pipeline section, Hub pumping station (PS), water treatment plant (WTP), and solar PV plant. The facilities will incorporate CCTV WIFI enabled cameras and the concessiona</p>	<p>Please help to confirm the material of the fence, height, width, installation method and other standards, as well as the number of CCTV monitoring centers</p>	<p>Please refer to section 4.3 of Part 4 (<i>Specific Requirements</i>) of Volume II of the RFP. Bidders are required to conduct their own independent assessment. The Company shall be responsible for the security of the Site and shall ensure that the security facilities are constructed within the Site boundary.</p>

Sr. No.	CLAUSE REFERENCE	CLAUSE	QUERY / CLARIFICATION REQUESTED	PROPOSED RESPONSE
		ire will be responsible for ensuring the proper security		
154.	Page 16/1688	The contractors proposed by a Bidder (not exceeding three (3)) in terms of Sub-Section 2.1.10 of the Instructions to Bidders, which will be evaluated by TFEC under this RFP; and may include a Bidder itself in case the Bidder intends to undertake the	Each bidder can provide maximum 3 EPC contractors, If bidder be awarded the project, do they have to choose among these three EPC? Or can they replaced the submitted EPC contractors with other EPCs that meet the requirements of the RFP bidding documents?	Please refer to sections 6.5.7 and 6.5.8 of the Instructions to Bidders.

Sr. No.	CLAUSE REFERENCE	CLAUSE	QUERY / CLARIFICATION REQUESTED	PROPOSED RESPONSE
		construction works for the Project.		
155.	<b>Termination Payment</b>	-	<p>Termination Payment SBLC to cover fifty percent (50%) of the Outstanding Principal Amount.</p> <p>Presently, the Termination Payment SBLC is secured to the extent of the outstanding debt. However, it is proposed that in consideration of the fact that foreign equity is involved, the Termination Payment SBLC should be enhanced to provide coverage for the equity component as well.</p> <p>The Termination Payment SBLC should cover at least seventy-five percent (75%) of the Outstanding Principal Amount.</p> <p>The relevant changes are to be made throughout the Concession Agreement based on GoS' response.</p>	No change.
156.	<b>Part 2 2.5.12, Technical Specification- Volume II - Existing reservoir</b>	The main goal is the refurbishment of the existing rectangular Reservoir, built in concrete and semi-buried, with 15 MG (68,170 m <sup>3</sup> ) capacity,	Please provide the specific information and as-built drawings for existing rectangular, especially for internal structural detail drawings. We could not find any related drawings in updated water treatment plant as built drawings package. Also, please clarify the building year for reservoir, since in the as-built drawings for WTP, it mentioned the reservoir as "existing service reservoir".	<p>The available information concerning the WTP reservoir has already been included in the RFP.</p> <p>Bidders may conduct their own independent assessment and due diligence in case any additional information is deemed to be necessary.</p>

Sr. No.	CLAUSE REFERENCE	CLAUSE	QUERY / CLARIFICATION REQUESTED	PROPOSED RESPONSE
		including, if necessary, the refurbishment and upgrade of the existing equipment.		
157.	<p align="center"><b>Part 2</b> <b>2.5.13,</b> <b>Technical</b> <b>Specification-</b> <b>Volume II -</b> <b>Existing</b> <b>reservoir</b></p>	The main goal is the refurbishment of the existing rectangular Reservoir, built in concrete and semi-buried, with 15 MG (68,170 m <sup>3</sup> ) capacity, including, if necessary, the refurbishment and upgrade of	<p>The reservoir has two part, part 1 and part 2, please help to clarification:</p> <p>Question 1, Part1 and Part 1 is connected internally or separated?</p> <p>Question 2, Part1 is built on about 1985 and Part 2 is built on about 2003? Or Part 1 and Part 2 is built on same time?</p>	 <p>The available information concerning the WTP reservoir has already been included in the RFP.</p> <p>Bidders may conduct their own independent assessment and due diligence in case any additional information is deemed to be necessary.</p>



Sr. No.	CLAUSE REFERENCE	CLAUSE	QUERY / CLARIFICATION REQUESTED	PROPOSED RESPONSE
		the existing equipment.		