

№	Question	Answer
1.	Please confirm the rationale for the extension of the definition of “Airport Contracts” to include “as well as any future contracts with Third Parties except for any Construction Contracts”. The use of a single definition to deal with Airport Contracts which are Transferring Contracts or not Transferring Contracts and Airport Contracts entered into by the Concessionaire from the Concession Commencement Date is unclear in the context of Articles 2.9 and 3.8.	We consider the existing definition of Airport Contracts, as read in the context of the entire draft Concessions Agreement, clear. Nevertheless, we will further review and clarify if needed.
2.	Please explain the rationale for including the word "also" in the definition of “Airport Operator”. Presumably there is only 1 Airport Operator and that is either the Concessionaire or an Airport Operator Third Party.	For the sake of clarity: according to the Civil Aviation Act (and not presumed), the Airport can have only one Airport Operator and the word “also” cannot change the legal provision. Nevertheless, the word "also" will be deleted.
3.	Please confirm that it is intended that the definition of Airport Services excludes the Works/Construction Works and any other type of activities relating to the Investment Programme.	The definition of Airport Services concerns the services provided by the Concessionaire at the Airport as indicated in the definition. Of course, for the provision of these services at the necessary level and with the necessary quality, as stipulated in the draft Concession Agreement, the Concessionaire will have to carry out the necessary activities in accordance with the Investment Program.
4.	In the definition of “Direct Agreement”, please confirm whether or not it is necessary to have the words “without adversely affecting the Grantor’s rights and obligations deriving from this Agreement”. By its very nature the Direct Agreement will adversely affect the rights and obligations of the Grantor as it will suspend the Grantor's right to effect a termination of the Concession Agreement. Reference should also be made to the form of the Direct Agreement appended to the Concession Agreement as Appendix 13. Please confirm when a form of the Direct Agreement will be provided to bidders for review.	To the extent something is permitted under the Direct Agreement, this will not be considered as materially adversely affecting the Grantor's rights and obligations. The form of the Direct Agreement is provided as Appendix 13 to the draft Concession Agreement as from the start of the Procedure.
5.	In relation to the definition of Force Majeure Event, please can you provide a definition of "Delays"?	We do not deem that a specific definition needs to be considered.
6.	Please explain the use of the term “Future Material Works” as it does not seem to be used in the Concession Agreement.	This issue will be reviewed and the text will be amended if necessary.
7.	Please explain the rationale for the reference to "First Ranking Bidder" in the definition of “Mandatory Capital Expenditure” (especially as it is already used in the definition of Offer)? In	As per the answers published on 12 Sept, the First Ranking Bidder may be a consortium which could incorporate a Project Company which will effectively be the Concessionaire, hence the distinction.

	addition what if the Concessionaire is not the First Ranking Bidder?	
8.	In relation to the definition of “Works”, please can the Grantor confirm whether or not the definition of Works excludes Renewal Works?	We have a very encompassing definition of Works and thus cannot exclude Renewal Works.
9.	Please explain the rationale as to why Article 1.3.1(a)(A) only applies to the Concessionaire. It should apply to both Parties. We also refer to our Clarification Question No 1 of 30 <sup>th</sup> July 2018 which stated that the Losses of the Grantor should be the actual losses suffered or incurred by the Grantor.	We note and will duly consider your request.
10.	Please confirm that the reference to Article 2.6.1 in Article 2.6.1 is intended to be a reference to Article 2.6.	We note and will duly consider your request.
11.	In respect of Article 2.7.2, please confirm that the Grantor will use more than reasonable endeavours to take account of the Concessionaire’s comments on these contracts before they are entered into. It is accepted that the comments of the Concessionaire (or the ones which we believe the Grantor should take account of) should only be those which are reasonable and proportionate to the fact that the Concessionaire will be taking the new third party contract following the Concession Commencement Date.	We deem the current clauses reasonable.
12.	Please confirm that the definition of Transferring Contracts will be amended to refer to the list as updated (for new Third Party Contracts entered into during the Transition Period) in accordance with Article 2.8.1.	We note and will duly consider your request.
13.	Please confirm that if the Transferring Contract is not assigned by the CP Long Stop Date then the Concessionaire will be entitled to request the Grantor/Current Operator to terminate the Transferring Contract (this is covered by Article 2.9 but not contemplated by Article 2.8.4).	We note and will duly consider your request.
14.	We note that under Article 3.8 the Concessionaire is permitted to grant a lease or sub-lease of any part of the Concession Site to Third Parties to give effect to a relevant Airport Contract. Can you please confirm that the Concessionaire will be permitted to seek the Grantor's consent to granting a lease or sub-lease for longer than the term of the Concession (noting that it is typical for commercial leases to be for a term of 50 years).	This is unacceptable. Leases or sub-leases, whether commercial or not, for a term of 50 years are not typical for Bulgaria. Please also consider the relevant provisions of the State Property Act, which imposes restrictions on public state property’s rental (such as the properties included in the Subject of the Concession) – for a period of up to 10 (ten) years. Also, the conclusion of lease contracts for a period of 50 years would clearly outweigh the duration of this Concession, any possible extensions included.

15.	Please confirm that the wording in Article 3.2.23 is actually words which belong at the end of Article 3.2.21 in the brackets instead of “(Business Plan)”.	There are certain IT issues, this will be removed;
16.	Please confirm that the provisions of Article 3.8 do not apply to the Transferring Contracts and any new third party contracts entered into during the Transition Period (Article 2.7).	We will review and consider your request.
17.	Please clarify why Article 3.11.1 carves out "the construction, development, upgrade and/or operation of any airport" – isn't this the purpose of the Article?	This question was already answered, there is a technical glitch in the English version of the Concession Agreement.
18.	In relation to Article 4.3, please confirm what happens from a practical perspective with this daily repetition of the representations and warranties if there is a breach. For example, in relation to Article 4.1.8, if litigation proceedings are commenced then there is an immediate breach of warranty and yet Article 4.4.1 there is an obligation on the Concessionaire to inform the Grantor of any litigation. It would be appropriate for there to be a process for a disclosure against the warranty to prevent the Concessionaire from being in breach.	We will review and consider your request.
19.	Please confirm that the undertaking at Article 4.4.2 is subject to the provisions of the Concession Agreement which permits these transfers.	The provision is balanced in our view.
20.	Please clarify the concern of the Grantor in relation to the provisions of Article 4.4.5. This is an unusual undertaking for a PPP Project.	We consider it a balanced approach insofar as the Concessionaire shall be only an operating and not a lending entity.
21.	In relation to Article 5.5.2(b), please explain under what circumstances the Government Users can put restrictions on the Concessionaire. Presumably this is only as a result of their rights as a matter of Law? If so this should be confirmed in this Article.	We deem the provision very clear considering the various definitions.
22.	Please confirm that the provisions of Article 5.6 are subject to the provisions of Article 8.1. Please also confirm the rationale for requiring the Concessionaire to warrant the matters set out in Article 5.6 – in comparable international concessions, this is typically expressed as a requirement to confirm the matters set out in Article 5.6.	In our view, these two provisions do not interfere with each other.
23.	In relation to Article 9.1.5, please confirm that the phrase "continue" is a reference to such employment continuing from the Concession Commencement Date?	Yes, we confirm
24.	In relation to Article 12, please confirm that if the First Ranking Bidder's solution involves an Airport Operator Third Party but not a Third Party	Yes, we confirm this

	providing financial capabilities, that such Airport Operator Third Party will be required to enter into the Undertaking in the form of Appendix 11(b) and that the Undertaking in the form of Appendix 11(c) will not also need to be entered into.	
25.	In relation to Article 14.1.3, please confirm that an Exempt Refinancing will not require the consent of the Grantor.	Article 14.1.3 does deal with the Financing Agreements not with Exempt Refinancing
26.	In relation to Article 17.2.6, is the reference to “Users” to “Government Users”?	To the extent there is a discrepancy of defined terms this will be respected. The reference in Clause 17.2.6 will be changed to “State Service Level Agreements”.
27.	In relation to Article 17.8.1, please confirm that the Concessionaire is only obliged to take account of those agreements that are publically available or have been provided to the Concessionaire”.	All applicable Laws need to be respected, it is within the bidder's responsibility to assess the applicable Laws.
28.	Please provide a definition of Variation in Article 27.1.	We note and will review your request.
29.	Please confirm that, in relation to Article 29.1, where the Concessionaire is obliged to replace a subcontractor for "national security" reasons then during the replacement the Concessionaire is entitled to a Relief Event for the period of time it takes the replacement subcontractor to transition into its role, familiarise with the Concession Site/Concession Operations etc.	We deem the present wording reasonable
30.	In relation to Article 29.5.1, it is not practical (or common practice) to pass "all" of the obligations of the Concessionaire to the subcontractor. It is however accepted that the Concessionaire is liable of all of the obligations under the Concession Agreement notwithstanding any subcontracting. Please consider amending this provision to reflect international market practice in this regard.	We will consider whether the provisions is not market standard.
31.	In respect of Article 37.4.4, please confirm who is the “Board” in this Article?	We note and will review your request.
32.	In relation to Article 40.1.3, it is common practice to include a long stop date for the Works as being the trigger for termination (and this permits a cascade of a longstop date under the Construction Contract and the Finance Documents). We would request the introduction of a longstop date for the Scheduled Completion Date.	We refer to our answer on question no 26 dated 12 September 2018
33.	In respect of Article 42.4, please confirm the rationale for granting the Concessionaire the	We note your concern raised and would like to point out that the termination provisions have

	<p>Concessionaire Default Compensation Sum in circumstances where it is <u>not</u> established that the reason for the termination is based on a breach by the Grantor. The Concessionaire should be entitled to receive the Grantor Default Compensation Sum unless it can be established that the reason for the termination is based on a breach by the Concessionaire. We cannot see why any of the Other Reasons should not entitle the Concessionaire to the Grantor Default Compensation Sum.</p>	<p>been proposed in accordance with the laws. Please review carefully the relevant texts of the Concessions Act.</p>
34.	<p>In respect of Appendix 6 (KPIs), B. Specific Performance Standards, table 1, please clarify if there is an informal monitoring period for Safety and Related Performance Standards or does formal monitoring commence on the Concession Commencement Date?</p>	<p>Safety and Related Performance Standards must be monitored formally from the Concession Commencement Date.</p>
35.	<p>In relation to Appendix 6 (KPIs), (B. Specific Performance Standards), para 1.2.1 / 1.2.2, please clarify what would be captured by "external circumstances". Perhaps by reference to acts or omissions outside the Concessionaire's control?</p>	<p>Broadly, yes – for example, “external circumstances” could include events such as natural disasters, terrorism, air traffic control industrial disputes, etc.</p>