

Consolidated Clarification Document of Site Neutral Hybrid Project at KE's Dhabeji Grid

The responses are as shared with prospective bidders on the clarifications sought; changes (if any) in responses is issued as Amendment and Corrigendum on KE Website and on Ariba.

We have now concluded the clarification process of Site Neutral Hybrid Power Project bidding process.

General/ Commercial Clarification Responses on EPA/ RFP

Sr.#	RFP/EPA Section No.	Current Clause of the RFP/EPA	Proposed Clause of the Revised RFP/EPA	Comments/ Clarifications	KE Response
1.	NEPRA request for approval for RFP.			Could K.E provide NEPRA’s approval in respect for the Request for Proposal.	NEPRA’s approval on the RFP, decision No. NEPRA/Advisor (CTBCM)/RFP-07/2522-28, can be found on: KE-200MW-SNHPP-RFP-NEPRA-15-03-2024
2.	Definition of Lock in Period	N/A		Lock in Period is not defined.	As per Exhibit 16 of the RFP, Prequalification Document, Lock in Period is defined as: “Lock in Period” means the period commencing from the date of award of bid till 7th anniversary of Project COD or any other extended term as required by lenders or NEPRA.
3.	4.16 (of the	Subsequent to the formation	Subsequent to the formation of	Please remove this sub-	The RFP is

	RFP)	<p>of SPV, the SPV will be required to, inter alia, (i) obtain Generation License/Concurrence and Tariff Approval from NEPRA (ii) enter into EPC contract for the design, construction and commissioning of the Complex (iii) enter into EPA with KE, and other necessary Project agreements, (iv) obtain any relevant regulatory and corporate approvals (v) arrange the necessary financing for the close (vi) construct and implement the Project to achieve COD within the time period allowed by NEPRA in the Tariff Approval, and (vii) upon commissioning, operate and maintain the Complex for the Term to provide the generated electricity to KE as per the terms and conditions of the EPA and Tariff Approval.</p>	<p>SPV, the SPV will be required to, inter alia, (i) obtain Generation License/Concurrence and Tariff Approval from NEPRA (ii) enter into EPC contract for the design, construction and commissioning of the Complex (iii) enter into EPA with KE, and other necessary Project agreements, (iv) obtain any relevant regulatory and corporate approvals (v) arrange the necessary financing for the Project(s) and achieve financial close (vi) construct and implement the Project to achieve COD within the time period provided in the EPA allowed by NEPRA in the Tariff Approval, and (vii) upon commissioning, operate and maintain the Complex for the Term to provide the generated electricity to KE as per the terms and conditions of the EPA and Tariff Approval.</p>	<p>section since the timeline for completion of the Project is already provided in the EPA. Any subsequent change in the construction timeline would have an impact on the value of the Bid.</p>	<p>approved by NEPRA, and the construction period allowed is 18 months.</p>
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<p>4.</p>	<p>9.7 (of the RFP)</p>	<p>The Successful Bidder shall be required to provide Performance Guarantee to the value equal to USD 5,000/MW for each Project. Such Performance Guarantee shall be issued by at least an “AA” rated scheduled bank operating in Pakistan, acceptable to KE or in case of foreign bank, having a correspondent bank in Pakistan. The Performance Guarantee shall be submitted prior to LOI issuance by KE with validity up to thirteen (13) months. The Performance Guarantee shall be as per the format attached as Exhibit 9.</p>		<p>Please confirm whether the Performance Guarantee would be the same as the Seller Letter of Credit. If not, then the Performance Guarantee should be returned upon submission of the Seller Letter of Credit.</p>	<p>As earlier clarified, both Seller LC and PG are separate document and PG will be returned upon submission of the Seller Letter of Credit.</p>
				<p>Furthermore, the Performance Guarantee should also be returned if: (a) NEPRA does not approve or delays the approval of the EPA; (b) NEPRA does not approve or delays the issuance of the Tariff Approval; (c) NEPRA does not approve the Bid in accordance with the NCBTR; (d) the Escrow Agreement is not executed in accordance with agreed terms; (e)</p>	<p>Since RFP has already been approved by NEPRA therefore no change can be made at this stage. Further, in case non-performance of its obligation by the Successful Bidder are due to Regulatory reasons KE may consider return of PG upon submission of documentary</p>

				NEPRA does not approve or delays to issue Generation License/Concurrence; and, (f) K.E otherwise abandons the bidding process contemplated under this RFP.	evidence to the satisfaction of KE.
5.	11.1 (3.) (of the RFP)	11.1 – Upon Selection of Successful Bidder: 3. KE will sign EPA with the SPV formed for each Project after approval by NEPRA.	11.1 – Upon Selection of Successful Bidder: 3. KE will sign EPA with the SPV formed for each Project after (i) approval by NEPRA of the EPA; (ii) issuance of Generation License/Concurrence; (iii) issuance of Tariff Approval for each Project by NEPRA; and, (iv) approval by NEPRA of the Bid in accordance with the NCBTR.	The proposed amendment is for preventing unnecessary delay in the construction of the Project after the signing of the EPA due to any delay in the procurement of the Generation License/Concurrence or approval by NEPRA of the EPA or the Tariff Approval.	The construction timeline will be governed under EPA therefore we understand such amendment is not required. However, the LOI already contains provision of the requested information.
6.	11.7 (of the RFP)	The SPV will be required to complete the regulatory process to obtain all relevant consents and approvals and achieve Financial Close in accordance with the timelines specified in the LOI. The SPV will be required to construct the Project consistent with the technical specifications, equipment details and design parameters that are consistent with the Technical Proposal of the Successful Bidder	The SPV will be required to complete the regulatory process to obtain all relevant consents and approvals and achieve Financial Close in accordance with the timelines specified in the LOI. The SPV will be required to construct the Project consistent with the technical specifications, equipment details and design parameters that are consistent with the Technical Proposal of the Successful Bidder		The consequences defined in the said clause pertains to delay in achieving required milestones of the LOI and such will remain unchanged because EPA will be signed at a later stage after fulfilling conditions under LOI.

		received pursuant to this RFP and agreed with K-Electric in the EPA with the approval of NEPRA. Any variations to above that are determined to be material by K-Electric, shall result in revocation of the LOI by K- Electric and encashment of Performance Guarantee provided that K- Electric shall notify in writing to the Successful Bidder of such material deviations and allow ten (10) Business Days for rectification of such material deviations.	received pursuant to this RFP and agreed with K-Electric in the EPA with the approval of NEPRA. Any variations to above that are determined to be material by K- Electric; shall result in revocation of the LOI by K- Electric and encashment of Performance Guarantee provided that K- Electric shall notify in writing to the Successful Bidder of such material deviations and allow ten (10) Business Days for rectification of such material deviations.		
7.	15.15 (of the RFP)	<p>Bidder shall provide the information relating to the Design Consultant along with the relevant details/experience as per below mentioned criteria:</p> <ul style="list-style-type: none"> a) Proven design experience with projects of comparable sizes (Minimum 05 projects with at least 02 solar power projects of 50 MW capacity each designed by the Consultant). b) Applicable 		Confirmation is required on whether the EPC Contractor (in case one is appointed) can be designated as the Design Consultant?	In such case the EPC contractor shall meet the criteria outlined in Section 20.18 of the RFP.

		<p>experience of key design staff to be assigned to the Project (Each individual's role in the project to be specified).</p> <p>c) Minimum 50 MW projects with each project not less than 10 MW is interconnected with Grid in last 05 years.</p> <p>d) Well-defined row spacing to reduce inter-row shading and associated shading losses, layout to minimize cable runs and associated electrical losses, sufficient distance between rows to allow access for maintenance purposes etc. shall be evaluated under design criteria.</p>			
8.	16.1.1 and 16.1.2, definition of Rev SOFR (of	<p>16.1.1 (Indexation mechanism – SBP Financing)</p> <p>16.1.2 (Indexation mechanism –</p>		We understand that the RFP provides flexibility to bidders to consider either Term and / or Daily SOFR as base rate (in line with	Refer amended EPA

	the RFP)	Commercial Financing) “Rev SOFR” – quarterly revised Term or Daily SOFR, as the case may be based on GOP policy decision on the transition from LIBOR to SOFR, as on the last day of the preceding quarter.		lender's requirements) with the indexation mechanism to be available for both as applicable. Please confirm this understanding. Please also confirm that if the financing sets base rate as "Term SOFR", the same will be used for indexation, and in case financing is based on "Daily SOFR" (in arears), the same methods will be used? is this the purpose of stating both SOFR application methods in the definition?	
9.	16.3 (of the RFP)	Subject to the approval of NEPRA in Determined Tariff, following items shall be considered pass- through: (a) Duties and/or taxes, not being of refundable nature, relating to the construction period directly imposed on the Successful Bidder up to Commercial Operations Date, will be allowed at actual upon production of verifiable		We understand that the payments specified herein should be first paid and then subsequently applied to NEPRA for approval. Kindly reflect such understanding here.	RFP can't be amended at this stage; however, the said understanding is already covered under EPA.

		<p>documentary evidence to the satisfaction of the Authority.</p> <p>(b) In case the Successful Bidder is obligated to pay any tax on its income from generation of electricity from solar, or any duties, taxes or cess not being of refundable nature, are imposed on the Successful Bidder, the exact amount paid by the Successful Bidder on these accounts will be reimbursed by KE on production of original filing documents.</p> <p>In case of the above scenario, the Successful Bidder shall also submit to KE the details of any tax savings and KE shall deduct the amount of these savings from its payment to the Successful Bidder on</p>			
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		<p>accounts of taxation. The adjustment for duties and taxes will be restricted only to the extent of duties and taxes directly imposed on the Successful Bidder. No adjustment for duties and taxes imposed on third parties such as contractors, suppliers, consultants, etc., will be allowed.</p> <p>(c) Payment into Worker's Profit Participation Fund and Worker's Welfare Fund.</p> <p>(d) Withholding tax on dividend will not be a pass-through item.</p> <p>(e) Alternative & Renewable Energy Policy, 2019 (ARE Policy 2019) states certain conditions, fulfillment of which can result in the exemption of duties on the import of</p>			
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		<p>items, being manufactured locally also. In case any Bidder proposes to import any plant, machinery or equipment that is also manufactured locally in accordance with the Customs General Order of the FBR, shall be reimbursed to the Successful Bidder subject to fulfillment of conditions as given in the ARE Policy 2019, for which certification shall be obtained by the Successful Bidder from AEDB. The Bidder is expected to have knowledge of applicable laws and regulations and shall not in any case hold KE accountable for information not provided under this document.</p>			
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<p>10.</p>	<p>Exhibit 13 – Form of Letter of Intent to Successful Bidder (of the RFP)</p>	<p>Recital C (ii) of the LoI says that the SPV shall be required to enter into EPC contract for the design, construction and commissioning of the Complex</p> <p>Clause 1.1 is reproduced below:</p> <p>For the purposes of this LOI, Successful Bidder and/or any of its sponsors and/or its affiliates together with any other individual or group or entity nominated by and duly accepted by KE, shall be the</p>		<p>The RFP does not specify any requirements/prerequisites for EPC contractors based on which we understand that bidders are allowed to opt for an unbundled EPC structure. Please confirm this understanding along with clarification of the apparent mismatch of the above with the draft LoI.</p>	<p>Bidders must ensure compliance with the criteria specified in the RFP Section 20.17.</p>
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		<p>Main Sponsor(s) of the Project. It is anticipated that KE will execute a mutually acceptable Energy Purchase Agreement with SPV for the term agreed under the Energy Purchase Agreement. For the purposes of this LOI irrespective of any other Sponsor being added to the Project in the future, SPV or its designated affiliate shall remain as the developer for the Project for all intents and purposes and in its dealings with KE. The equity shareholding of the Lead Member of the Successful Bidder's (in case Successful Bidder is a consortium/joint venture) shall be higher of minimum 20% or greater than the equity shareholding of other members of the consortium/joint venture and shall maintain such shareholding for the term of the loan; any change prior thereto shall require approval of KE which shall not be unreasonably withheld.</p>		<p>In relation to Clause 1.1, please clarify if the Lead Member's equity needs to be higher than the combined equity of the other shareholders or their individual equity.</p>	<p>Please refer Section 5 of RFQ.</p>
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11.	Schedules of the EPA			EPA Schedules are not provided as part of the RFP. Please share these schedules as they are an integral part of the EPA and are required for a thorough commercial; / financial review of the EPA by Bidders.	NPMV Schedule have been already shared and the pass-through items have been covered in the RFP.
				Bidder will not be able to bid without knowing the exact requirements for insurance, Schedule 1 (pass through items), technical, NPMV protocol (Schedule 10 and 13) etc. Project specific requirements may be left blank in the Schedules to the EPA.	NPMV Schedule have been already shared and the pass-through items have been covered in the RFP.
12.	1.1 (of the EPA)	<p>“Ambient Site Conditions” – The climatic conditions at the Site for generation of Net Delivered Energy or which have an impact on the electrical output and efficiency of the Complex, including, without limitation, solar irradiation, windspeed, temperature and rainfall, etc.</p>	<p>“Ambient Site Conditions” – The climatic conditions at the Site for generation of Net Delivered Energy or which have an impact on the electrical output and efficiency of the Complex, including, without limitation, solar irradiation, windspeed <u>including the Cut In Wind</u></p>		The said proposals are not acceptable to KE. Applicant is requested to provide its acceptance to the amended EPA as required under the RFP

		as measured by the Meteorological Station provided for the purposes of calculating Adjusted Forecast Energy, the Ambient Site Conditions may be measured by the Forecasting Consultant without necessarily relying on the Meteorological Station.	<u>Speed and Cut Out Wind Speed</u> , temperature and rainfall, etc. as measured by the Meteorological Station provided for the purposes of calculating Adjusted Forecast Energy, the Ambient Site Conditions may be measured by the Forecasting Consultant without necessarily relying on the Meteorological Station.		
13.	1.1 (of the EPA)	<p>“Carrying Costs” – Unless otherwise amended by NEPRA, the interest (or mark-up) limited to KIBOR plus [●] for Rupee based financing and SOFR/ plus [●] for Foreign Currency based financing, as applicable, as agreed under the Financing Documents, payable in or converted into Rupees accruing on the then-outstanding principal amount of the relevant portion of the debt under the Financing Documents related to the Complex; provided that if the Seller secures full or portion of the debt under any concessionary financing scheme, including one introduced by the State Bank of Pakistan, the Carrying</p>	<p>“Carrying Costs” – Unless otherwise amended by NEPRA, the interest (or mark-up) limited to KIBOR plus [●] for Rupee based financing and SOFR/ plus [●] for Foreign Currency based financing, as applicable, as agreed under the Financing Documents, payable in or converted into Rupees accruing on the then-outstanding principal amount of the relevant portion of the debt under the Financing Documents related to the Complex; provided that if the Seller secures full or portion of the debt under any concessionary financing scheme, including one introduced by the State Bank of Pakistan, the Carrying</p>	<p>Given the nature of tariff, we suggest that the Carrying Costs are linked with the actual payments under the Financing Documents.</p>	<p>Refer amended EPA.</p>

		Costs for such portion of the debt shall be calculated on the basis of the rate applicable to such concessionary financing availed by the Seller.	Costs for such portion of the debt shall be calculated on the basis of the rate applicable to such concessionary financing availed by the Seller.		
14.	1.1 (of the EPA)	N/A	<u>“Cut In Wind Speed” – The minimum wind speed at which the WTGs can operate and generate electrical power, as specified in Schedule 5.</u>		Schedule 5 will be shared with the successful bidder, where this will be defined.
15.	1.1 (of the EPA)	N/A	<u>“Cut Out Wind Speed” – The maximum wind speed below which the WTGs can safely operate and generate electrical power, as specified in Schedule 5.</u>		Schedule 5 will be shared with the successful bidder, where this will be defined.
16.	1.1 (of the EPA)	“Escrow Agent” – The financial institution which enters into an Escrow Agreement with the Seller and the Purchaser.	“Escrow Agent” – The financial institution <u>(acceptable to the Seller)</u> which enters into an Escrow Agreement with the Seller and the Purchaser.	The Escrow Agent should be acceptable to the Seller in line with the precedent KE EPA.	Escrow Agent is already finalized as Seller will be added to existing MCA
17.	1.1 (of the EPA)	“Energy Price” – The Reference Tariff, as adjusted from time to time in accordance with the indexations permitted by NEPRA under the Tariff Determination.	“Energy Price” - The Reference Tariff, as adjusted from time to time in accordance with the indexations permitted by NEPRA under the Tariff Determination <u>Schedule 1.</u>	The Energy Price should be linked with Schedule 1 in line with the precedent KE EPA.	We understand that such change makes no difference as both EPA and Tariff Determination are to be approved by NEPRA.
18.	1.1 (of the EPA)	“Financing Documents” – Loan agreements, based on the term sheets related thereto,	“Financing Documents” – Loan agreements <u>listed in Schedule 1 of the Direct</u>	Given that the tariff is not based on a cost plus tariff, therefore, there should not	We understand this is a general procedural

		provided to the Purchaser, and all related notes, indentures, security agreements, guarantees, documents under Islamic financing arrangements, agreements or other instruments providing security to the Lenders (including consents and acknowledgements of assignment and direct agreements in respect to documents assigned as security to the Lenders) and other documents entered into by the Seller in relation to the construction and permanent financing (including any refinancing) of the Complex (or any part thereof), as such agreement, instruments, guarantees and documents may be amended from time to time".	Agreement, based on the term sheets related thereto, provided to the Purchaser, and all related notes, indentures, security agreements, guarantees, documents under Islamic financing arrangements, agreements or other instruments providing security to the Lenders (including consents and acknowledgements of assignment and direct agreements in respect to documents assigned as security to the Lenders) and other documents entered into by the Seller in relation to the construction and permanent financing (including any refinancing) of the Complex (or any part thereof), as such agreement, instruments, guarantees and documents may be amended from time to time".	be any requirement to submit term sheets in relation thereto. Therefore, in line with Precedent EPA, this can be linked with Schedule 1 of the Direct Agreement.	requirement and should not be an issue to the Bidder.
19.	1.1 (of the EPA)	“ Generation License ” – The license No. [●] dated [●], issued by NEPRA for generation and supply of electricity by the Seller from the Complex in accordance with the terms and conditions of such license as may be amended from time to time.	“ Generation License ” – The license/ <u>concurrence</u> No. [●] dated [●], issued by NEPRA for generation and supply of electricity by the Seller from the Complex in accordance with the terms and conditions of such license/ <u>concurrence</u> as may be amended from time		The Successful Bidder will form the SPV with management control. The SPV would be responsible for filing the Tariff

			to time.		Application with NEPRA and obtaining its concurrence on setting up the Generation Facility, with applicable fees.
20.	1.1 (of the EPA)	“SOFR” - The Secured Overnight Financing Rate, or SOFR is a backward-looking compounded rate based on the volume weighted median of overnight daily treasury repo transactions i.e., the cost of borrowing cash overnight collateralized by U.S. Treasury securities.	“SOFR” - the secured overnight Financing Rate <u>administered by the Federal Reserve Bank of New York (or any other person which takes over the administration of that rate) published by the Federal Reserve Bank of New York (or any other person which takes over the publication of that rate);</u>	The proposed amendment is the definition used in current financing agreements for IPPs in Pakistan. Hence, this definition should be adopted.	Refer Amended EPA
21.	2.1 (of the EPA)	(a) No provision of this Agreement shall become effective prior to the approval of this Agreement by NEPRA, a copy of which approval shall be provided by the Purchaser to the Seller. Subject to and in accordance with the terms of NEPRA’s approval only the following Articles and Sections shall become effective: (i) Article I	(a) No provision of this Agreement shall become effective prior to the approval of this Agreement by NEPRA, a copy of which approval shall be provided by the Purchaser to the Seller. Subject to and in accordance with the terms of NEPRA’s approval <u>On the date of execution of this Agreement,</u> only the following Articles and Sections shall	Please note that in terms of the RFP, the EPA is only signed following approval of NEPRA in accordance with Clause 11.1 (3.) which states: <i>‘KE will sign EPA with the SPV formed for each Project after approval by NEPRA.’</i>	We understand this is a general procedural requirement and should not be an issue to the Bidder

		<p>(Definitions; Interpretation),</p> <p>(ii) this Section 2.1,</p> <p>(iii) Section 2.3,</p> <p>(iv) Article XIII (Representations and Warranties) and</p> <p>(v) Article XIX (Miscellaneous Provisions).</p> <p>(b) The Seller shall use its reasonable endeavors to cause the occurrence of Financial Closing by the [●], or such extended date as may be approved by NEPRA, which extension shall also be agreed to by the Purchaser.</p> <p>(c) The Seller shall deliver to the Purchaser, the Seller Letter of Credit in a form which is reasonably acceptable to the Purchaser on or before the Financial Closing Date.</p> <p>(d) The date on which notice</p>	<p>become effective:</p> <p>(i) Article I (Definitions; Interpretation),</p> <p>(ii) this Section 2.1,</p> <p>(iii) Section 2.3,</p> <p>(iv) Article XIII (Representations and Warranties) and</p> <p>(v) Article XIX (Miscellaneous Provisions).</p> <p>(b) The Seller shall use its reasonable endeavors to cause the occurrence of Financial Closing by the [●], or such extended date as may be approved by NEPRA, which extension shall also be agreed to by the Purchaser.</p> <p>(c) The Seller shall deliver to the Purchaser, the Seller Letter of Credit in a form which is reasonably acceptable to the</p>		
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		<p>from the Agent of the occurrence of Financial Closing is received by the Purchaser, this Agreement shall become effective in its entirety (the “Effective Date”).</p> <p>(e) If the Effective Date does not occur by [●], as such date may be extended in accordance with this Agreement, then the Purchaser may deliver written notice to the Seller terminating this Agreement, which termination shall be effective on the date of delivery of such notice. From the date of such termination, the Parties shall have no further rights against each other and shall be released from all further obligations under this Agreement, subject to any rights and obligations that may have accrued before the date of such termination.</p>	<p>Financial Closing Date.</p> <p>(d) The date on which notice from the Agent of the occurrence of Financial Closing is received by the Purchaser, this Agreement shall become effective in its entirety (the “Effective Date”).</p> <p>(e) <u>Subject to Section 2.1 (f)</u>, If the Effective Date does not occur by [●], as such date may be extended in accordance with this Agreement, then the Purchaser may deliver written notice to the Seller terminating this Agreement, which termination shall be effective on the date of delivery of such notice. From the date of such termination, the Parties shall have no further rights against each other and shall be released from all further obligations under this Agreement, subject to any rights and obligations that may have accrued before the date of such termination.</p>		
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			(f) <u>If the Effective Date does not occur within the timeline provided in Section 2.2 (e) due to failure to enter into an Escrow Agreement in an agreed form, then the timeline given in Section 2.2 (e), shall be further extended by ninety (90) days.</u>		
22.	2.2 (b) (of the EPA)	If there occurs a PPFME or a CLFME that, in either case, requires the Purchaser to make payments to the Seller pursuant to Section 15.6(a)(iii) and 15.6(i), then, unless Section 2.2(e) applies, the Term at the end of the Agreement shall be extended for a period equal to the number of Days such PPFME or CLFME, as the case may be, was in effect. During such extended period, the Seller shall be paid [● %] of the Energy Price prevalent at the end of 25th Agreement Year, on account of O&M and insurance costs in respect of such period.		<p>K.E to revert on the quantum of the Energy Price to be paid to the Seller.</p> <p>We understand that such blank relate to payment in relation to Operations and Maintenance, and insurances. We suggest that the approach in relation to its quantum should be clarified upfront.</p> <p>Furthermore, since no Return on Equity component was paid when compensation set out in Section 15.6 (a) (iii) and Section 15.6 (i) were paid, therefore, Return on Equity component should</p>	Refer amended EPA

				be payable in this case as well.	
23.	Performance Guarantee (under the RFP) and Seller Letter of Credit – Section 2.7 of the EPA			K.E to confirm whether Performance Guarantee and the Seller Letter of Credit are separate instruments. If so, then the Performance Guarantee should be returned as soon as the Seller Letter of Credit is submitted.	This is correct.
24.	2.9 (a) (of the EPA)	The Parties agree that the Contract Capacity is [●]MWP, being the nameplate capacity of all the WTGs (in MW) and PV modules (in MWp) (installed at the Site at Commercial Operations Date. In the event that PV Panels are added after Commercial Operations Date, at the Seller’s cost, to address effect of yearly degradations, the same would not be added to calculate the Contract Capacity and necessary regulatory approvals shall be sought by the Seller.	The Parties agree that the Contract Capacity is [●]MWP, being the nameplate capacity of all the WTGs (in MW) and PV modules (in MWp) (installed at the Site at Commercial Operations Date. In the event that PV Panels are added after Commercial Operations Date, at the Seller’s cost, to address effect of yearly degradations, the same would not be added to calculate the Contract Capacity and necessary regulatory approvals (if applicable) shall be sought by the Seller.		Refer amended EPA
25.	2.9 (b) (of the EPA)	The Seller may vary the installed capacity in MWp before the Commercial Operations Date for which the necessary consents needs to be obtained, provided that the	The Seller may vary the installed capacity in MWp before the Commercial Operations Date for which the necessary consents needs to be obtained (if applicable).	Please see the attached proposal in respect of this clause. Furthermore, the allowances that have been	The said proposals are not acceptable to KE. Applicant is requested to provide its

		<p>maximum power to be evacuated in MW_{ac} shall remain consistent with the grid study approved by the Purchaser; and provided further that, if the reduction in the Contract Capacity requested by the Seller is less than or equal to five percent (5%) of the specified Contract Capacity, the Seller shall pay to the Purchaser in immediately available funds within five (5) Business Days after the notice to reduce the Contract Capacity, as liquidated damages for such reduction and not as a penalty, an amount equal to four hundred thousand Dollars (\$400,000) multiplied by the number of MW (prorated for any fraction thereof) of the reduction in the Contract Capacity.</p> <p>(i) from the date of payment of the amount of liquidated damages determined pursuant to Section 2.9(b), the Contract Capacity shall be reduced by the amount stated in such notice to the Purchaser; the Seller may deliver</p>	<p>provided that the maximum power to be evacuated in MW_{ac} shall remain consistent with the grid study approved by the Purchaser; and provided further that, if the reduction in the Contract Capacity requested by the Seller is less than or equal to five percent (5%) <u>greater than five percent (5%) and less than or equal to ten percent (10%)</u> of the specified Contract Capacity, the Seller shall pay to the Purchaser in immediately available funds within five (5) Business Days after the notice to reduce the Contract Capacity, as liquidated damages for such reduction (not for all reductions but for reductions greater than five percent (5%)) and not as a penalty, an amount equal to four hundred thousand Dollars (\$400,000) <u>three hundred and fifty thousand Dollars (\$350,000)</u> multiplied by the number of MW (prorated for any fraction thereof) of the reduction after <u>five percent (5%)</u> in the Contract Capacity.</p>	<p>provided in respect of the Contract Capacity are market standard both in case of K.E Projects as well as CPPA-G Projects. It provides a certain relief (with obviously attached liquidated damages) within acceptable tolerances.</p> <p>Please note that restricting such tolerances would have an impact on EPC cost. It is also important to note that despite such tolerances, none of the projects (including, it appears, K.E Projects) have suffered substantive reductions in Contract Capacity.</p> <p>- We would therefore request that this provision is aligned with market standard.</p>	<p>acceptance to the amended EPA as required under the RFP</p>
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		<p>additional notices of reduction of the Contract Capacity, provided that the aggregate reduction in Contract Capacity does not exceed five percent (5%) of the initial Contract Capacity specified in Section 2.9(a), and <u>provided, further</u>, that the amount of any liquidated damages payable pursuant to Section 2.9(b) for such further reduction shall be without double- counting of, and shall exclude, any amounts already paid under Section 2.9(b) for previous reductions of the Contract Capacity.</p>	<p>(i) from the date of payment of the amount of liquidated damages determined pursuant to Section 2.9(b), the Contract Capacity shall be reduced by the amount stated in such notice to the Purchaser;</p> <p>(ii) the Seller may deliver additional notices of reduction of the Contract Capacity, provided that the aggregate reduction in Contract Capacity does not exceed five percent (5%) <u>ten percent (10%)</u> of the initial Contract Capacity specified in Section 2.9(a), and <u>provided, further</u>, that the amount of any liquidated damages payable pursuant to Section 2.9(b) for such further reduction shall be without double-counting of, and shall exclude, any amounts already paid under Section 2.9(b) for previous reductions of the Contract Capacity.</p>		
26.	5.12 (a) (of the EPA)	<p>If, after the Commercial Operations Date, without the prior written consent of the Purchaser, the Seller shall have ceased to operate the Complex for a period of seven</p>	<p>If, after the Commercial Operations Date, without the prior written consent of the Purchaser, the Seller shall have ceased to operate the Complex for a period of seven</p>		Refer amended EPA

		<p>(7) consecutive Days other than because of:</p> <ul style="list-style-type: none"> (i) a Force Majeure Event, (ii) a Scheduled Outage or a Maintenance Outage, (iii) a Forced Outage or a Partial Forced Outage, (iv) a Non-Project Event, or (v) any act or omission of the Purchaser that effectively prevents the Seller or its Contractors from operating the Complex, <p>then the Purchaser shall be entitled to (A) enter the Complex and operate it until the Seller demonstrates, to the reasonable satisfaction of the Purchaser, that the Seller can and will resume normal operation of the Complex or until the Lenders shall have exercised their rights in accordance with the Financing Documents,</p>	<p>(7) consecutive Days other than because of:</p> <ul style="list-style-type: none"> (i) a Force Majeure Event, (ii) a Scheduled Outage or a Maintenance Outage, (iii) a Forced Outage or a Partial Forced Outage, (iv) a Non-Project Event, or (v) any act or omission of the Purchaser that effectively prevents the Seller or its Contractors from operating the Complex, <p>then the Purchaser shall be entitled to (A) enter the Complex and operate it until the Seller demonstrates, to the reasonable satisfaction of the Purchaser, that the Seller can and will resume normal operation of the Complex or until the Lenders shall have exercised their rights in accordance with the Financing Documents,</p>		
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		<p>including the EPA Direct Agreement, to enter the Complex and operate it, and (B) as soon as is reasonably practicable, send written notice of such entry to the Lender or the Agent (as defined in Section 16.5) in accordance with the procedure set forth in Section 16.5 and the EPA Direct Agreement.</p> <p>During any period that the Purchaser operates the Complex pursuant to this Section 5.12, the Purchaser shall (i) operate the Complex within the Technical Limits and in accordance with Laws of Pakistan, Prudent Utility Practices and Prudent Electrical Practices, (ii) bear all costs of such operation, and (iii) pay to the Seller the aggregate of the Actual Principal Repayment Component and the Actual Interest Charges Component multiplied by the Average Daily Energy during such period (to the extent Ambient Site Conditions enabled such generation under the Hybrid Forecast Model); <u>provided, however, that the Seller shall</u></p>	<p>including the EPA Direct Agreement, to enter the Complex and operate it, and (B) as soon as is reasonably practicable, send written notice of such entry to the Lender or the Agent (as defined in Section 16.5) in accordance with the procedure set forth in Section 16.5 and the EPA Direct Agreement.</p> <p>During any period that the Purchaser operates the Complex pursuant to this Section 5.12, the Purchaser shall (i) operate the Complex within the Technical Limits and in accordance with Laws of Pakistan, Prudent Utility Practices and Prudent Electrical Practices, (ii) bear all costs of such operation, and (iii) pay to the Seller the aggregate of the Actual Principal Repayment Component and the Actual Interest Charges Component multiplied by the Average Daily Energy during such period (to the extent Ambient Site Conditions enabled such generation under the Hybrid Forecast Model); <u>provided, however, that the Seller shall</u></p>		
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		not be entitled to any payment during such period to which it would not be entitled if the Complex had been operated by the Seller during such period.	not be entitled to any payment during such period to which it would not be entitled if the Complex had been operated by the Seller during such period.		
27.	6.5 (of the EPA)			<p>Please note that this project has been specifically set up for the purposes of KE's requirements. In case of suspension, the Seller would be incurring significant costs to keep the project suspended – this would include operational costs, insurance costs as well as debt payments. How does KE propose to address such a risk? This would necessarily mean that there would be default under the financing documents for non- payment of debt payments, and a failure to pay insurance premium (which would result in an expiry of the insurance policies). Furthermore, in case there is termination due to a PPFME / CLFME, it appears that there are no compensations payable by</p>	<p>The said proposals are not acceptable to KE. Applicant is requested to provide its acceptance to the amended EPA as required under the RFP</p>

				<p>KE in such case. From a bankability perspective, this would be a significant risk that would need to be addressed.</p> <p>In view of the above, to ensure bankability of the risk, it is important that the EPA reflects the market standard provisions relating to a buy-out obligations and payment of compensation payments.</p>	
28.	6.5 (a) (of the EPA)	<p>Within seven (7) Days of the Effective Date, the Seller shall give to the Purchaser written notice of the Scheduled Commercial Operations Date then anticipated by the Seller (which date shall not in any event be earlier than the earliest date on which the Commercial Operations Date may occur hereunder). Following receipt of such notice, the Purchaser shall commence the final design of the Purchaser Interconnection Facilities. Thereafter, the Purchaser shall provide to the Seller reports on the progress of the Purchaser Interconnection Works until their completion. The</p>	<p>Within seven (7) Days of the Effective Date, the Seller shall give to the Purchaser written notice of the Scheduled Commercial Operations Date then anticipated by the Seller (which date shall not in any event be earlier than the earliest date on which the Commercial Operations Date may occur hereunder). Following receipt of such notice, the Purchaser shall commence the final design of the Purchaser Interconnection Facilities. Thereafter, the Purchaser shall provide to the Seller reports on the progress of the Purchaser Interconnection Works until their completion. The</p>	<p>Please also note the provisions of Section 6.5 (a) (iv) which operates as an exception to Purchaser’s obligations to provide Purchaser Interconnection Facilities by a certain specified date. Please note that in any contractual framework, the only exception to performance obligations is Force Majeure Events and therefore such would be reflected here. As K.E would be aware that this is a key obligation on part of the Purchaser.</p> <p>Please note that the consequences for the</p>	<p>The said proposals are not acceptable to KE. Applicant is requested to provide its acceptance to the amended EPA as required under the RFP</p>

		<p>Purchaser shall complete the Purchaser Interconnection Works so as to be able to accept Net Delivered Energy at the Interconnection Point to carry out the Commissioning Tests no later than [●] Days prior to the Scheduled Commercial Operations Date notified by the Seller to the Purchaser pursuant to this Section 6.5(a); <u>provided</u>, <u>however</u>, that such completion date shall be extended on a Day-for-Day basis for any changes in the Scheduled Commercial Operations Date, and to the extent necessary because of the occurrence of any of the following:</p> <ul style="list-style-type: none"> (i) the Seller’s failure to execute, in sufficient time for the Purchaser to complete the Purchaser Interconnection Facilities, such easements, rights-of- way, licenses and other documents, each in recordable 	<p>Purchaser shall complete the Purchaser Interconnection Works so as to be able to accept Net Delivered Energy at the Interconnection Point to carry out the Commissioning Tests no later than [●] Days prior to the Scheduled Commercial Operations Date notified by the Seller to the Purchaser pursuant to this Section 6.5(a); <u>provided</u>, <u>however</u>, that such completion date shall be extended on a Day-for-Day basis for any changes in the Scheduled Commercial Operations Date, and to the extent necessary because of the occurrence of any of the following:</p> <ul style="list-style-type: none"> (i) the Seller’s failure to execute, in sufficient time for the Purchaser to complete the Purchaser Interconnection Facilities, such easements, rights-of- way, licenses and other documents, each in recordable 	<p>Seller are severe since if the construction timelines are extended due to Section 6.5 (a) (iv), it is not entitled to any compensations under the EPA nor the Insurance Policies.</p> <p>Therefore, we suggest that Section 6.5 (a) (iv) is deleted.</p>	
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		<p>form, as the Purchaser may reasonably require to record the deeds, easements, rights-of-way and licenses granted pursuant to Section 6.4;</p> <p>(ii) the Seller's failure to provide the Purchaser, on a timely basis, with any technical data relating to the Complex and available to the Seller but not included in Schedule 3, requested by the Purchaser and reasonably necessary for the Purchaser to undertake the design, construction, installation, commissioning, maintenance and operation of the</p>	<p>form, as the Purchaser may reasonably require to record the deeds, easements, rights-of-way and licenses granted pursuant to Section 6.4;</p> <p>(ii) the Seller's failure to provide the purchaser, on a timely basis, with any technical data relating to the Complex and available to the Seller but not included in Schedule 3, requested by the Purchaser and reasonably necessary for the Purchaser to undertake the design, construction, installation, commissioning, maintenance and operation of the</p>		
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		<p>Purchaser Interconnection Facilities;</p> <p>(iii) a Force Majeure Event that materially and adversely affects the Purchaser’s ability to perform its obligations in accordance with this Article VI;</p> <p>(iv) Any circumstances / events that are beyond Purchaser’s reasonable control and cause delay in construction or operations of Purchaser Interconnection Facilities;</p> <p>(v) any other failure by the Seller to perform in accordance with this Agreement, including but not limited to the Seller’s obligations</p>	<p>Purchaser Interconnection Facilities;</p> <p>(iii) a Force Majeure Event that materially and adversely affects the Purchaser’s ability to perform its obligations in accordance with this Article VI;</p> <p>(iv) Any circumstances / events that are beyond Purchaser’s reasonable control and cause —delay in construction or operations of Purchaser Intereconnection Facilities;</p> <p>(v) any other failure by the Seller to perform in accordance with this Agreement, including but not limited to the Seller’s</p>		
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		<p>assumed under Schedule 3, that materially and adversely affects the Purchaser's ability to perform its obligations in accordance with this Article VI;</p> <p><u>provided, however</u>, that no extension shall be granted to the Purchaser to the extent that such failure or delay would nevertheless have been experienced by the Purchaser.</p> <p>If the Purchaser has not completed, commissioned and energized the Purchaser Interconnection Facilities, by the date required in Section 6.5(a), and such delay causes a delay in the Commissioning of the Complex, the Required Commercial Operations Date shall be extended Day-for-Day until the date on which the Purchaser Interconnection Works are completed, provided however, the Required Commercial Operations Date shall not be extended on account of any extension of the completion</p>	<p>obligations assumed under Schedule 3, that materially and adversely affects the Purchaser's ability to perform its obligations in accordance with this Article VI;</p> <p><u>provided, however</u>, that no extension shall be granted to the Purchaser to the extent that such failure or delay would nevertheless have been experienced by the Purchaser.</p> <p>If the Purchaser has not completed, commissioned and energized the Purchaser Interconnection Facilities, by the date required in Section 6.5(a), and such delay causes a delay in the Commissioning of the Complex, the Required Commercial Operations Date shall be extended Day-for-Day until the date on which the Purchaser Interconnection Works are completed, provided however, the Required Commercial Operations Date shall not be extended on account of any</p>		
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		date of the Purchaser Interconnection Works under Section 6.5(a)(i), (ii) and (iv).	extension of the completion date of the Purchaser Interconnection Works under Section 6.5(a)(i), (ii) and (iv).		
29.	6.5 (b) (of the EPA)	In addition, if the Purchaser has not completed the Purchaser Interconnection Works by the date which is [●] Days following the date by which the Purchaser Interconnection Facilities were required to be completed in accordance with Section 6.5(a) as such date may be extended pursuant to Section 6.5(a)(i), (ii), (iii) and (iv), and such delay causes a delay in Commissioning of the Complex, as certified by the Engineer, then the Purchaser shall pay to the Seller monthly, in arrears, (and prorated for any portion of a Month) an amount equal to the Carrying Cost plus [● %]of the Energy Price on account of partial reimbursement of actual O&M and insurance costs multiplied by the Average Daily Energy for each Day during the period of such delay.	In addition, if the Purchaser has not completed the Purchaser Interconnection Works by the date which is [●] Days following the date by which the Purchaser Interconnection Facilities were required to be completed in accordance with Section 6.5(a) as such date may be extended pursuant to Section 6.5(a)(i), (ii), (iii) and (iv), and such delay causes a delay in Commissioning of the Complex, as certified by the Engineer, then the Purchaser shall pay to the Seller monthly, in arrears, (and prorated for any portion of a Month) an amount equal to the Carrying Cost plus [● %]of the Energy Price on account of partial reimbursement of actual O&M and insurance costs multiplied by the Average Daily Energy for each Day during the period of such delay.	Please note that given the structure of the Tariff, there would not be any specific components as such.	Refer amended EPA
30.	6.5 (c) (of the EPA)	In addition to payment set out in Section 6.5(b) above for the period of such delay, if	In addition to payment set out in Section 6.5(b) above for the period of such delay, if	The adjustment with regards to debt servicing should not be subject to	Refer amended EPA

		<p>the delay by the Purchaser in completing the Purchaser Interconnection Facilities continues beyond the [●] Day following the date of the issuance by the Engineer of the Certificate of Readiness for Synchronization and a simultaneous certificate by the Engineer that the delay caused by the Purchaser would likely cause the then-scheduled Commissioning Tests to be delayed, the Purchaser shall also be required to pay the principal sum of the debt when due pursuant to the repayment schedule as set out under the relevant Financing Document (as certified to the Purchaser by the Lender or Agent). Such payment of the principal sum of the debt by the Purchaser shall be made within [●] Days following receipt of an invoice therefor, but in no event earlier than the [●] day following the Scheduled Commercial Operations Date prevailing immediately prior to such delay which invoice shall be signed by the Lenders or the Agent, certifying the amount shown therein to be</p>	<p>the delay by the Purchaser in completing the Purchaser Interconnection Facilities continues beyond the [●] Day following the date of the issuance by the Engineer of the Certificate of Readiness for Synchronization and a simultaneous certificate by the Engineer that the delay caused by the Purchaser would likely cause the then-scheduled Commissioning Tests to be delayed, the Purchaser shall also be required to pay the principal sum of the debt when due pursuant to the repayment schedule as set out under the relevant Financing Document (as certified to the Purchaser by the Lender or Agent). Such payment of the principal sum of the debt by the Purchaser shall be made within [●] Days following receipt of an invoice therefor, but in no event earlier than the [●] day following the Scheduled Commercial Operations Date prevailing immediately prior to such delay which invoice shall be signed by the Lenders or the Agent, certifying the amount shown therein to be</p>	<p>KIBOR +[3%] since such additional spread has not been made available to compensation that are made to the Seller at a subsequent date.</p>	
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		<p>correct and stating the due date for such payment of principal debt under the repayment schedule as set out under the relevant Financing Document (as certified to the Purchaser by the Lenders or Agent). Such payments shall continue until the earlier of (A) the end of the period equal to the period of delay or deferral of any Commissioning Test, or (B) completion of the first attempted Commissioning Tests (whether successfully completed or not), <u>provided</u>, that any payments made by the Purchaser pursuant to Section 6.5(c) on account of payments of principal sum of the debt shall be in the form of a loan from the Purchaser to the Seller in order to facilitate the Seller to meet its debt servicing obligations and the same shall be recovered, together with interest at KIBOR plus a spread of [3%] (on the monthly outstanding balance of such amounts) commencing on the date of such payments by the Purchaser and ending on the date of complete repayment</p>	<p>correct and stating the due date for such payment of principal debt under the repayment schedule as set out under the relevant Financing Document (as certified to the Purchaser by the Lenders or Agent). Such payments shall continue until the earlier of (A) the end of the period equal to the period of delay or deferral of any Commissioning Test, or (B) completion of the first attempted Commissioning Tests (whether successfully completed or not), <u>provided</u>, that any payments made by the Purchaser pursuant to Section 6.5(c) on account of payments of principal sum of the debt shall be in the form of a loan from the Purchaser to the Seller in order to facilitate the Seller to meet its debt servicing obligations and the same shall be recovered, together with interest at KIBOR plus a spread of [3%] (on the monthly outstanding balance of such amounts) commencing on the date of such payments by the Purchaser and ending on the date of complete repayment</p>		
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		<p>thereof by the Seller, through successive deductions of [● %] of the Energy Price from the monthly Energy Payments until such amounts have been completely recovered. The Purchaser shall have no obligation to make the payments provided in this Section 6.5 if, and to the extent that, the delay in the Commissioning Tests would nevertheless have occurred regardless of the Purchaser's delay or deferral of such tests. If payments by the Purchaser under this Section 6.5 shall have commenced, or the obligation for such payments shall have accrued, the Complex shall be tested at the first available opportunity thereafter. Except as provided in this Section 6.5, Section 8.1, Section 15.6 and Section 16.2(h), the Seller shall be entitled to no other compensation or claim for damages under this Agreement as a result of delay in completion of the Purchaser Interconnection Facilities or deferral of the Commissioning Tests by the Purchaser, as the</p>	<p>thereof by the Seller, through successive deductions of [● %] of the Energy Price from the monthly Energy Payments until such amounts have been completely recovered. The Purchaser shall have no obligation to make the payments provided in this Section 6.5 if, and to the extent that, the delay in the Commissioning Tests would nevertheless have occurred regardless of the Purchaser's delay or deferral of such tests. If payments by the Purchaser under this Section 6.5 shall have commenced, or the obligation for such payments shall have accrued, the Complex shall be tested at the first available opportunity thereafter. Except as provided in this Section 6.5, Section 8.1, Section 15.6 and Section 16.2(h), the Seller shall be entitled to no other compensation or claim for damages under this Agreement as a result of delay in completion of the Purchaser Interconnection Facilities or deferral of the Commissioning Tests by the Purchaser, as the</p>		
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		case may be.	case may be.		
31.	6.6 (c) (of the EPA)	Subject to providing the Seller reasonable notice, the Purchaser may require the Seller to modify or expand the requirements for protective devices. Following the Purchaser’s approval of the costs of such modification or expansion, the Seller shall perform such modification or expansion. Such work shall be completed within a reasonable time under the circumstances. If such request for a modification or expansion is sent by the Purchaser on or after the Construction Start Date and such request causes a delay in Commissioning the Complex, as certified by the Engineer, the Required Commercial Operations Date shall be extended Day-for- Day to account for such delay provided the Seller has submitted its final metering, control and protection single line diagram to the Purchaser no later than fifteen (15) Days after the Construction Start Date. The Purchaser shall be notified in advance of, and shall have the	Subject to providing the Seller reasonable notice, the Purchaser may require the Seller to modify or expand the requirements for protective devices. Following the Purchaser’s approval of the costs of such modification or expansion, the Seller shall perform such modification or expansion. Such work shall be completed within a reasonable time under the circumstances. If such request for a modification or expansion is sent by the Purchaser on or after the Construction Start Date and such request causes a delay in Commissioning the Complex, as certified by the Engineer, the Required Commercial Operations Date shall be extended Day-for- Day to account for such delay provided the Seller has submitted its final <u>initial</u> metering, control and protection single line diagram to the Purchaser no later than fifteen <u>thirty</u> (15 <u>30</u>) Days after the Construction Start Date. The Purchaser shall be notified in advance of, and		Refer amended EPA

		right to observe, all work on the protective devices.	shall have the right to observe, all work on the protective devices.		
32.	8.1 (b) (1) (of the EPA)	<p>If the Purchaser is unable to accommodate the schedule for any of the Commissioning Tests as provided by the Seller, the Purchaser will give the Seller notice within forty-eight (48) hours of its receipt of the final schedule for testing of its requirements regarding deferral or delay of any Commissioning Tests for the Complex and the Parties will mutually agree on a date for any deferral test or programme of tests; <u>provided</u>, subject to the requirements for notification to the Purchaser hereunder, in no event shall the Purchaser be permitted to delay or defer the Commissioning Tests beyond thirty (30) Days from the date on which the tests were finally scheduled, except for reasons of a Force Majeure Event experienced by the Purchaser. Notwithstanding the foregoing, the Purchaser shall have no liability to the Seller under this Section 8.1 and no claim of breach or default hereunder shall arise</p>	<p>If the Purchaser is unable to accommodate the schedule for any of the Commissioning Tests as provided by the Seller, the Purchaser will give the Seller notice within forty-eight (48) hours of its receipt of the final schedule for testing of its requirements regarding deferral or delay of any Commissioning Tests for the Complex and the Parties will mutually agree on a date for any deferral test or programme of tests; <u>provided</u>, subject to the requirements for notification to the Purchaser hereunder, in no event shall the Purchaser be permitted to delay or defer the Commissioning Tests beyond thirty (30) <u>fifteen (15)</u> Days from the date on which the tests were finally scheduled, except for reasons of a Force Majeure Event experienced by the Purchaser. Notwithstanding the foregoing, the Purchaser shall have no liability to the Seller under this Section 8.1 and no claim of breach or default</p>	<p>Given the competitive construction timeline provided in the EPA, we would suggest that the 30 days should be 15 days in line with Precedent EPA.</p>	<p>The said proposals are not acceptable to KE. Applicant is requested to provide its acceptance to the amended EPA as required under the RFP</p>

		if, and to the extent that, any delay in or deferral of the programme of Commissioning Tests would nevertheless have occurred regardless of the Purchaser's delay or deferral of such tests.	hereunder shall arise if, and to the extent that, any delay in or deferral of the programme of Commissioning Tests would nevertheless have occurred regardless of the Purchaser's delay or deferral of such tests.		
33.	8.1 (b) (2) (of the EPA)	Should the Purchaser defer or delay any Commissioning Tests beyond thirty (30) Days from the date on which the tests were finally scheduled and such deferral or delay causes the Scheduled Commercial Operations Date of the Complex to be delayed or deferred, as certified by the Engineer, then from the Scheduled Commercial Operations Date prevailing immediately prior to such delay or deferral, the Purchaser shall pay to the Seller Monthly, in arrears, (and prorated for any portion of a Month) an amount equal to the Carrying Cost plus [●]% of the Energy Price on account of actual reimbursement of partial O&M and insurance costs multiplied by the Average Daily Energy for the number of Days of such delay. Such payments shall commence on the Scheduled Commercial	Should the Purchaser defer or delay any Commissioning Tests beyond thirty (30) <u>fifteen (15)</u> Days from the date on which the tests were finally scheduled and such deferral or delay causes the Scheduled Commercial Operations Date of the Complex to be delayed or deferred, as certified by the Engineer, then from the Scheduled Commercial Operations Date prevailing immediately prior to such delay or deferral, the Purchaser shall pay to the Seller Monthly, in arrears, (and prorated for any portion of a Month) an amount equal to the Carrying Cost plus [●]% of the Energy Price on account of actual reimbursement of partial O&M and insurance costs multiplied by the Average Daily Energy for the number	Given the competitive construction timeline provided in the EPA, we would suggest that the 30 days should be 15 days in line with Precedent EPA. Please provide us the missing information in the blanks. It would be important to highlight prior to Bid submission as how such blanks would operate given the structure of the tariff.	Refer amended EPA

		<p>Operations Date prevailing immediately prior to such delay and shall continue until the completion of the first attempted Commissioning Tests (whether successfully completed or not); <u>provided, however</u>, that the payment of such amounts by the Purchaser and extension of the Required Commercial Operations Date shall be subject to issuance by the Engineer of Certificate of Readiness for Synchronization and a simultaneous certificate that the delay caused by the Purchaser has caused the then scheduled Commissioning Tests to be delayed.</p>	<p>of Days of such delay. Such payments shall commence on the Scheduled Commercial Operations Date prevailing immediately prior to such delay and shall continue until the completion of the first attempted Commissioning Tests (whether successfully completed or not); <u>provided, however</u>, that the payment of such amounts by the Purchaser and extension of the Required Commercial Operations Date shall be subject to issuance by the Engineer of Certificate of Readiness for Synchronization and a simultaneous certificate that the delay caused by the Purchaser has caused the then scheduled Commissioning Tests to be delayed.</p>		
34.	8.1 (b) (3) (of the EPA)	<p>In addition to the payment set out in Section 8.1(b)(2) above, if the delay or deferral of the commissioning Tests by the Purchaser continues beyond the [●] Day following the date of issuance by the Engineer of the two (2) certificates referred to in this Section, then the Purchaser shall also be required</p>	<p>In addition to the payment set out in Section 8.1(b)(2) above, if the delay or deferral of the Commissioning Tests by the Purchaser continues beyond the <u>ninetieth (90th)</u> Day following the date of issuance by the Engineer of the two (2) certificates referred to in this Section,</p>		Refer amended EPA

		<p>to pay the principal debt payments when due under the Financing Documents pursuant to the repayment schedule agreed between the Seller and the Lenders at Financial Closing, with a copy of such repayment schedule being furnished to the Purchaser attested by the Lenders or their Agent as to its accuracy (“Lender Debt Confirmation”). Such principal debt payment shall be due from the Purchaser no later than thirty (30) Days following receipt of an invoice therefor (together with the Lender Debt Confirmation) which invoice shall be signed by the Lenders or the Agent certifying the amount shown therein to be correct and stating the due date for such payment of principal debt under the repayment schedule. Such payments shall continue until the earlier of (i) the end of a period equal to the period of delay or deferral of any Commissioning test or Commissioning Tests; and (ii) the completion of the first attempted Commissioning Tests (whether successfully completed or not).</p>	<p>then the Purchaser shall also be required to pay the principal debt payments when due under the Financing Documents pursuant to the repayment schedule agreed between the Seller and the Lenders at Financial Closing, with a copy of such repayment schedule being furnished to the Purchaser attested by the Lenders or their Agent as to its accuracy (“Lender Debt Confirmation”). Such principal debt payment shall be due from the Purchaser no later than thirty (30) Days following receipt of an invoice therefor (together with the Lender Debt Confirmation) which invoice shall be signed by the Lenders or the Agent certifying the amount shown therein to be correct and stating the due date for such payment of principal debt under the repayment schedule. Such payments shall continue until the earlier of (i) the end of a period equal to the period of delay or deferral of any Commissioning test or Commissioning Tests; and (ii) the completion of the first attempted Commissioning Tests</p>		
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			(whether successfully completed or not).		
35.	8.1 (b) (5) (of the EPA)	Any payments made by the Purchaser pursuant to this Section 8.1(b) on account of principal debt payments under the Financing Documents shall be in the form of a loan from the Purchaser to the Seller in order to facilitate the Seller to meet its debt servicing obligations and the same shall be recovered by the Purchaser, together with interest at KIBOR plus a spread of three percent (3%) (on the monthly outstanding balance of such amounts), commencing on the Commercial Operations Date and ending on the date of complete repayment thereof by the Seller, through successive deductions of [●] % twenty percent of the Energy Price from the monthly Energy Payments until the aforesaid amounts have been completely recovered.	Any payments made by the Purchaser pursuant to this Section 8.1(b) on account of principal debt payments under the Financing Documents shall be in the form of a loan from the Purchaser to the Seller in order to facilitate the Seller to meet its debt servicing obligations and the same shall be recovered by the Purchaser, together with interest at KIBOR plus a spread of three percent (3%) (on the monthly outstanding balance of such amounts), commencing on the Commercial Operations Date and ending on the date of complete repayment thereof by the Seller, through successive deductions of [●] % twenty percent of the Energy Price from the monthly Energy Payments until the aforesaid amounts have been completely recovered.	The adjustment with regards to debt servicing should not be subject to KIBOR +[3%] since such additional spread has not been made available to compensation that are made to the Seller at a subsequent date.	Refer amended EPA
36.	9.3 (b) (of the EPA)	If the Seller is in breach of its obligation under Section 4.1(b) to achieve the Commercial Operations Date by the Required Commercial	If the Seller is in breach of its obligation under Section 4.1(b) to achieve the Commercial Operations Date by the Required Commercial	This exception to the applicability of the liquidated damages under Section 9.3 (b) should also include a Non-Project	The said proposals are not acceptable to KE. Applicant is requested to

		<p>Operations Date (unless such breach is attributable to breach or default by the Purchaser of its obligations hereunder, the nonavailability of Ambient Site Conditions in accordance with Section 8.8, or a Force Majeure Event) then for each Month (prorated Daily) thereafter until the Commercial Operations Date is actually achieved, the Seller shall pay the Purchaser as liquidated damages an amount equal to four Dollars (\$4.00) per kW of the Contract Capacity for each Month (prorated Daily) thereafter until the Commercial Operations Date is actually achieved. The Parties acknowledge and agree that it would be difficult or impossible at the date of this Agreement to determine with absolute precision the amount of damages that would or might be incurred by the Purchaser as a result of the Seller's failure to perform those matters for which liquidated damages are provided under this Section 9.3.</p>	<p>Operations Date (unless such breach is attributable to breach or default by the Purchaser of its obligations hereunder, the nonavailability of Ambient Site Conditions in accordance with Section 8.8, a Force Majeure Event, <u>or a Non-Project Event</u>) then for each Month (prorated Daily) thereafter until the Commercial Operations Date is actually achieved, the Seller shall pay the Purchaser as liquidated damages an amount equal to four Dollars (\$4.00) per kW <u>two and half Dollars (\$2.50) per kW</u> of the Contract Capacity for each Month (prorated Daily) thereafter until the Commercial Operations Date is actually achieved. The Parties acknowledge and agree that it would be difficult or impossible at the date of this Agreement to determine with absolute precision the amount of damages that would or might be incurred by the Purchaser as a result of the Seller's failure to perform those matters for which liquidated damages are provided under this Section</p>	<p>Event.</p> <p>In terms of EPA, Non-Project Event is recognized as an exception to generation of electricity. Therefore, similarly, such should also be included here.</p> <p>Furthermore, the quantum of the delay liquidated damages should be adjusted in line with the K.E Precedent EPAs and other market precedent.</p>	<p>provide its acceptance to the amended EPA as required under the RFP</p>
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<p>37.</p>	<p>9.4 (h) (of the EPA)</p>	<p>Notwithstanding anything to the contrary in this Agreement, if any amount paid by the Purchaser to the Seller under this Agreement, is subsequently disallowed by NEPRA under the Determined Tariff, the Purchaser shall have the right to recover the same from the Seller by way of set off or otherwise.</p>	<p>9.3. Notwithstanding anything to the contrary in this Agreement, If any amount paid by the Purchaser to the Seller <u>in terms of Section 15.6 (a) (iii) and 15.6 (i)</u> under this Agreement, is subsequently disallowed by NEPRA under the Determined Tariff, <u>the Purchaser shall promptly inform (but not later than three (3) Days of issuance of such determination by NEPRA) the Seller of the same. If the Seller does not file an appeal before the appellate tribunal established under the NEPRA Act, and/or a motion for leave for review, in accordance with the applicable law,</u> the Purchaser shall have the right to recover the same from the Seller by way of set off or otherwise <u>on a mutually agreed Schedule. The Purchaser shall provide to the Seller all information and documents as may be requested by the Seller as may be required by the Seller to file an appeal before the Appellate Tribunal established under the NEPRA Act and/or a motion for leave for review in</u></p>	<p>Please note that contractual payments which do not relate to the tariff itself should in any case be excluded from this clause. Such excluded payments would include payments in relation to delay in Purchaser Interconnection Facilities, delay in commissioning tests, Delayed Payment Rate, payments in relation to indemnities or other payment in relation to the Contract.</p> <p>With regards to Energy Payments, Supplemental Tariffs and Pass- Through Items, such payments would be made pursuant to Schedule 1 which would be reflective of the tariff approval for the Project in any case. Therefore, such payments should be excluded. This clause should be restructured to the payments only under Section 15.6 (a) (iii) and Section 15.6 (i).</p> <p>We understand that such</p>	<p>The said proposals are not acceptable to KE. Applicant is requested to provide its acceptance to the amended EPA as required under the RFP</p>
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			<u>accordance with the applicable law.</u>	<p>payments would be made upfront and then in case of disapproval, would be adjusted. Any such adjustment should be based on a reasonable schedule.</p> <p>Furthermore, the Agreement Year should be extended to allow the Seller to re-coup such disallowed payments.</p>	
38.	9.5 (d) (of the EPA)	Late payments by either Party of amounts due and payable under this Agreement shall bear interest at a rate per annum equal to the Delayed Payment Rate, prorated Daily.	Late payments by either Party of amounts due and payable under this Agreement shall bear interest at a rate per annum equal to the Delayed Payment Rate, prorated Daily <u>provided however any interest on liquidated damages payable under Section 9.3(b) shall be calculated at SOFR instead of KIBOR plus the same applicable spread on Delayed Payment Rate.</u>	<p>Please note that the Liquidated Damages are USD denominated, and therefore SOFR should be applicable.</p> <p>Please note that the same is in line with Precedent EPAs.</p>	The said proposals are not acceptable to KE. Applicant is requested to provide its acceptance to the amended EPA as required under the RFP
39.	9.6 (a) (of the EPA)	At any time within three hundred and sixty (360) Days after receipt of an invoice, a Party may serve notice (an ‘Invoice Dispute Notice’) on the other Party that the amount of such invoice (or part thereof) is in dispute. Each	At any time within three hundred and sixty (360) Days after receipt of an invoice, a Party may serve notice (an ‘Invoice Dispute Notice’) on the other Party that the amount of such invoice (or part thereof) is in dispute. Each	In line with Precedent solar based K.E EPAs, this allowed a party to go straight to an Expert for determination. Given the prolonged timelines in case of arbitration, this a more efficient manner of	The said proposals are not acceptable to KE. Applicant is requested to provide its acceptance to the amended EPA as required under the

		Invoice Dispute Notice shall specify the invoice concerned and the amount in dispute, providing reasons as complete and detailed as reasonably possible. A Party shall be entitled to submit any Dispute relating to an invoice to dispute resolution in accordance with Article XVIII, so long as it has delivered an Invoice Dispute Notice to the other Party in accordance with Section 9.6(a).	Invoice Dispute Notice shall specify the invoice concerned and the amount in dispute, providing reasons as complete and detailed as reasonably possible. A Party shall be entitled to submit any Dispute relating to an invoice to dispute resolution in accordance with Article XVIII, so long as it has delivered an Invoice Dispute Notice to the other Party in accordance with Section 9.6(a). <u>A Party submitting an Invoice Dispute Notice may require such dispute to be immediately referred to an Expert for determination pursuant to Section 18.2.</u>	resolution of disputes.	RFP
40.	9.6 (c) (of the EPA)	Notwithstanding the determination of the Dispute by the Expert under Section 18.2, each Party shall be entitled to refer the Dispute to arbitration without being obligated to pay, repay or offset, as the case may be, prior to the Dispute being settled through arbitration if such Party has elected to refer the Dispute to arbitration.	Notwithstanding the determination of the Dispute by the Expert under Section 18.2, each Party shall be entitled to refer the Dispute to arbitration without being obligated to pay, repay or offset, as the case may be, prior to the Dispute being settled through arbitration if such Party has elected to refer the Dispute to arbitration. <u>Following such resolution or determination by an Expert,</u>	We have suggested this provision in line with the K.E Solar IPPs – this goes a long way in creating efficiency in the overall payment structure and does not lead to either party being cash constrained.	The said proposals are not acceptable to KE. Applicant is requested to provide its acceptance to the amended EPA as required under the RFP

			<u>neither Party may refer a Dispute regarding such matter to arbitration under Section 18.3, unless and until it has paid all amounts resolved or determined to be payable in accordance with Section 9.6(b).</u>		
41.	9.8 (of the EPA)	(a) Within [●] Business Days prior to Financial Closing, the Purchaser undertakes to execute an Escrow Agreement which shall become effective sixty (60) Days after Commercial Operations Date. The Purchaser shall for the purposes of effecting payments under the Agreement, designate a collection account maintained with the Escrow Agent in accordance with the Escrow Agreement. The Escrow Agent shall transfer, in accordance with the Escrow Agreement, the payments due in accordance with Section 9.5, to the Seller that have fallen due and which have not been disputed by the Purchaser.	(a) Within [●] Business Days prior to Financial Closing, the Purchaser undertakes to execute an Escrow Agreement which shall become effective sixty (60) Days after Commercial Operations Date <u>on the Scheduled Commercial Operations Date</u> . The Purchaser shall for the purposes of effecting payments under the Agreement, designate a collection account maintained with the Escrow Agent in accordance with the Escrow Agreement. The Escrow Agent shall transfer, in accordance with the Escrow Agreement, the payments due in accordance with Section 9.5, to the Seller that have fallen due and which have not been disputed by the Purchaser.	Please note that the Escrow Agreement should become immediately effective given that there are certain very important payments prior to Commercial Operations Date.	Refer Amended EPA
				Please note that such payments are not lump sum payment but compensations linked to regular tariff component and therefore should not unusually strain the Escrow Arrangement.	Payments covered under escrow are clearly defined in Amended EPA Section 9.8
		(b) The Escrow Account will remain in place until all payment obligations of the	(b) The Escrow Account	We understand that the arrangement relating to payment security would not only include an escrow arrangement, but also its linkages with the MCAs and the Collection Agreements. We would request KE to reflect such an	The said proposals are not acceptable to KE. Applicant is requested to provide its acceptance to the amended EPA as required under the RFP

		<p>Purchaser to the Seller in relation to the Energy Payments (as approved by NEPRA in the Tariff Determination) under this Agreement, to the extent of any undisputed amounts, are paid or discharged in full, provided that;</p> <p>(i) All Consents under this Agreement are timely obtained as per the terms of this Agreement;</p> <p>(ii) The Agreement is not terminated due to a Force Majeure Event pursuant to Section 15;</p> <p>(iii) The Agreement is not terminated pursuant to Section 16.</p> <p>(c) In the event that the Seller fails to pay any undisputed invoice issued by the Purchaser in accordance with this Agreement (the “Purchaser Invoice”), the Purchaser shall have the right to set-off such undisputed amounts due and payable to it under the Purchaser Invoice against any amount due and</p>	<p>will remain in place until all payment obligations of the Purchaser to the Seller in relation to the Energy Payments (as approved by NEPRA in the Tariff Determination) under this Agreement, to the extent of any undisputed amounts, are paid or discharged in full, provided that;</p> <p>(i) All Consents under this Agreement are timely obtained as per the terms of this Agreement;</p> <p>(ii) The Agreement is not terminated due to a Force Majeure Event pursuant to Section 15;</p> <p>(iii) The Agreement is not terminated pursuant to Section 16.</p> <p>(c) In the event that the Seller fails to pay any undisputed invoice issued by the Purchaser in accordance with this Agreement (the “Purchaser Invoice”), the Purchaser shall have the right to set-off such undisputed amounts due and payable to it</p>	<p>understanding in Section 9.8(a). This should be reflected in the definition of Escrow Agreement as well.</p> <p>We are a bit unclear with regards to the reference to “as approved by NEPRA in the Tariff Determination”. All energy payments would be made in accordance with Schedule 1 of the EPA and the Tariff Approval.</p> <p>We understand that prior to Financial Close, there would be an approval in relation to Energy Purchase Agreement, there is no need for a subsequent approval from NEPRA. Therefore, we suggest that the same be deleted.</p> <p>KE to clarify which Consents are contemplated here. This is a fundamental security for any bidder (and its lenders), therefore, a clarification in this regard would be appreciated. In any case, all such consents should be procured prior to the signing of the Escrow</p>	<p></p> <p>All energy payments would be made in accordance with the Tariff Approval</p> <p>The said proposals are not acceptable to KE. Applicant is requested to provide its acceptance to the amended EPA as required under the RFP</p> <p>Consents under the agreement will be the obligation of respective parties.</p>
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		<p>payable by the Seller under the Escrow Agreement. (d) Notwithstanding the aforesaid, in the event the Purchaser is notified by the Escrow Agent that the Escrow Agreement may terminate prior to the termination of this Agreement, the Purchaser shall, prior to such termination of the Escrow Agreement, provide the Seller with an alternate escrow arrangement, on substantially similar terms to the Escrow Agreement.</p>	<p>under the Purchaser Invoice against any amount due and payable by the Seller under the Escrow Agreement. (d) Notwithstanding the aforesaid, in the event the Purchaser is notified by the Escrow Agent that the Escrow Agreement may terminate prior to the termination of this Agreement, the Purchaser shall, prior to such termination of the Escrow Agreement, provide the Seller with an alternate escrow arrangement, on substantially similar terms to the Escrow Agreement.</p>	<p>Agreement. The Escrow Account should secure all payments under the Energy Purchase Agreement and not just Energy Payments. There are important payments such as Pass-Through Items, Supplementary Tariffs, Payments made under Section 15.6 upon occurrence of PPFME/CLFME which should be secured by the Escrow Account. References to the Energy Purchase Agreement being terminated should be removed. The escrow arrangement should also be terminated once all amounts are settled. There may very well be the case of termination of the Energy Purchase Agreement but still amounts outstanding at KE's end. There should be advance timelines built in to allow for an appropriate novation to a third account bank, and the existing arrangement should only be terminated once the</p>	<p>Payments covered under escrow are clearly defined in Amended EPA Section 9.8 This clause binds KE to replace the mechanism before termination and is for Seller's comfort. Already covered in EPA</p>
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				substituted arrangement is in place.	
				K.E to also provide the MCA Agreements and confirm whether the Lenders have provided such consent.	Brief already shared; further clarifications also provided as part of General clarification
42.	15			Under Clause 15 of the EPA, if a natural Force Majeure Event e.g. a hurricane, delays KE in completing the Purchaser Interconnection Works or subsequently damages KE's network, the EPA provides an extension of time e.g. to allow the Seller to reach COD. But there is no financial support (the protections for lenders' interest and principal in 6.5(b) and (c) do not apply in case of force majeure). The normal solution for a project company affected by a natural force majeure would be to obtain insurance cover which would include interim payments to cover principal and interest. But, in this case, the seller cannot insure against the risk because the network is not its insurable asset. We	The said proposals are not acceptable to KE. Applicant is requested to provide its acceptance to the amended EPA as required under the RFP

				request clarity on what approach will be taken in terms of insurance for delay from KE.	
43.	15.6 (a) (iii) (A) (of the EPA)	(iii): If there occurs a PPFME or a CLFME that prevents or delays the construction of the Complex or the ability of the Seller to operate the Complex or deliver Net Delivered Energy, the Purchaser shall within thirty (30) Days of the delivery by the Seller for an invoice therefor, pay to the Seller, for each Month (prorated for portion thereof) of the PE Compensation Period (as defined below) an amount equal to: (A) if the PPFME or the CLFME occurs prior to the Commercial Operations Date, the Carrying Cost or	if the PPFME or the CLFME occurs prior to the Commercial Operations Date, the carrying Cost plus [●%] of the <u>Energy Price multiplied by the Average Daily Energy for each Day during the period of such delay. In addition, in the event that a PPFME or a CLFME continues beyond ninety (90) days, then the Purchaser shall also be required to pay the principal sum of the debt when due pursuant to the repayment schedule as set out under the relevant Financing Document (as certified to the Purchaser by the Lender or Agent). Such payment of the principal sum of the debt by the Purchaser shall be due from the Purchaser on the earlier of thirty (30) Days following receipt of an invoice therefor or the due date for such payment under the repayment schedule (as certified to the Purchaser by the Lender or Agent), which invoice shall be signed by the</u>	<p>KE to clarify whether such payments are already approved as part of its Determined Tariff.</p> <p>If not, would it seek such an approval prior to signing the Energy Purchase Agreement. If not, then, fundamentally, this regulatory risk would be undertaken by the Bidder. KE to clarify.</p> <p>The compensations are important to cover key risks for the Seller. This compensation regime is also something that the lenders would look for in such a Project and since, in any case, it is subject to NEPRA’s approval, there would not be a risk on K.E’s end. Please provide the missing information in the blanks.</p>	Refer amended EPA

			<p><u>Lenders or the Agent, certifying the amount shown therein to be correct and stating the due date for such payment of principal debt under the repayment schedule as set out under the relevant Financing Document (as certified to the Purchaser by the Lenders or Agent).</u> or</p>		
44.	15.6 (a) (iii) (B) (of the EPA)	<p>(B) if the PPFME or the CLFME occurs after the Commercial Operations Date, the Energy Price multiplied by the Average Daily Energy for the number of Days the Seller was unable to operate the Complex or deliver the Net Delivered Energy less (i) the amount of Energy Payments paid to the Seller by the Purchaser pursuant to Section 15.5 and (ii) [●]% of the Energy Price for the energy not delivered under Section 15.5; further such payments shall be pass-through item in Determined Tariff by NEPRA.</p>	<p>(B) if the PPFME or the CLFME occurs after the Commercial Operations Date, the Energy Price multiplied by the Average Daily Energy for the number of Days the Seller was unable to operate the Complex or deliver the Net Delivered Energy less (i) the amount of Energy Payments paid to the Seller by the Purchaser pursuant to Section 15.5 and (ii) [●]% of the Energy Price for the energy not delivered under Section 15.5;</p> <p><u>Provided however if (i) such payments are disallowed by NEPRA to be claimed by the Purchaser under its Determined Tariff, the Purchaser shall be entitled to set-off such paid amounts</u></p>	<p>Please fill in the missing information in the blanks as we would need visibility on this, as such has been the case in the past EPAs.</p> <p>We understand that such payments would be made upfront, and then NEPRA approval would be sought. Please reflect such understanding. Furthermore, in case of (ii), once the approval by NEPRA is in place, then such amounts should be paid as well.</p>	Refer Amended EPA

			<p><u>against any outstanding invoice issued by the Seller pursuant to Section 9.5 or otherwise recover the same from the Seller in accordance with a reasonably mutually agreed schedule; or (ii) the payment of the Energy Payments is permitted by NEPRA to be claimed by the Purchaser under its Determined Tariff the Purchaser shall pay the Seller withheld pursuant to Section 15.6(a)(iii)(B)(ii), following such approval.</u></p> <p>further such payments shall be pass-through item in Determined Tariff by NEPRA.</p>		
45.	15.6 (i) (of the EPA)	<p>If, following the Commercial Operations Date, there occurs a PPFME or a CLFME that, in either case, does not require the Seller to undertake a Restoration but nonetheless disables the Seller from operating the Complex and delivering Net Delivered Energy (a “Non-Restoration Event”), then the Purchaser shall pay to the Seller for each Month (or portion thereof) of the PE Compensation Period (as defined below), the</p>	<p>If, following the Commercial Operations Date, there occurs a PPFME or a CLFME that, in either case, does not require the Seller to undertake a Restoration but nonetheless disables the Seller from operating the Complex and delivering Net Delivered Energy (a “Non-Restoration Event”), then the Purchaser shall pay to the Seller for each Month (or portion thereof) of the PE Compensation Period (as defined below), the</p>	<p>It appears that the EPA states that such compensations are payable in case such amounts are a pass-through under KE’s own tariff. In this regard, we would first request for KE to confirm whether such amounts are a pass through under KE’s own tariff. If not, would it be approaching NEPRA in this regard. In case NEPRA does not accord (or delays) its approval in relation to</p>	<p>Refer amended EPA</p>

		<p>Energy Price multiplied by the Average Daily Energy for the number of Days during such period less (i) payment on account of [●]%) of the prevailing Energy Price for the energy not delivered under Section 15.5 and (ii) the amount of any Energy Payments paid to the Seller by the Purchaser pursuant to Sections 9.1 and 15.5; provided however any such payment hereunder shall be pass-through item under the Determined Tariff by NEPRA.</p> <p>The term "PE Compensation Period" for purposes of this Section 15.6(i) only, shall have the same meaning as it bears in Section 15.6(a)(iv) except for the reference to the Restoration Period.</p>	<p>Energy Price multiplied by the Average Daily Energy for the number of Days during such period less (i) payment on account of [●]%) of the prevailing Energy Price for the energy not delivered under Section 15.5 and (ii) the amount of any Energy Payments paid to the Seller by the Purchaser pursuant to Sections 9.1 and 15.5.; provided however any such payment hereunder shall be pass-through item under the Determined Tariff by NEPRA.</p> <p>The term "PE Compensation Period" for purposes of this Section 15.6(i) only, shall have the same meaning as it bears in Section 15.6(a)(iv) except for the reference to the Restoration Period.</p> <p><u>Provided however if (i) such payments for the PE Compensation Period as above are disallowed by NEPRA to be claimed by the Purchaser under its Determined Tariff, the Purchaser shall be entitled to set-off such paid amounts</u></p>	<p>the such pass-through items, and we understand that it would be KE that would need to make such an application, it would be inappropriate to park that risk at the end of Seller.</p> <p>Furthermore, if such payments are to be submitted to NEPRA for approval, then why is there a deduction from such compensations?</p> <p>Furthermore, we understand that payments would be first made by K.E, and then, in case disapproved by NEPRA, then there would be adjustment. Kindly reflect the same.</p>	
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			<p><u>against any outstanding invoice issued by the Seller pursuant to Section 9.5 or otherwise recover the same from the Seller in accordance with a reasonable mutually agreed schedule or (ii) the payment of the Energy Payment is permitted by NEPRA to be claimed by the Purchaser under its Consumer End Tariff the Purchaser shall pay to the Seller withheld pursuant to this section 15.6(i), following such approval.</u></p>		
46.	15.6 (k)	<p>Notwithstanding anything herein to the contrary, in the event of:</p> <p>(i) the occurrence of a PPFME and/or CLFME that has a material adverse effect on the Seller’s ability to construct, commission or operate the Complex and such PPFME and/or CLFME continues for a period exceeding one hundred eighty (180) Days, or</p>	<p>Notwithstanding anything herein to the contrary, in the event of:</p> <p>(i) the occurrence of a PPFME and/or CLFME that has a material adverse effect on the Seller’s ability to construct, commission or operate the Complex and such PPFME and/or CLFME continues for a period exceeding one hundred eighty (180) Days, or</p> <p>(ii) a series of such related PPFMEs and/or CLFME that continue</p>	<p>We would suggest that the right to opt for Suspension should be limited to the Seller since it would be best placed to undertake an assessment as to whether it would be able to continue with the Project without compensation. Otherwise, the Seller would be locked in for the FME Suspension Period being fully aware that it would be unable to address the consequences of the same.</p> <p>The other option is that if the Purchaser wants to</p>	<p>The said proposals are not acceptable to KE. Applicant is requested to provide its acceptance to the amended EPA as required under the RFP</p>

		<p>(ii) a series of such related PPFMEs and/or CLFME that continue in the aggregate for a period that exceeds one hundred eighty (180) Days during any year, or</p> <p>(iii) a PPFME or a CLFME following which (A) the Parties agree or the Expert determines that a Restoration is not feasible or the Purchaser decides that the cost of Restoration is not acceptable or (B) the Parties agree that a Restoration is feasible and the Seller fails to secure financing for the Restoration or (C) the Parties</p>	<p>in the aggregate for a period that exceeds one hundred eighty (180) Days during any year, or</p> <p>(iii) a PPFME or a CLFME following which (A) the Parties agree or the Expert determines that a Restoration is not feasible or the Purchaser decides that the cost of Restoration is not acceptable or (B) the Parties agree that a Restoration is feasible and the Seller fails to secure financing for the Restoration or (C) the Parties disagree on the Report, or</p> <p>(iv) a CLFME following which the Complex does not operate for one hundred eighty (180) Days and during such period the Change in Law is not rescinded or modified in a way to permit or avoid the Restoration or allow the Complex to operate as before,</p> <p>either Party <u>the Seller</u> may</p>	<p>continue with the Suspension option, then it should simple takeover the Project at an agreed price.</p> <p>Furthermore, the EPA should also contemplate the possibility that the Seller may continue with the EPA past 180 days without opting for termination or suspension.</p>	
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		<p>disagree on the Report, or</p> <p>(iv) a CLFME following which the Complex does not operate for one hundred eighty (180) Days and during such period the Change in Law is not rescinded or modified in a way to permit or avoid the Restoration or allow the Complex to operate as before,</p> <p>either Party may elect to suspend the operation of this Agreement pursuant to Section 15.6A no later than three (3) Days: (i) prior to the expiry of one hundred and eighty (180) day period provided in Section 15.6(k)(i), (ii) and (iv) hereinabove; or (ii) following the fulfilment of the condition(s) provided in Section 15.6(k)(iii) hereinabove by delivering a written notice to the other Party</p>	<p>elect to suspend the operation of this Agreement pursuant to Section 15.6A no later than three (3) Days at any time following:</p> <p>(i) prior to upon the expiry of one hundred and eighty (180) day period provided in Section 15.6(k)(i), (ii) and (iv) hereinabove; or (ii) following the fulfilment of the condition(s) provided in Section 15.6(k)(iii) hereinabove by delivering a written notice to the other Party Purchaser (the “FME Suspension Notice”). If both the Parties fail to deliver the Seller does not issue the FME Suspension Notice within the period set out herein, then the Seller either Party shall have the option to terminate this Agreement immediately by delivering a written notice of such termination to the other Party Purchaser.</p> <p>Notwithstanding the Parties’ Seller’s right to suspend or terminate this Agreement pursuant to this Article 15, no payments shall be due from the Purchaser to the Seller under Section 15.6 (a) (iii) or</p>		
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		(the “ FME Suspension Notice ”). If both the Parties fail to deliver the FME Suspension Notice within the period set out herein, then either Party shall have the option to terminate this Agreement immediately by delivering a written notice of such termination to the other Party. Notwithstanding the Parties’ right to suspend or terminate this Agreement pursuant to this Article 15, no payments shall be due from the Purchaser to the Seller following the expiry of the one hundred and eighty (180) Days as provided in this Section 15.6(k) on account of a PPFME/CLFME.	15.6 (i) following the expiry of the one hundred and eighty (180) Days as provided in this Section 15.6(k) on account of a PPFME/CLFME.		
47.	15.6A (n) + 15.6A (o) (of the EPA)	(n) If either Party elects to suspend the operation of this Agreement by issuance of the FME Suspension Notice pursuant to section 15.6(k), such suspension shall take effect from the date of the FME Suspension Notice and continue until the earlier to occur of the following: (i) expiry of the period, as set out in the FME Suspension Notice; or (ii) the earlier withdrawal by either Party of	(n) (a) If either Party the Seller elects to suspend the operation of this Agreement by issuance of the FME Suspension Notice pursuant to section 15.6(k), such suspension shall take effect from the date of the FME Suspension Notice and continue until the earlier to occur of the following: (i) expiry of the period, as set out in the FME Suspension Notice; or (ii) the earlier	We would suggest the right to opt for suspension should be limited to the Seller since it would be best placed to undertake an assessment as to whether it would be able to continue with the Project without compensation. Otherwise, the Seller would be locked in for the FME Suspension Period being fully aware that it is	Refer Amended EPA

		<p>the FME Suspension Notice in accordance with Section 15.6A(c) below; or (iii) the earlier cessation of the PPFME or CLFME, as the case may be (the “FME Suspension Period”). The Parties agree that the aggregate of the FME Suspension Period shall not exceed five (5) years during the Term (the “Total FME Suspension Period”) and either Party may issue as many FME Suspension Notice(s) as it deems appropriate during the Term. For avoidance of doubt, following the expiry of the Total FME Suspension Period, either Party shall have the option to terminate this Agreement immediately by delivering written notice of such termination to the other Party.</p> <p>(⊕) During the FME Suspension Period, all obligations under the Agreement for both the Parties, including, inter alia, the Seller to supply energy and Purchaser’s obligation to make any payments during the pendency of PPFME or</p>	<p>withdrawal by either Party <u>the Seller</u> of the FME Suspension Notice in accordance with Section 15.6A(c) below; or (iii) the earlier cessation of the PPFME or CLFME, as the case may be (the “FME Suspension Period”). The Parties agree that the aggregate of the FME Suspension Period shall not exceed five (5) years during the Term (the “Total FME Suspension Period”) and either Party <u>the Seller</u> may issue as many FME Suspension Notice(s) as it deems appropriate during the Term. For avoidance of doubt, following the expiry of the Total FME Suspension Period, either Party shall have the option to terminate this Agreement immediately by delivering written notice of such termination to the other Party.</p> <p>(⊕) (b) During the FME Suspension Period, all obligations under the Agreement for both the Parties, including, inter alia, the Seller to supply energy and Purchaser’s obligation to</p>	<p>unable to address the consequences of the same.</p> <p>The other option is that if the Purchaser wants to continue with the suspension option, then it can simply take-over the Project at an agreed price.</p>	
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		CLFME shall be suspended with immediate effect and shall remain suspended until the Seller withdraws the FME Suspension Notice.	make any payments during the pendency of PPFME or CLFME shall be suspended with immediate effect and shall remain suspended until the Seller withdraws the FME Suspension Notice <u>provided, however, it is hereby clarified that this Section shall not apply in respect of any accrued obligation prior to such suspension.</u>		
48.	15.8 (d) (of the EPA)	The Seller shall (unless this Agreement has been terminated by the Purchaser pursuant to Sections 15.6(e), 15.8(a) or 15.9), be entitled to receive a Supplemental Tariff such that it will recover from the Purchaser, the costs actually incurred in effecting the Restoration, including, without limitation, weighted average cost of capital not exceeding KIBOR plus three percent (3%) determined at the time the Complex returns to operation or, if the Complex did not cease operation, at the time the Restoration is completed by the Seller but subject in all respect to the terms and conditions of NEPRA's approval under the			The said proposals are not acceptable to KE. Applicant is requested to provide its acceptance to the amended EPA as required under the RFP

		<p>Supplemental Tariff. The costs to be recovered by the Seller pursuant to this Section 15.8 and Section 15.9 shall be the costs that are actually incurred by the Seller to effect the Restoration to the extent those costs exceed any insurance proceeds; <u>provided, however,</u> that each such item of cost shall have been reasonable and appropriate for the Seller to effect such Restoration consistent with the standards for the original construction and the applicable Laws of Pakistan Prudent Utility Practices and low cost Restoration methods, as the case may be. The Seller shall deliver a schedule of such costs to the Purchaser, together with copies of the invoices, for review by the Purchaser. If the Purchaser contests any item of cost on the basis of the foregoing standards and the Purchaser and the Seller cannot agree, the issue of whether such item of cost should be recovered under this Agreement shall be referred to an Expert pursuant to Section 15.7(c) to render a decision based on the</p>			
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		foregoing standards.			
49.	15.10 (of the EPA)	Subject to the Parties entitlement to issue a FME Suspension Notice pursuant to Section 15.6(k), a Party shall exercise any right to terminate this Agreement under this Article XV by delivering a notice of termination to the other Party in accordance with Section 19.1. Any such notice from the Purchaser shall be executed by a duly authorized representative of the Purchaser. Such notice shall identify, if applicable, the PPFME or CLFME (as applicable) in reasonable detail and the basis for termination. Termination of this Agreement shall be effective at 17:00 hours on the thirtieth (30th) Day following the date of delivery of such notice.	Subject to the Parties Seller's entitlement to issue a FME Suspension Notice pursuant to Section 15.6(k), a Party shall exercise any right to terminate this Agreement under this Article XV by delivering a notice of termination to the other Party in accordance with Section 19.1. Any such notice from the Purchaser shall be executed by a duly authorized representative of the Purchaser. Such notice shall identify, if applicable, the PPFME or CLFME (as applicable) in reasonable detail and the basis for termination. Termination of this Agreement shall be effective at 17:00 hours on the thirtieth (30th) Day following the date of delivery of such notice.		The said proposals are not acceptable to KE. Applicant is requested to provide its acceptance to the amended EPA as required under the RFP
50.	16.1 (a) (ii) (of the EPA)	(a) The Seller's failure: (ii) to achieve the Commercial Operations Date not earlier than one hundred eighty (180) Days after the Required Commercial Operations Date;	(a) The Seller's failure: (ii) to achieve the Commercial Operations Date not earlier than one hundred eighty (180) <u>three hundred sixty-five (365)</u> Days after the Required Commercial Operations Date;	The required COD is within 10 months + 180 days before it becomes a Seller Event of Default, we understand usually there is 365 days' buffer. We request KE to confirm whether past precedent will be followed and if not,	The said proposals are not acceptable to KE. Applicant is requested to provide its acceptance to the amended EPA as required under the

				the reasoning behind such a change.	RFP
51.	16.1 (m) (of the EPA)	Reduction of the Contract Capacity on the Commercial Operations Date by an amount which exceeds in aggregate five percent (5%) of the Contract Capacity specified in Section 2.9(a).	Reduction of the Contract Capacity on the Commercial Operations Date by an amount which exceeds in aggregate five percent (5%) <u>ten percent (10%)</u> of the Contract Capacity specified in Section 2.9(a).		The said proposals are not acceptable to KE. Applicant is requested to provide its acceptance to the amended EPA as required under the RFP
52.	16.2 (b) (of the EPA)	The Purchaser's failure to pay any undisputed (or following the resolution of such dispute in favour of the Seller) amount due from it under the provisions of Section 9.4 of this Agreement by the Due and Payable Date for the relevant invoice or to make any other payment when required to be made under the Agreement, that, in each case, is not remedied within sixty (60) Days following the Seller's notice to the Purchaser stating that a payment default has occurred and is continuing, and describing such payment default in reasonable detail.	The Purchaser's failure to pay any undisputed (or following the resolution of such dispute in favour of the Seller) amount due from it under the provisions of Section 9.4 of this Agreement by the Due and Payable Date for the relevant invoice or to make any other payment when required to be made under the Agreement, that, in each case, is not remedied within sixty (60) Days <u>thirty (30) Days</u> following the Seller's notice to the Purchaser stating that a payment default has occurred and is continuing, and describing such payment default in reasonable detail.	Kindly note that failure to comply with payment obligations would have a key impact on the Project. Therefore, given the various risks highlighted, we suggest a time period of 30 days.	The said proposals are not acceptable to KE. Applicant is requested to provide its acceptance to the amended EPA as required under the RFP
53.	16.2 (f) (of the EPA)	The Purchaser fails to enter into the Escrow Agreement in accordance with Section 9.8(a); or the Escrow	The Purchaser fails to enter into the Escrow Agreement in accordance with Section 9.8(a); or the Escrow	In case of provision of an alternate Escrow arrangement, we suggest a time period of 7 days.	Refer Amended EPA

		Agreement is terminated prior to the expiry or termination of this Agreement, and the Purchaser fails to provide an alternate escrow arrangement in accordance with Section 9.8 within [●] Days of such termination or expiry or termination of the Escrow Agreement,	Agreement is terminated prior to the expiry or termination of this Agreement, and the Purchaser fails to provide an alternate escrow arrangement in accordance with Section 9.8 within [●] 7 Days of such termination or expiry or termination of the Escrow Agreement,		
54.	16.2 (g) (of the EPA)	Breach of any material term of the Escrow Agreement which is attributable to the Purchaser and such breach continues for a period of [●] consecutive Days.	Breach of any material term of the Escrow Agreement which is attributable to the Purchaser and such breach continues for a period of [●] thirty (30) consecutive Days.		Refer amended EPA
55.	16.2 (h) (of the EPA)	The failure by the Purchaser to complete and commission the Purchaser Interconnection Facilities within [●] Days following the Required Commercial Operations Date, provided any extension of RCOD shall only be pursuant to a Force Majeure Event and/or Section 6.5.	The failure by the Purchaser to complete and commission the Purchaser Interconnection Facilities within [●] thirty (30) Days following the Required Commercial Operations Date, provided any extension of RCOD shall only be pursuant to a Force Majeure Event and/or Section 6.5.		Refer amended EPA
56.	16.2 (j) (of the EPA)	N/A	<u>Any Change in Law rendering any material undertaking or obligation of the Purchaser under this Agreement or the Escrow Agreement unenforceable, invalid or void or making it unlawful for the Seller to receive payment or</u>		The said proposals are not acceptable to KE. Applicant is requested to provide its acceptance to the amended EPA as

			<u>perform its obligations for more than one hundred and eighty (180) Days.</u>		required under the RFP
57.	16.3(b)(i)	(b) The following cure periods (each a “ Cure Period ”) shall apply: (i) In the case of a Seller Event of Default arising under Section 16.1(c)(i) or a Purchaser Event of Default arising under Section 16.2(b) and (g), the Cure Period shall be sixty (60) Days;	(b) The following cure periods (each a “ Cure Period ”) shall apply: (i) In the case of a Seller Event of Default arising under Section 16.1(c)(i) or a Purchaser Event of Default arising under Section 16.2(b) and (g), the Cure Period shall be sixty (60) <u>forty-five (45)</u> Days;	We suggest the cure period in line with the Precedent KE EPA.	Refer Amended EPA
58.	16.3A (b) (of the EPA)	If there is a Seller Event of Default as set out in Section 16.1(a)(iv), Section 16.1(e) or Section 16.1(i), which is not cured within the time period provided in Section 16.3 or there is a Seller Other Default which is not cured within the period provided in Section 16.3A(a), the Purchaser may elect to suspend the operation of this Agreement by delivering a written notice to the Seller (the “ Purchaser Suspension Notice ”) but shall not be entitled to terminate this Agreement. If the Purchaser elects to suspend		During a suspension period, KE shall not be entitled to terminate the Escrow Agreement.	We understand no such termination clause is part of EPA currently. However, In case of suspension due to Seller EoD. The Payment security would become available after default is cured because KE cannot lock its cash streams if the Seller is on default.

		<p>the operation of this Agreement by issuance of the Purchaser Suspension Notice, such suspension shall take effect from the date of the Purchaser Suspension Notice and continue until the earlier to occur of the following: (i) fourteen (14) Days of the notice from the Seller to the Purchaser that it has cured such default; or (ii) withdrawal by the Purchaser of the Purchaser Suspension Notice (the “Purchaser Suspension Period”). The Parties agree that the aggregate of the</p>		<p>Furthermore, during the suspension period, whilst the right to ‘dip in’ the Payment Security may be suspended, however, the obligation to maintain the Payment Security should continue as is.</p>	
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		<p>Purchaser Suspension Period shall not exceed five (5) years during the Term (the “Purchaser Total Suspension Period”) and the Purchaser may issue as many Purchaser Suspension Notice(s) as the circumstances permit during the Term.</p>		<p>Following termination, the Seller should have the option to provide energy to third parties, however, the framework for that should be, to the extent possible, upfront agreed.</p>	<p>Refer amended EPA.</p>
<p>59.</p>	<p>16.3A (c) (of the EPA)</p>	<p>During any Purchaser Suspension Period, all obligations under the Agreement for both the Parties, including, inter alia, the Purchaser’s obligation to make any payments or provide the Payment Security and the Seller’s obligation to supply and deliver energy and its entitlement to receive any payments or Payment Security shall be suspended with immediate effect and shall remain suspended until the end of the Purchaser Suspension</p>	<p>During any Purchaser Suspension Period, all obligations under the Agreement for both the Parties, including, inter alia but excluding, the Purchaser’s obligation to make any accrued payments prior to commencement of the Purchaser Suspension Period or provide the Payment Security and the Seller’s obligation to supply and deliver energy and its entitlement to receive any payments (except as</p>	<p>Please note that in case of a Purchaser Suspension Period, whilst we can understand that there may be a suspension in relation to a dip in right in the Escrow Account, however, given that the Energy Purchase Agreement contemplates a cure and termination of the Purchaser Suspension Period, from a payment security perspective, KE cannot have the right to withdraw the entire escrow</p>	<p>The said proposals are not acceptable to KE. Applicant is requested to provide its acceptance to the amended EPA as required under the RFP</p>

		Period.	<u>otherwise provided above</u>) or Payment Security shall be suspended with immediate effect and shall remain suspended until the end of the Purchaser Suspension Period.	arrangement.	
60.	16.3A (e) (of the EPA)	If the Purchaser elects not to suspend this Agreement pursuant to Section 16.3A(b), the Purchaser shall be required to pay only for the Net Delivered Energy supplied by the Seller in accordance with this Agreement provided that [●]% of the prevailing Energy Price shall not be payable until such time that the Seller Event of Default is cured.		Please provide the missing information in the blanks. It would be important to highlight prior to Bid submission as how such blanks would operate given the structure of the tariff.	Refer amended EPA
61.	16.3A (g) (of the EPA)	N/A	<u>If any Seller Event(s) of Default occurs following which the Purchaser elects to suspend the operation of this Agreement pursuant to Section 16.3A (b), then the Escrow Agreement shall stand suspended by the issuance of relevant instructions to the Escrow Agent by the Purchaser. If the Seller cures the Seller Event(s) of Default to the satisfaction of the Purchaser, the Purchaser shall within fourteen (14) Days of the</u>	Please see the proposed provision in relation to our comment with regards to Section 16.3A (c) above. The proposed provision is in line with Precedent K.E EPA.	KE understands since the suspension is not in place as the Seller has cured its default then Escrow will be available therefore such addition is not required.

			<u>cessation of the relevant Seller Event of Default issue a notice to the Escrow Agent requesting a resumption of the Escrow Agreement.</u>		
62.	16.3B (a) (of the EPA)	If there is a Purchaser Event of Default as set out in Section 16.2(f) and 16.2(h) (the "Purchaser Major Default") and the same is not cured within the time period provided in Section 16.3, the Seller may cease the supply and delivery of the Net Delivered Energy by delivering a written notice to the Purchaser (the "Purchaser Major Default Notice"), but the Purchaser shall continue to be liable to pay and the Seller shall continue to be entitled to receive hundred percent (100%) of the Energy	If there is a Purchaser Event of Default as set out in Section <u>16.2 (a), 16.2 (b), 16.2 (c), 16.2(f), 16.2(g), and 16.2(h) and 16.2(i)</u> (the "Purchaser Major Default") and the same is not cured within the time period provided in Section 16.3, the Seller may <u>(i) elect to terminate the Agreement in accordance with Section 16.4 or (ii)</u> cease the supply and delivery of the Net Delivered Energy by delivering a written notice to the Purchaser (the "Purchaser Major Default Notice"), but the Purchaser	The Term shall be extended by such time period, however the tariff shall be limited to O&M and insurance component. Please note that if the EPA is terminated due to the Purchaser Event of Default, then the Seller shall not further rights to claim against KE. It would have been expected that Purchaser Major Default should include Purchase Event of Default relating to breach of payment security agreement as well as failure to make payment under the EPA.	Refer Amended EPA.

		<p>Payment multiplied by the Average Daily Energy for each Day during the period of such suspension (the “Undisputed Payment Obligation”). If the Seller elects to stop the supply and delivery of the Net Delivered Energy from the date of the Purchaser Major Default Notice, the same shall continue until the earlier to occur of the following: (i) the date the Purchaser pays all due payments to the Seller under this Agreement; or (ii) the earlier withdrawal by the Seller of the Purchaser Major Default Notice (the ”Purchaser Major Default Period”). The Parties agree that the aggregate of the Purchaser Major Default Period shall not exceed three (3) years during the Term (”Total Major Default Period”) and the Seller may</p>	<p>shall continue to be liable to pay and the Seller shall continue to be entitled to receive hundred percent (100%) of the Energy Payment Price multiplied by the Average Daily Energy (as the Energy Payment) for each Day during the period of such suspension (the “Undisputed Payment Obligation”). If the Seller elects to stop the supply and delivery of the Net Delivered Energy from the date of the Purchaser Major Default Notice, the same shall continue until the earlier to occur of the following: (i) three (3) days from the date the Purchaser pays all due payments to the Seller under this Agreement; or (ii) the earlier withdrawal by the Seller of the Purchaser Major Default Notice (the ”Purchaser Major Default Period”). The Parties agree</p>	<p>Typically, in case of purpose-built project, if there is a termination due to the off-taker’s default, there is usually a buy-out obligation on part of the off taker. Given that this is squarely a default by KE, therefore, the buy-out obligation (along with necessary compensation payments) should kick in.</p>	<p>The said proposals are not acceptable to KE. Applicant is requested to provide its acceptance to the amended EPA as required under the RFP</p>
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		<p>issue as many Purchaser Major Default Notice(s) as the circumstances permit during the Term. Provided however in the event the Purchaser Major Default Period continues beyond the Total Major Default Period, either Party may terminate this Agreement pursuant to Section 16.4. The Agreement may only be terminated during the Purchaser Major Default Period by mutual consent by both the Parties.</p>	<p>that the aggregate of the Purchaser Major Default Period shall not exceed three (3) years during the Term ("Total Major Default Period") and the Seller may issue as many Purchaser Major Default Notice(s) as the circumstances permit during the Term. Provided however in the event the Purchaser Major Default Period continues beyond the Total Major Default Period, either Party may terminate this Agreement pursuant to Section 16.4. The Agreement may only be terminated during the Purchaser Major Default Period by mutual consent by both the Parties.</p>	<p>In case of a Purchaser Event of Default, the Seller should have the option to walk away and terminate the EPA during the Purchaser Major Default Period especially where such period has commenced due to default relating to the Escrow Agreement.</p>	<p>The said proposals are not acceptable to KE. Applicant is requested to provide its acceptance to the amended EPA as required under the RFP</p>
63.	16.3B (b) (of the EPA)	<p>If the Purchaser has paid the Undisputed Payment Obligation, then the Term shall be extended for a period equal to the Purchaser Major Default Period and the Purchaser shall be entitled to</p>	<p>If the Purchaser has paid the Undisputed Payment Obligation, then the Term shall be extended for a period equal to the Purchaser Major Default Period and the Purchaser shall be entitled to</p>	<p>Furthermore, the extension of the Term is entirely due to the Purchaser Event of Default, therefore, in such a case, the Seller should be entitled to Return on Equity</p>	<p>Since ROE will already be part of Suspension payment in case of Purchaser Major EoD therefore no ROE</p>

		receive an equivalent number of kWh, during such extended period, provided the Purchaser pays to the Seller the [●%] of the Energy Price on account of O&M and insurance costs, in accordance with the provisions of Schedule 1, for the Net Delivered Energy delivered by the Seller to the Purchaser. For avoidance of doubt, no additional payment shall be due and payable by the Purchaser for such Net Delivered Energy other than as provided in this Section 16.3B(b).	receive an equivalent number of kWh, during such extended period, provided the Purchaser pays to the Seller the [●%] of the Energy Price on account of O&M and insurance costs , in accordance with the provisions of Schedule 1, for the Net Delivered Energy delivered by the Seller to the Purchaser. For avoidance of doubt, no additional payment shall be due and payable by the Purchaser for such Net Delivered Energy other than as provided in this Section 16.3B(b).		in extension period.
64.	16.3B (c) (of the EPA)	If there is a Purchaser Event of Default other than the Purchaser Major Default and Purchaser Event of Default set out in Section 16.2(c) (the “ Purchaser Other Default ”) and the same is not cured within the time period provided under this Agreement, the Seller shall deliver a written notice to the Purchaser within seven (7) Days of the expiry of the cure period as provided in Section 16.3, to cure such Purchaser Other Default by providing to the Purchaser a further period(s) not exceeding three	If there is a Purchaser Event of Default other than the Purchaser Major Default and Purchaser Event of Default set out in Section 16.2(c) (the “ Purchaser Other Default ”) and the same is not cured within the time period provided under this Agreement, the Seller shall deliver a written notice to the Purchaser within seven (7) Days of the expiry of the cure period as provided in Section 16.3, to cure such Purchaser Other Default by providing to the Purchaser a further period(s) not exceeding three	The Seller should have the option to terminate the Agreement in such a case and not simply go for suspension of the Agreement.	The said proposals are not acceptable to KE. Applicant is requested to provide its acceptance to the amended EPA as required under the RFP

		hundred and sixty five (365) Days to cure the Purchaser Other Default (“ Additional Cure Period ”). Following the expiry of the Additional Cure Period the Seller may elect to suspend the operation of this Agreement (“ Seller Other Suspension Notice ”).	hundred and sixty five (365) Days to cure the Purchaser Other Default (“ Additional Cure Period ”). Following the expiry of the Additional Cure Period the Seller may <u>(i) elect to suspend the operation of this Agreement (“Seller Other Suspension Notice”) or (ii) elect to terminate the Agreement in accordance with Section 16.4.</u>		
65.	16.3B (f)	During any Seller Suspension Period, the Seller shall not be entitled to terminate this Agreement on account of the Purchaser Other Default; provided however in the event the Purchaser Other Default continues beyond the Seller Total Suspension Period, either Party may terminate this Agreement pursuant to Sections 16.4.	During any Seller Suspension Period, <u>only</u> the Seller shall not be entitled to terminate this Agreement on account of the Purchaser Other Default; provided however in the event the Purchaser Other Default continues beyond the Seller Total Suspension Period, either Party may terminate this Agreement pursuant to Sections 16.4.	As suggested above, please note that the Seller should have the right to terminate in case of a suspension scenario. Please also note that this is in line with the Precedent KE EPA.	The said proposals are not acceptable to KE. Applicant is requested to provide its acceptance to the amended EPA as required under the RFP
66.	16.3B (i)	N/A	<u>In the event the Seller terminate this Agreement in accordance with this Agreement due to a Purchase Event of Default, the Seller may elect to the transfer the Complex to the Purchaser and, in such an event, the Complex shall be transferred to the Purchaser and the Purchaser</u>	We suggest that the Compensation Payments should include the following: <ul style="list-style-type: none"> The sum of: <ul style="list-style-type: none"> (i) All outstanding payments under the Financing 	The said proposals are not acceptable to KE. Applicant is requested to provide its acceptance to the amended EPA as required under the RFP

			<p><u>shall simultaneously pay the Compensation Amount. As soon as reasonably practicable and in any event not later than sixty (60) Days after the Termination Date, the Seller shall invoice to the Purchaser setting out the amounts payable by the Purchaser as Compensation Payments (“Termination Invoice”). The Termination Invoice would be accompanied by a certification of a reputable international accountancy firm operating in Pakistan, agreed by the Parties or appointed by the President of the Institute of Chartered Accountants of Pakistan, experienced in the methods of valuation of utility assets, verifying the calculation of all of the elements listed in the Termination Invoice in reasonable details, which calculation shall be used in the preparation of the Termination Invoice. The Purchaser shall pay to the Seller the amount shown in the Termination Invoice not later than thirty (30) days</u></p>	<p>Documents including any winding-up costs, breakage costs, pre-payment penalties and charges, or similar charges or cost pass through by or payable to Lenders in accordance with the Finance Documents;</p> <p>(ii) The total amount outstanding under any loan agreements for capital improvements to, or Restoration of the Complex that are required as a result of Change in Law Force Majeure Event or Pakistan</p>	
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			<p><u>following the delivery of the Termination Invoice to the Purchaser (“Payment Date”). If any Tax is imposed on or withheld from payments from the Purchaser under this Section, then such payments to the Seller shall be increased by an amount such that the Seller shall receive same amount which it would had no such Tax been imposed or withheld. The Parties agree that the termination amount provided herein are the Seller’s reasonable and pre-agreed genuine estimates of the actual losses that the Seller would incur as a result of termination of this Agreement, and do not constitute a penalty. Following payment of the amounts set out in the Termination Invoice, the Seller shall transfer to the Purchaser the Transferrable Assets.</u></p>	<p>Political Force Majeure Event under the Energy Purchase Agreement;</p> <ul style="list-style-type: none"> • The actual initial equity investment by the Seller to achieve Commercial Operations Date as reduced on a straight line basis from the Commercial Operations Date through the term of the EPA to 20% of value of such equity; • For a period, equal to the lesser of (i) four (4) years, and (ii) the remainder of the initial term of the EPA, an amount equal to: <ul style="list-style-type: none"> (A) Prior to the first anniversary of the Commercial Operations Date, a return based on 30% of the Energy Price assuming Average Daily 	
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				<p>Energy multiplied by the number of Days in such period or,</p> <p>(B) Following the first anniversary of the Commercial Operations Date, the Net Cash Flow for such period, as shown in audited financial statements of the Seller for the last completed financial year prior to the date of termination, discounted to its present value by applying a discount rate equal to 12%. The term Net Cash Flow shall mean the gross cash revenues of the Seller with respect to the operations of the Complex;</p> <ul style="list-style-type: none"> Any additional equity amounts that are contributed by the 	
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				<p>shareholders of the Seller for any of the events described under Article 15 of the EPA plus any such other equity contributions, approved by either NEPRA or the Purchaser, as the case may be, in each case reduced on a straight line basis for each year following the date of such equity contribution to the end of the Term;</p> <ul style="list-style-type: none"> • The summation of (i) any additional equity amounts, that are contributed by the shareholders of the Seller for any of the events that are described under Article XV of the Energy Purchase Agreement consequent upon the occurrence of a Force Majeure Event (as defined in the Energy Purchase Agreement) giving rise to the Restoration which led to termination of the 	
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				<p>Energy Purchase Agreement pursuant to Article XV thereof, reduced on a straight-line basis for each year following the date of such equity contribution to the end of the Term, <u>plus</u> (ii) original equity contributions, adjusted in the manner described in item (b) here above, plus other equity contributions, prior to such Force Majeure Event and approved by the NEPRA or the Purchaser, as the case may be, reduced on a straight-line basis for each year following the date of such equity contribution to the end of the Term.</p>	
67.	16.8 (c) (of the EPA)	Notwithstanding the foregoing or any other provision of this Agreement, the Parties agree that, in the event the Seller terminates this Agreement as a result of a Purchaser Event of Default under this Agreement, then upon termination of this Agreement, any claims by the	<p>Notwithstanding the foregoing or any other provision of this Agreement, The Parties agree that, in the event the Seller terminates this Agreement as a result of a Purchaser Event of Default under this Agreement, then upon termination of this</p>	The Purchaser's obligation in case of a Purchaser Event of Default should not be limited if the Purchaser's Event of Default has been caused by its gross negligence or willful misconduct.	The said proposals are not acceptable to KE. Applicant is requested to provide its acceptance to the amended EPA as required under the RFP

		<p>Seller against or liability of the Purchaser under this Agreement (except as provided in Section 16.6) shall be fully extinguished and the Seller shall have no further claim or recourse against the Purchaser under this Agreement.</p>	<p>Agreement, any claims by the Seller against or liability of the Purchaser under this Agreement (except as provided in Section 16.6) shall be fully extinguished and the Seller shall have no further claim or recourse against the Purchaser under this Agreement, <u>provided, however, this provision shall not apply in case of gross negligence or willful default of the Purchaser.</u></p>		
68.	16.8 (d) (of the EPA)	N/A	<p><u>Notwithstanding the foregoing or any other provision of this Agreement, the Parties agree that, in the event the Purchaser terminates this Agreement as a result of a Seller Event of Default under this Agreement, then upon termination of this Agreement, any claims by the Purchaser against or liability of the Seller under this Agreement (except as provided in Section 16.6) shall be fully extinguished and the Purchaser shall have no further claim or recourse against the Seller under this Agreement.</u></p>	<p>Similar protection that is available to the Purchaser should be available to the Seller as well in such a case.</p>	<p>The said proposals are not acceptable to KE. Applicant is requested to provide its acceptance to the amended EPA as required under the RFP</p>

<p>69.</p>	<p>16.8 (d) (of the EPA)</p>			<p>Typically, in case of purpose-built project, if there is a termination due to the off taker's default, there is usually a buy-out obligation on part of the off taker. Given that this is squarely a default by KE, therefore, the buy-out obligation (along with necessary compensation payments) should kick in.</p>	<p>The said proposals are not acceptable to KE. Applicant is requested to provide its acceptance to the amended EPA as required under the RFP</p>
<p>70.</p>	<p>17.3 (of the EPA)</p>	<p>If this Agreement is terminated during the Term, the Seller may sell the Net Delivered Energy to any prospective purchaser in accordance with the Laws of Pakistan.</p>	<p><u>(a) If this Agreement is terminated or suspended during the Term, or the Agreement has otherwise expired, the Seller may shall have the right to sell the Net Delivered Energy to any prospective purchaser in accordance with the Laws of Pakistan.</u></p> <p><u>(b) The Purchaser hereby represents and warrants that:</u></p> <p><u>(i) the Seller shall be entitled to enter into the Use of System</u></p>	<p>In case of termination, the Seller should have the right to sell Net Delivered Energy to third parties.</p>	<p>Refer Amended EPA</p>

			<p><u>Agreement with the Purchaser and supply energy to consumers in accordance with the applicable law; and</u></p> <p><u>(ii) the Purchaser has provided to the Seller the Use of System Agreement proposed by NEPRA, as well as the comments proposed by the Purchaser in relation to the Use of System Agreement.</u></p> <p><u>(c) Upon termination or expiry or suspension of the Agreement, the Purchaser shall, within fifteen (15) days of request by the Seller, enter into the Use of System Agreement approved by NEPRA (and in case the NEPRA has not</u></p>		
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			<p><u>approved a Use of System Agreement based on the Purchaser's comments, then the Use of System Agreement proposed by NEPRA and provided to the Seller in terms of Section 17.3(b)(ii).</u></p> <p><u>(d) The Purchaser should, on a best effort basis, provide all facilitation to the Seller for the Seller to be able to produce energy to its customers</u></p> <p><u>(e) Time is the essence of this Section 17.3 of this Agreement.</u></p> <p><u>(f) In case of sale of Net Delivered Energy by the Seller to a bulk power consumer (as specified in the National Electric Power Regulation Authority Act, 1997), the Purchaser hereby acknowledges that it would be deemed to</u></p>		
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			<p><u>have received any advance notice required to be received by it under the applicable law (including, but not limited to, Section 22 of the National Electric Power Regulation Authority Act, 1997), and Seller shall be entitled to sell energy to such bulk power consumer immediately following termination or expiry or suspension of the Agreement.</u></p> <p><u>(g) This Section 17.3 of this Agreement shall survive any termination or expiry or suspension of this Agreement.</u></p> <p><u>(h) Section 17.3 of this Agreement shall continue to be applicable notwithstanding any other provision of this Agreement.</u></p> <p><u>The Parties shall enter into a</u></p>		
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			<u>Use of Systems Agreement as a pre- condition to Financial Closing, which Use of System Agreement shall become automatically effective upon notice by the Seller.</u>		
71.	18.2 (o) (of the EPA)	Subject to Section 18.2(i) either Party may serve a written notice on the other Party within thirty (30) Days of the Expert’s determination having been notified to it, stating its intention to refer the matter in Dispute to arbitration.	Subject to Section 18.2(i) either Party may serve a written notice on the other Party within thirty (30) Days of the Expert’s determination having been notified to it, stating its intention to refer the matter in Dispute to arbitration, <u>provided that the notifying Party implements fully the determination of the Expert before commencing the procedure to refer the Dispute to arbitration and commences the procedure to refer the Dispute to arbitration within a further forty-five (45) Day period after serving such notice. Notwithstanding anything to the contrary expressed in this Article XVIII, either Party may require arbitration of a Dispute pursuant to Section 18.3 without reference to an Expert under this Section 18.2.</u>	In line with Precedent K.E EPA, we suggest that if there has been an Expert determination, then, if a party is challenging the same through arbitration, then, in such a case, the amount determined by the Expert should be paid upfront.	The said proposals are not acceptable to KE. Applicant is requested to provide its acceptance to the amended EPA as required under the RFP
72.	18.3 (a) (of the EPA)	Any Dispute that has not been resolved following the procedures set forth in Section	Any Dispute that has not been resolved following the procedures set forth in Section	Only a single forum should be applicable in case of Arbitration. Given	Refer amended EPA

		<p>18.1 (<i>Resolution by Parties</i>) and Section 18.2 (<i>Determination by Expert</i>), or has been required by a Party to be referred to arbitration without reference to an Expert, shall be settled by arbitration in accordance with the [Arbitration Act of 1940/rules of arbitration of the London Court of International Arbitration (“LCIA”) as may be amended from time to time (the “Rules)”). The arbitral tribunal shall comprise of one (1) arbitrator.</p>	<p>18.1 (<i>Resolution by Parties</i>) and Section 18.2 (<i>Determination by Expert</i>), or has been required by a Party to be referred to arbitration without reference to an Expert, shall be settled by arbitration in accordance with the [Arbitration Act of 1940/ rules of arbitration of the London Court of International Arbitration (“LCIA”) as may be amended from time to time (the “Rules)”). The arbitral tribunal shall comprise of one (1) arbitrator.</p>	<p>that there would be international Lenders in this case, we suggest it should be LCIA.</p>	
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