



Kenya National Highways Authority

Quality Highways, Better Connections

**CONSULTANCY SERVICES
FOR THE
SELECTION OF THE INDEPENDENT EXPERT
FOR THE NAIROBI EXPRESSWAY**

Tender No. KeNHA/PPP/2316/2020

REQUEST FOR PROPOSALS

JULY 2020

**DIRECTOR (DEVELOPMENT)
KENYA NATIONAL HIGHWAYS
AUTHORITY
P. O. BOX 49712 - 00100
NAIROBI.**

**DIRECTOR GENERAL
KENYA NATIONAL HIGHWAYS
AUTHORITY
P.O. BOX 49712 - 00100
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Request for Proposal Document

SUMMARY

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Request for Proposals Consulting Services

Procurement of:

Consultancy Services

For The

**Selection of The Independent Expert for the
Nairobi Expressway**

JULY 2020

PART I

Section 1. Request for Proposal Letter

Request for Proposals for Consulting Services

1. The Kenya National Highways Authority (the Client) has entered a Project Agreement under the Public Private Partnership Act, 2013 with a Private Company to develop the Nairobi Expressway Project; running from Mlolongo to James Gichuru, to be constructed within the Central Median of the existing Mombasa Road, Uhuru Highway and Waiyaki Way.
2. The Private Company will be granted a concession to build operate and transfer the Project for 30 years that includes a construction period of 3 years and thereafter an Operation & Maintenance period of 27 years.
3. As part of the Project Agreement the Client and the Private Company are required to jointly procure an Independent Expert to offer consultancy services during the period of construction and 1 year into the Operation & Maintenance Period.
4. The Client now invites proposals to provide the following consulting services (hereinafter called “Services”): **Consultancy Services for The Independent Expert for The Nairobi Expressway**. More details on the Services are provided in the Terms of Reference (Section 5).
5. A firm will be selected under Quality Cost Based Selection (QCBS) Method procedures and in a Full Technical Proposal (FTP) as described in this RFP.
6. The RFP includes the following documents:
 - Section 1 – Request for Proposals Letter
 - Section 2 - Instructions to Independent Experts and Data Sheet
 - Section 3 - Technical Proposal - Standard Forms
 - Section 4 - Financial Proposal - Standard Forms
 - Section 5 - Terms of Reference
 - Section 6 - Standard Forms of Contract for a Time-Based Assignment
7. Details on the proposal’s submission date, time and address are provided in ITC 15.7 and ITC 15.9.

Yours sincerely,

Levina Wanyonyi
Deputy Director, Supply Chain Management
FOR: DIRECTOR GENERAL

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Section 2. Instructions to Independent Experts and Data Sheet

Instructions to Independent Experts

A. General Provisions

1. Definitions

- (a) “Affiliate(s)” means an individual or an entity that directly or indirectly controls, is controlled by, or is under common control with the Independent Expert.
- (b) “Applicable Law” means the laws and any other instruments having the force of law in the Client’s country, or in such other country as may be specified in the **Data Sheet**, as they may be issued and in force from time to time.
- (c) “Client” means the implementing agency that signs the Contract for the Services with the selected Independent Expert.
- (d) “Independent Expert” means a legally-established professional consulting firm or an entity that may provide or provides the Services to the Client under the Contract.
- (e) “Contract” means a legally binding written agreement signed between the Client and the Independent Expert and includes all the attached documents listed in its Clause 1 (the General Conditions of Contract (GCC), the Special Conditions of Contract (SCC), and the Appendices).
- (f) “Data Sheet” means an integral part of the Instructions to Independent Experts (ITC) Section 2 that is used to reflect specific country and assignment conditions to supplement, but not to over-write, the provisions of the ITC.
- (g) “Day” means a calendar day, unless otherwise specified as “Business Day”. A Business Day is any day that is an official working day. It excludes official public holidays.
- (h) “Experts” means, collectively, Key Experts, Non-Key Experts, or any other personnel of the Independent

Expert, Sub-Independent Expert or Joint Venture member(s).

- (i) “Government” means the government of the Client’s country.
- (j) “in writing” means communicated in written form (e.g. by mail, e-mail, fax, including, if specified in the Data Sheet, distributed or received through the electronic-procurement system used by the Client) with proof of receipt;
- (k) “Joint Venture (JV)” means an association with or without a legal personality distinct from that of its members, of more than one Independent Expert where one member has the authority to conduct all business for and on behalf of any and all the members of the JV, and where the members of the JV are jointly and severally liable to the Client for the performance of the Contract.
- (l) “Key Expert(s)” means an individual professional whose skills, qualifications, knowledge and experience are critical to the performance of the Services under the Contract and whose CV is taken into account in the technical evaluation of the Independent Expert’s proposal.
- (m) “ITC” (this Section 2 of the RFP) means the Instructions to Independent Experts that provides the shortlisted Independent Experts with all information needed to prepare their Proposals.
- (n) “Non-Key Expert(s)” means an individual professional provided by the Independent Expert or its Sub-Independent Expert and who is assigned to perform the Services or any part thereof under the Contract and whose CVs are not evaluated individually.
- (o) “Proposal” means the Technical Proposal and the Financial Proposal of the Independent Expert.
- (p) “RFP” means the Request for Proposals to be prepared by the Client for the selection of Independent Experts, based on the SPD - RFP.

- (q) “SPD - RFP” means the Standard Procurement Document - Request for Proposals, which must be used by the Client as the basis for the preparation of the RFP.
- (r) “Services” means the work to be performed by the Independent Expert pursuant to the Contract.
- (s) “Sub-Independent Expert” means an entity to whom the Independent Expert intends to subcontract any part of the Services while the Independent Expert remains responsible to the Client during the whole performance of the Contract.
- (t) “Terms of Reference (TORs)” (this Section 5 of the RFP) means the Terms of Reference that explains the objectives, scope of work, activities, and tasks to be performed, respective responsibilities of the Client and the Independent Expert, and expected results and deliverables of the assignment.

2. Introduction

- 2.1 The Client named in the **Data Sheet** intends to select a Independent Expert from those listed in the Request for Proposals (RFP), in accordance with the method of selection specified in the **Data Sheet**.
- 2.2 The shortlisted Independent Experts are invited to submit a Technical Proposal and a Financial Proposal, or a Technical Proposal only, as specified in the **Data Sheet**, for consulting services required for the assignment named in the **Data Sheet**. The Proposal will be the basis for negotiating and ultimately signing the Contract with the selected Independent Expert.
- 2.3 The Independent Experts should familiarize themselves with the local conditions and take them into account in preparing their Proposals, including attending a pre-proposal conference if one is specified in the **Data Sheet**. Attending any such pre-proposal conference is optional and is at the Independent Experts’ expense.
- 2.4 The Client will timely provide, at no cost to the Independent Experts, the inputs, relevant project data, and reports required for the preparation of the Independent Expert’s Proposal as specified in the **Data Sheet**.

3. Conflict of Interest

- 3.1 The Independent Expert is required to provide professional, objective, and impartial advice, at all times holding the Client’s interests paramount, strictly avoiding conflicts

with other assignments or its own corporate interests, and acting without any consideration for future work.

3.2 The Independent Expert has an obligation to disclose to the Client any situation of actual or potential conflict that impacts its capacity to serve the best interest of its Client. Failure to disclose such situations may lead to the disqualification of the Independent Expert or the termination of its.

**4. Unfair
Competitive
Advantage**

4.1 Fairness and transparency in the selection process require that the Independent Experts or their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to the assignment in question. To that end, the Client shall make available to all shortlisted Independent Experts together with this RFP all information that would in that respect give such Independent Expert any unfair competitive advantage over competing Independent Experts.

B. Preparation of Proposals

**5. General
Considerations**

5.1 In preparing the Proposal, the Independent Expert is expected to examine the RFP in detail. Material deficiencies in providing the information requested in the RFP may result in rejection of the Proposal.

**6. Cost of
Preparation of
Proposal**

6.1 The Independent Expert shall bear all costs associated with the preparation and submission of its Proposal, and the Client shall not be responsible or liable for those costs, regardless of the conduct or outcome of the selection process. The Client is not bound to accept any proposal, and reserves the right to annul the selection process at any time prior to Contract award, without thereby incurring any liability to the Independent Expert.

7. Language

7.1 The Proposal, as well as all correspondence and documents relating to the Proposal exchanged between the Independent Expert and the Client, shall be written in the language(s) specified in the **Data Sheet**.

**8. Documents
Comprising the
Proposal**

8.1 The Proposal shall comprise the documents and forms listed in the **Data Sheet**.

8.2 The Independent Expert shall furnish information on commissions, gratuities, and fees, if any, paid or to be paid

to agents or any other party relating to this Proposal and, if awarded, Contract execution, as requested in the Financial Proposal submission form (Section 4).

9. Only One Proposal

9.1 The Independent Expert (including the individual members of any Joint Venture) shall submit only one Proposal, either in its own name or as part of a Joint Venture in another Proposal. If a Independent Expert, including any Joint Venture member, submits or participates in more than one proposal, all such proposals shall be disqualified and rejected. This does not, however, preclude a Sub-Independent Expert, or the Independent Expert's staff from participating as Key Experts and Non-Key Experts in more than one Proposal when circumstances justify and if stated in the **Data Sheet**.

10. Proposal Validity

10.1 **The Data Sheet** indicates the period during which the Independent Expert's Proposal must remain valid after the Proposal submission deadline.

10.2 During this period, the Independent Expert shall maintain its original Proposal without any change, including the availability of the Key Experts, the proposed rates and the total price.

10.3 If it is established that any Key Expert nominated in the Independent Expert's Proposal was not available at the time of Proposal submission or was included in the Proposal without his/her confirmation, such Proposal shall be disqualified and rejected for further evaluation.

a. Extension of Validity Period

10.4 The Client will make its best effort to complete the negotiations and award the contract within the proposal's validity period. However, should the need arise, the Client may request, in writing, all Independent Experts who submitted Proposals prior to the submission deadline to extend the Proposals' validity.

10.5 If the Independent Expert agrees to extend the validity of its Proposal, it shall be done without any change in the original Proposal and with the confirmation of the availability of the Key Experts, except as provided in ITC 10.7.

10.6 The Independent Expert has the right to refuse to extend the validity of its Proposal in which case such Proposal will not be further evaluated.

- b. Substitution of Key Experts at Validity Extension**
- 10.7 If any of the Key Experts become unavailable for the extended validity period, the Independent Expert shall seek to substitute another Key Expert. The Independent Expert shall provide a written adequate justification and evidence satisfactory to the Client together with the substitution request. In such case, a substitute Key Expert shall have equal or better qualifications and experience than those of the originally proposed Key Expert. The technical evaluation score, however, will remain to be based on the evaluation of the CV of the original Key Expert.
- 10.8 If the Independent Expert fails to provide a substitute Key Expert with equal or better qualifications, or if the provided reasons for the replacement or justification are unacceptable to the Client, such Proposal will be rejected.
- c. Sub-Contracting**
- 10.9 The Independent Expert shall not subcontract the whole of the Services.
- 11. Clarification and Amendment of RFP**
- 11.1 The Independent Expert may request a clarification of any part of the RFP during the period indicated in the **Data Sheet** before the Proposals' submission deadline. Any request for clarification must be sent in writing, or by standard electronic means, to the Client's address indicated in the **Data Sheet**. The Client will respond in writing, or by standard electronic means, and will send written copies of the response (including an explanation of the query but without identifying its source) to all shortlisted Independent Experts. Should the Client deem it necessary to amend the RFP as a result of a clarification, it shall do so following the procedure described below:
- 11.1.1 At any time before the proposal submission deadline, the Client may amend the RFP by issuing an amendment in writing or by standard electronic means. The amendment shall be sent to all shortlisted Independent Experts and will be binding on them. The shortlisted Independent Experts shall acknowledge receipt of all amendments in writing.
- 11.1.2 If the amendment is substantial, the Client may extend the proposal submission deadline to give the shortlisted Independent Experts reasonable time to take an amendment into account in their Proposals.
- 11.2 The Independent Expert may submit a modified Proposal or a modification to any part of it at any time prior to the

proposal submission deadline. No modifications to the Technical or Financial Proposal shall be accepted after the deadline.

12. Preparation of Proposals Specific Considerations

12.1 While preparing the Proposal, the Independent Expert must give particular attention to the following:

12.1.1 The Client may indicate in the **Data Sheet** the estimated Key Experts' time input (expressed in person-month) or the Client's estimated total cost of the assignment, but not both. This estimate is indicative and the Proposal shall be based on the Independent Expert's own estimates for the same.

12.1.2 If stated in the **Data Sheet**, the Independent Expert shall include in its Proposal at least the same time input (in the same unit as indicated in the **Data Sheet**) of Key Experts, failing which the Financial Proposal will be adjusted for the purpose of comparison of proposals and decision for award in accordance with the procedure in the **Data Sheet**.

13. Technical Proposal Format and Content

13.1 The Technical Proposal shall be prepared using the Standard Forms provided in Section 3 of the RFP and shall comprise the documents listed in the **Data Sheet**. The Technical Proposal shall not include any financial information. A Technical Proposal containing material financial information shall be declared non-responsive.

13.1.1 Independent Expert shall not propose alternative Key Experts. Only one CV shall be submitted for each Key Expert position. Failure to comply with this requirement will make the Proposal non-responsive.

13.2 Depending on the nature of the assignment, the Independent Expert is required to submit a Full Technical Proposal (FTP), or a Simplified Technical Proposal (STP) as indicated in the **Data Sheet** and using the Standard Forms provided in Section 3 of the RFP.

14. Financial Proposal

14.1 The Financial Proposal shall be prepared using the Standard Forms provided in Section 4 of the RFP. It shall list all costs associated with the assignment, including (a) remuneration for Key Experts and Non-Key Experts, (b) reimbursable expenses indicated in the **Data Sheet**.

a. Price Adjustment

14.2 For assignments with a duration exceeding 18 months, a price adjustment provision for foreign and/or local

inflation for remuneration rates applies if so stated in the **Data Sheet**.

- b. Taxes** 14.3 The Independent Expert and its Sub-Independent Experts and Experts are responsible for meeting all tax liabilities arising out of the Contract unless stated otherwise in the **Data Sheet**. Information on taxes in the Client's country is provided in the **Data Sheet**.
- c. Currency of Proposal** 14.4 The Independent Expert may express the price for its Services in the currency or currencies as stated in the **Data Sheet**. If indicated in the **Data Sheet**, the portion of the price representing local cost shall be stated in the national currency.
- d. Currency of Payment** 14.5 Payment under the Contract shall be made in the currency or currencies in which the payment is requested in the Proposal.

C. Submission, Opening and Evaluation

- 15. Submission, Sealing, and Marking of Proposals**
- 15.1 The Independent Expert shall submit a signed and complete Proposal comprising the documents and forms in accordance with ITC 8 (Documents Comprising Proposal). Independent Experts shall mark as "CONFIDENTIAL" information in their Proposals which is confidential to their business. This may include proprietary information, trade secrets or commercial or financially sensitive information. The submission can be done by mail or by hand. If specified in the **Data Sheet**, the Independent Expert has the option of submitting its Proposals electronically.
- 15.2 An authorized representative of the Independent Expert shall sign the original submission letters in the required format for both the Technical Proposal and, if applicable, the Financial Proposal and shall initial all pages of both. The authorization shall be in the form of a written power of attorney attached to the Technical Proposal.
- 15.2.1 A Proposal submitted by a Joint Venture shall be signed by all members so as to be legally binding on all members, or by an authorized representative who has a written power of attorney signed by each member's authorized representative.

- 15.3 Any modifications, revisions, interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Proposal.
- 15.4 The signed Proposal shall be marked “ORIGINAL”, and its copies marked “COPY” as appropriate. The number of copies is indicated in the **Data Sheet**. All copies shall be made from the signed original. If there are discrepancies between the original and the copies, the original shall prevail.
- 15.5 The original and all the copies of the Technical Proposal shall be placed inside a sealed envelope clearly marked “**TECHNICAL PROPOSAL**”, “[Name of the Assignment]“, [reference number], [name and address of the Independent Expert], and with a warning “**DO NOT OPEN UNTIL [INSERT THE DATE AND THE TIME OF THE TECHNICAL PROPOSAL SUBMISSION DEADLINE].**”
- 15.6 Similarly, the original Financial Proposal (if required for the applicable selection method) and its copies shall be placed inside of a separate sealed envelope clearly marked “**FINANCIAL PROPOSAL**” “[Name of the Assignment]“, [reference number], [name and address of the Independent Expert], and with a warning “**DO NOT OPEN WITH THE TECHNICAL PROPOSAL.**”
- 15.7 The sealed envelopes containing the Technical and Financial Proposals shall be placed into one outer envelope and sealed. This outer envelope shall be addressed to the Client and bear the submission address, RFP reference number, the name of the assignment, the Independent Expert’s name and the address, and shall be clearly marked “Do Not Open Before [insert the time and date of the submission deadline indicated in the **Data Sheet**]”.
- 15.8 If the envelopes and packages with the Proposal are not sealed and marked as required, the Client will assume no responsibility for the misplacement, loss, or premature opening of the Proposal.
- 15.9 The Proposal or its modifications must be sent to the address indicated in the **Data Sheet** and received by the Client no later than the deadline indicated in the **Data Sheet**, or any extension to this deadline. Any Proposal or its modification received by the Client after the deadline

shall be declared late and rejected, and promptly returned unopened.

- 16. Confidentiality**
- 16.1 From the time the Proposals are opened to the time the Contract is awarded, the Independent Expert should not contact the Client on any matter related to its Technical and/or Financial Proposal. Information relating to the evaluation of Proposals and award recommendations shall not be disclosed to the Independent Experts who submitted the Proposals or to any other party not officially concerned with the process, until the Notification of Intention to Award the Contract. Exceptions to this ITC are where the Client notifies Independent Experts of the results of the evaluation of the Technical Proposals.
- 16.2 Any attempt by shortlisted Independent Experts or anyone on behalf of the Independent Expert to influence improperly the Client in the evaluation of the Proposals or Contract award decisions may result in the rejection of its Proposal.
- 16.3 Notwithstanding the above provisions, from the time of the Proposals' opening to the time of Contract award publication, if a Independent Expert wishes to contact the on any matter related to the selection process, it shall do so only in writing.
- 17. Opening of Technical Proposals**
- 17.1 The Client's evaluation committee shall conduct the opening of the Technical Proposals in the presence of the shortlisted Independent Experts' authorized representatives who choose to attend (in person, or online if this option is offered in the **Data Sheet**). The opening date, time and the address are stated in the **Data Sheet**. The envelopes with the Financial Proposal shall remain sealed and shall be securely stored with a reputable public auditor or independent authority until they are opened in accordance with ITC 21.
- 17.2 At the opening of the Technical Proposals the following shall be read out: (i) the name and the country of the Independent Expert or, in case of a Joint Venture, the name of the Joint Venture, the name of the lead member and the names and the countries of all members; (ii) the presence or absence of a duly sealed envelope with the Financial Proposal; (iii) any modifications to the Proposal submitted prior to proposal submission deadline; and (iv) any other

- information deemed appropriate or as indicated in the **Data Sheet**.
- 18. Proposals Evaluation**
- 18.1 Subject to provision of ITC 13.1, the evaluators of the Technical Proposals shall have no access to the Financial Proposals until the technical evaluation is concluded
- 18.2 The Independent Expert is not permitted to alter or modify its Proposal in any way after the proposal submission deadline except as permitted under ITC 10.7. While evaluating the Proposals, the Client will conduct the evaluation solely on the basis of the submitted Technical and Financial Proposals.
- 19. Evaluation of Technical Proposals**
- 19.1 The Client's evaluation committee shall evaluate the Technical Proposals on the basis of their responsiveness to the Terms of Reference and the RFP, applying the evaluation criteria, sub-criteria, and point system specified in the **Data Sheet**. Each responsive Proposal will be given a technical score. A Proposal shall be rejected at this stage if it does not respond to important aspects of the RFP or if it fails to achieve the minimum technical score indicated in the **Data Sheet**.
- 20. Financial Proposals for QBS**
- 20.1 Following the ranking of the Technical Proposals, when the selection is based on quality only (QBS), the top-ranked Independent Expert is invited to negotiate the Contract.
- 20.2 If Financial Proposals were invited together with the Technical Proposals, only the Financial Proposal of the technically top-ranked Independent Expert is opened by the Client's evaluation committee. All other Financial Proposals are returned unopened after the Contract negotiations are successfully concluded and the Contract is signed.
- 21. Public Opening of Financial Proposals (for QCBS, FBS, and LCS methods)**
- 21.1 After the technical evaluation is completed, the Client shall notify those Independent Experts whose Proposals were considered non-responsive to the RFP and TOR or did not meet the minimum qualifying technical score, advising them the following:
- (i) their Proposal was not responsive to the RFP and TOR or did not meet the minimum qualifying technical score;

- (ii) provide information relating to the Independent Expert's overall technical score, as well as scores obtained for each criterion and sub-criterion;
- (iii) their Financial Proposals will be returned unopened after completing the selection process and Contract signing; and
- (iv) notify them of the date, time and location of the public opening of the Financial Proposals and invite them to attend.

21.2 The Client shall simultaneously notify in writing those Independent Experts whose Proposals were considered responsive to the RFP and TOR, and that have achieved the minimum qualifying technical score, advising them the following:

- (i) their Proposal was responsive to the RFP and TOR and met the minimum qualifying technical score;
- (ii) provide information relating to the Independent Expert's overall technical score, as well as scores obtained for each criterion and sub-criterion;
- (iii) their Financial Proposal will be opened at the public opening of Financial Proposals; and
- (iv) notify them of the date, time and location of the public opening and invite them for the opening of the Financial Proposals.

21.3 The opening date should allow the Independent Experts sufficient time to make arrangements for attending the opening and shall be no less than seven (7) Business Days from the date of notification of the results of the technical evaluation, described in ITC 21.1 and 21.2.

21.4 The Independent Expert's attendance at the opening of the Financial Proposals (in person, or online if such option is indicated in the **Data Sheet**) is optional and is at the Independent Expert's choice.

21.5 The Financial Proposals shall be opened publicly by the Client's evaluation committee in the presence of the representatives of the Independent Experts and anyone else who chooses to attend. Any interested party who wishes to attend this public opening should contact the client as indicated in the **Data Sheet**. Alternatively, a notice of the

public opening of Financial Proposals may be published on the Client's website, if available. At the opening, the names of the Independent Experts, and the overall technical scores, including the break-down by criterion, shall be read aloud. The Financial Proposals will then be inspected to confirm that they have remained sealed and unopened. These Financial Proposals shall be then opened, and the total prices read aloud and recorded. Copies of the record shall be sent to all Independent Experts who submitted.

22. Correction of Errors

22.1 Activities and items described in the Technical Proposal but not priced in the Financial Proposal, shall be assumed to be included in the prices of other activities or items, and no corrections are made to the Financial Proposal.

a. Time-Based Contracts

22.1.1 If a Time-Based contract form is included in the RFP, the Client's evaluation committee will (a) correct any computational or arithmetical errors, and (b) adjust the prices if they fail to reflect all inputs included for the respective activities or items included in the Technical Proposal. In case of discrepancy between (i) a partial amount (sub-total) and the total amount, or (ii) between the amount derived by multiplication of unit price with quantity and the total price, or (iii) between words and figures, the former will prevail. In case of discrepancy between the Technical and Financial Proposals in indicating quantities of input, the Technical Proposal prevails and the Client's evaluation committee shall correct the quantification indicated in the Financial Proposal so as to make it consistent with that indicated in the Technical Proposal, apply the relevant unit price included in the Financial Proposal to the corrected quantity, and correct the total Proposal cost.

23. Taxes

The Client's evaluation of the Independent Expert's Financial Proposal shall exclude taxes and duties in the Client's country in accordance with the instructions in the **Data Sheet**.

24. Conversion to Single Currency

For the evaluation purposes, prices shall be converted to a single currency using the selling rates of exchange, source and date indicated in the **Data Sheet**.

25. Combined Quality and Cost Evaluation -

In the case of QCBS, the total score is calculated by weighting the technical and financial scores and adding them as per the formula and instructions in the **Data Sheet**.

Quality and Cost-Based Selection (QCBS)

The Independent Expert with the Most Advantageous Proposal, which is the Proposal that achieves the highest combined technical and financial scores, will be invited for negotiations.

D. Negotiations and Award**26. Negotiations**

26.1 The negotiations will be held at the date and address indicated in the Data Sheet with the Independent Expert's representative(s) who must have written power of attorney to negotiate and sign a Contract on behalf of the Independent Expert.

26.2 The Client shall prepare minutes of negotiations that are signed by the Client and the Independent Expert's authorized representative.

a. Availability of Key Experts

26.3 The invited Independent Expert shall confirm the availability of all Key Experts included in the Proposal as a pre-requisite to the negotiations, or, if applicable, a replacement in accordance with ITC 10. Failure to confirm the Key Experts' availability may result in the rejection of the Independent Expert's Proposal and the Client proceeding to negotiate the Contract with the next-ranked Independent Expert.

26.4 Notwithstanding the above, the substitution of Key Experts at the negotiations may be considered if due solely to circumstances outside the reasonable control of and not foreseeable by the Independent Expert, including but not limited to death or medical incapacity. In such case, the Independent Expert shall offer a substitute Key Expert within the period of time specified in the letter of invitation to negotiate the Contract, who shall have equivalent or better qualifications and experience than the original candidate.

b. Technical Negotiations

26.5 The negotiations include discussions of the Terms of Reference (TORs), the proposed methodology, the Client's inputs, the special conditions of the Contract, and finalizing the "Description of Services" part of the Contract. These discussions shall not substantially alter the original scope of services under the TOR or the terms of the contract, lest the quality of the final product, its price, or the relevance of the initial evaluation be affected.

c. Financial Negotiations

26.6 The negotiations include the clarification of the Independent Expert's tax liability in the Client's country and how it should be reflected in the Contract.

26.7 In the case of a Time-Based contract, unit rates negotiations shall not take place, except when the offered Key Experts and Non-Key Experts' remuneration rates are much higher than the typically charged rates by Independent Experts in similar contracts. In such case, the Client may ask for clarifications and, if the fees are very high, ask to change the rates after consultation. The format for (i) providing information on remuneration rates in the case of Quality Based Selection; and (ii) clarifying remuneration rates' structure under this Clause, is provided in Appendix A to the Financial Form FIN-3: Financial Negotiations – Breakdown of Remuneration Rates.

27. Conclusion of Negotiations

27.1 The negotiations are concluded with a review of the finalized draft Contract, which then shall be initialed by the Client and the Independent Expert's authorized representative.

27.2 If the negotiations fail, the Client shall inform the Independent Expert in writing of all pending issues and disagreements and provide a final opportunity to the Independent Expert to respond. If disagreement persists, the Client shall terminate the negotiations informing the Independent Expert of the reasons for doing so. The Client will invite the next-ranked Independent Expert to negotiate a Contract. Once the Client commences negotiations with the next-ranked Independent Expert, the Client shall not reopen the earlier negotiations.

28. Standstill Period

28.1 The Contract shall not be awarded earlier than the expiry of the Standstill Period. The Standstill Period shall be ten (10) Business Days unless extended in accordance with ITC 33. The Standstill Period commences the day after the date the Client has transmitted to each Independent Expert (that has not already been notified that it has been unsuccessful) the Notification of Intention to Award the Contract. Where only one Proposal is submitted, the Standstill Period shall not apply.

29. Notification of Intention to Award

29.1 The Client shall send to each Independent Expert (that has not already been notified that it has been unsuccessful) the Notification of Intention to Award the Contract to the successful Independent Expert. The Notification of

Intention to Award shall contain, at a minimum, the following information:

- (a) the name and address of the Independent Expert with whom the client successfully negotiated a contract;
- (b) the contract price of the successful Proposal;
- (c) the names of all Independent Experts included in the short list, indicating those that submitted Proposals;
- (d) where the selection method requires, the price offered by each Independent Expert as read out and as evaluated;
- (e) the overall technical scores and scores assigned for each criterion and sub-criterion to each Independent Expert;
- (f) the final combined scores and the final ranking of the Independent Experts;
- (g) a statement of the reason(s) why the recipient's Proposal was unsuccessful, unless the combined score in (f) above already reveals the reason;
- (h) the expiry date of the Standstill Period; and
- (i) instructions on how to request a debriefing and/or submit a complaint during the Standstill Period.

30. Notification of Award

30.1 Upon expiry of the Standstill Period, specified in ITC 30.1 or any extension thereof, and upon satisfactorily addressing any complaint that has been filed within the Standstill Period, the Client shall, send a notification of award to the successful Independent Expert, confirming the Client's intention to award the Contract to the successful Independent Expert and requesting the successful Independent Expert to sign and return the draft negotiated Contract within eight (8) Business Days from the date of receipt of such notification. If specified in the **Data Sheet**, the Client shall simultaneously request the successful Independent Expert to submit, within eight (8) Business Days, the Beneficial Ownership Disclosure Form.

Contract Award Notice

Within ten (10) Business Days from the date of notification of award such request, the Client shall publish the Contract Award Notice which shall contain, at a minimum, the following information:

- (a) name and address of the Client;

- (b) name and reference number of the contract being awarded, and the selection method used;
- (c) names of the Independent Experts that submitted proposals, and their proposal prices as read out at financial proposal opening, and as evaluated;
- (d) names of all Independent Experts whose Proposals were rejected or were not evaluated, with the reasons therefor;
- (e) the name of the successful Independent Expert, the final total contract price, the contract duration and a summary of its scope.

30.2 The Contract Award Notice shall be published on the Client's website with free access if available, or in at least one newspaper of national circulation in the Client's Country, or in the official gazette.

31. Signing of Contract

31.1 The Contract shall be signed prior to the expiration of the Proposal Validity Period and promptly after expiry of the Standstill Period, specified in ITC 29.1 or any extension thereof, and upon satisfactorily addressing any complaint that has been filed within the Standstill Period.

31.2 The Independent Expert is expected to commence the assignment on the date and at the location specified in the **Data Sheet**.

32. Procurement Related Complaint

32.1 The procedures for making a Procurement-related Complaint are as specified in the **Data Sheet**.

Section 2. Instructions to Independent Experts

E. Data Sheet

ITC Reference	A. General
2.1	<p>Name of the Client: Kenya National Highways Authority (KeNHA) (The Contracting Authority) and China Road & Bridge Corporation (CRBC) (the Project Company) on a 50:50 basis.</p> <p>Method of selection: <u>Quality Cost Based Selection Method</u></p>
2.2	<p>Financial Proposal to be submitted together with Technical Proposal: Yes</p> <p>The name of the assignment is: Consultancy Services for The Independent Expert for the Nairobi Expressway.</p>
2.3	<p>A pre-proposal conference will be held: No</p> <p>Date of pre-proposal conference: N/A</p> <p>Time: N/A</p> <p>Due to COVID – 19 pandemic, there shall be NO pre-proposal conference. However, bidders are encouraged to make arrangements to acquaint themselves with the project site before submission of bids.</p>
2.4	<p>The Client will provide the following inputs, project data, reports, etc. to facilitate the preparation of the Proposals: <u>The Design Outline</u></p>
B. Preparation of Proposals	
7.1	<p>Proposals shall be submitted in <u>English</u> language.</p> <p>All correspondence exchange shall be in <u>English</u> language.</p>

8.1	<p>The Proposal shall comprise the following:</p> <p>1st Inner Envelope with the Technical Proposal:</p> <ul style="list-style-type: none"> (1) Power of Attorney to sign the Proposal (2) TECH-1 (3) TECH-2 (4) TECH-3 (5) TECH-4 (6) TECH-5 (7) TECH-6 <p>AND</p> <p>2nd Inner Envelope with the Financial Proposal:</p> <ul style="list-style-type: none"> (1) FIN-1 (2) FIN-2 (3) FIN-3 (4) FIN-4
9.1	<p>Participation of Sub-Independent Experts, Key Experts and Non-Key Experts in more than one Proposal is permissible</p> <p><u>Yes</u></p>
10.1	<p>Proposals must remain valid for 120 days after the proposal submission deadline.</p>
11.1	<p>Clarifications may be requested no later than <u>14</u> days prior to the submission deadline.</p> <p>The contact information for requesting clarifications is:</p> <p><u>The Deputy Director</u> <u>Supply Chain Management Department</u> <u>Kenya National Highways Authority</u> <u>2nd Floor, South Wing, Block C,</u> <u>Barabara Plaza, JKIA</u></p>

	<u>P.O. Box 49712-00100, Nairobi</u>
12.1.1	The Independent Expert's Proposal must include <u>the minimum</u> Key Experts' time-input of 341 person-months.
12.1.2	<p>For the evaluation and comparison of Proposals only: if a Proposal includes less than the required minimum time-input, the missing time-input (expressed in person-month) is calculated as follows:</p> <p>The missing time-input is multiplied by the highest remuneration rate for a Key Expert in the Independent Expert's Proposal and added to the total remuneration amount. Proposals that quoted higher than the required minimum of time-input will not be adjusted.</p>
13.2	<p>The format of the Technical Proposal to be submitted is:</p> <p>FTP <u> Yes </u></p> <p>Submission of the Technical Proposal in a wrong format may lead to the Proposal being deemed non-responsive to the RFP requirements.</p>
14.1	<ol style="list-style-type: none"> (1) a per diem allowance, including hotel, for experts for every day of absence from the home office for the purposes of the Services; (2) cost of travel by the most appropriate means of transport and the most direct practicable route; (3) cost of office accommodation, including overheads and back-stop support; (4) communications costs; (5) cost of purchase or rent or freight of any equipment required to be provided by the Independent Experts; (6) cost of reports production (including printing) and delivering to the Client; (7) Allow a Provisional Sum for of KShs 3 Million for Capacity Building Initiatives and Graduate Engineer Internship Programme (GEIP) (8) Allow a Provisional Sum of KShs 7 Million for CPD training of Contracting Authority counterpart staff from KeNHA. (9) Allow a Provisional Sum of KShs 15 million for training of KeNHA staff on Certification Modules in Public-Private Partnerships and Project Management.

	(10) Allow a Provisional Sum of KShs 50 million for a document management system for tracking emails and documents, archiving and retrieval of all correspondence and documents shared by all parties.
14.2	A price adjustment provision applies to remuneration rates: <u>Yes.</u>
14.3	Information on the Independent Expert's tax obligations in the Client's country can be found <u>Kenya Revenue Authority</u>
14.4	The Financial Proposal shall be stated in the following currencies: <u>Kenya Shillings Only (Kshs)</u> Independent Expert may express the price for their Services in any fully convertible currency, singly or in combination of up to three foreign currencies. The Financial Proposal should state local and foreign costs in Kenya Shillings Only (Kshs)
C. Submission, Opening and Evaluation	
15.1	The Independent Experts <u>shall not</u> have the option of submitting their Proposals electronically.
15.4	The Independent Expert must submit: (a) Technical Proposal: one (1) original and <u>1</u> Copy; (b) Financial Proposal: one (1) original and <u>1</u> Copy. (Sealed)
15.7 and 15.9	The Proposals must be submitted no later than: Date: <u>Tuesday, 4th August 2020</u> Time: <u>11:00 local time</u> The Proposal submission address is: Kenya National Highways Authority, Supply Chain Management Office, 2nd Floor, Block C, North Wing, Barabara Plaza, Mazao Road off Airport South Road, P.O. Box 49712-00100, NAIROBI, KENYA

17.1	<p>The opening shall take place at:</p> <p><u>Supply Chain Management Department</u></p> <p><u>Kenya National Highways Authority</u></p> <p><u>2nd Floor, West Wing, Block C,</u></p> <p><u>Barabara Plaza, JKIA</u></p> <p><u>P.O. Box 49712-00100, Nairobi</u></p> <p>Date: same as the submission deadline indicated in 15.7.</p> <p>Time: <u>11:00 local time</u></p>
17.2	<p>In addition, the following information will be read aloud at the opening of the Technical Proposals <u>Not Applicable</u></p>
19.1	<p>Criteria, sub-criteria, and point system for the evaluation of the Full Technical Proposals:</p> <p style="text-align: right;"><u>Points</u></p> <p>(i) Specific experience of the Independent Expert (as a firm) relevant to the Assignment: [10]</p> <p>ii) Adequacy and quality of the proposed methodology, and work plan in responding to the Terms of Reference (TORs): [20]</p> <p><i>[Notes to Independent Expert: the Client will assess whether the proposed methodology is clear, responds to the TORs, work plan is realistic and implementable; overall team composition is balanced and has an appropriate skills mix; and the work plan has right input of Experts]</i></p> <p>(iii) Key Experts' qualifications and competence for the Assignment:</p> <p><i>{Notes to Independent Expert: each position number corresponds to the same for the Key Experts in Form TECH-6 to be prepared by the Independent Expert}</i></p>

Ref	Key Expert	Individual Score
K-1	Project Director cum Infrastructure Expert (Team Leader)	7
K-2	Project Manager/[Project Management and Highway Design]	8
K-3	Quality Assurance and Control Specialist [QA/QC Pavement & Materials/Geotech Engineering background]	8
K-4	PPP Expert-1 [Project Finance and Modelling Expert]	7
K-5	PPP Expert-2 [PPP Contracts, Operations and Maintenance]	7
K-6	Bridge/Drainage Engineer (SBE) [drainage and hydrology]	7
K-7	Architect and Landscape Designer	4
K-8	Environmental Expert	3
K-9	Social Safeguards Expert [Community Liaison]	3
K-10	Electrical Engineer/Lighting Specialist	4
K-11	Communications Expert	2
	TOTAL	60

The number of points to be assigned to each of the above key experts shall be determined considering the following three sub-criteria and relevant percentage weights:

- 1) General qualifications (general education, training, and experience) : **30%**
- 2) Adequacy for the Assignment (relevant education, training, experience in the sector/similar assignments) : **60%**
- 3) Relevant experience in the region (working level fluency in local language(s)/knowledge of local culture or administrative system, government organization, etc.) : **10%**

**Total weight:
100%**

Total points for criterion (iii): [60]

(iv) **Transfer of knowledge (training) program** (relevance of approach and methodology):

Total points for criterion (iv): **[10]**

	<p>Total points for the four criteria: 100</p> <p>The minimum technical score (St) required to pass is: <u>80</u></p>
	<p>Public Opening of Financial Proposals</p>
21.4	<p>An online option of the opening of the Financial Proposals is offered: <u>No</u></p>
21.5	<p>Following the completion of the evaluation of the Technical Proposals, the Client will notify all Independent Experts of the location, date and time of the public opening of Financial Proposals.</p> <p>Any interested party who wishes to attend this public opening should contact</p> <p style="text-align: center;"> <u>The Deputy Director</u> <u>Supply Chain Management Department</u> <u>Kenya National Highways Authority</u> <u>2nd Floor, South Wing, Block C,</u> <u>Barabara Plaza, JKIA</u> <u>P.O. Box 49712-00100, Nairobi</u> </p> <p>and request to be notified of the location, date and time of the public opening of Financial Proposals. The request should be made before the deadline for submission of Proposals, stated above.</p> <p>Alternatively, a notice of the public opening of Financial Proposals may be published on the Client's website, if available.</p>
23.1	<p>For the purpose of the evaluation, the Client will exclude:</p> <p>(a) all local identifiable indirect taxes such as sales tax, excise tax, VAT, or similar taxes levied on the contract's invoices; and</p> <p>(b) all additional local indirect tax on the remuneration of services rendered by non-resident experts in the Client's country. If a Contract is awarded, at Contract negotiations, all such taxes will be discussed, finalized (using the itemized list as a guidance but not limiting to it) and added to the Contract amount as a separate line, also indicating which taxes shall be paid by the</p>

	Independent Expert and which taxes are withheld and paid by the Client on behalf of the Independent Expert.
24.1	<p>The single currency for the conversion of all prices expressed in various currencies into a single one is: Kenya Shillings (Kshs)</p> <p>The official source of the selling (exchange) rate is: The CBK Mean Selling Rate</p> <p>The date of the exchange rate is: Friday, 17th July, 2020</p>
25.1 (QCBS only)	<p>The lowest evaluated Financial Proposal (Fm) is given the maximum financial score (Sf) of 100.</p> <p>The formula for determining the financial scores (Sf) of all other Proposals is calculated as following: $Sf = 100 \times Fm / F$, in which “Sf” is the financial score, “Fm” is the lowest price, and “F” the price of the proposal under consideration.</p> <p>The weights given to the Technical (T) and Financial (P) Proposals are:</p> <p>T = <u>50</u>, and</p> <p>P = <u>50</u></p> <p>Proposals are ranked according to their combined technical (St) and financial (Sf) scores using the weights (T = the weight given to the Technical Proposal; P = the weight given to the Financial Proposal; T + P = 1) as following: $S = St \times T\% + Sf \times P\%$.</p>
	D. Negotiations and Award
26.1	<p>Expected date and venue for contract negotiations:</p> <p>Date: <u>Monday, 10th August 2020</u></p> <p>Address:</p> <p style="text-align: center;"><u>Public-Private Partnership Department</u> <u>Kenya National Highways Authority</u> <u>4th Floor, Block A,</u> <u>Barabara Plaza, JKIA</u> <u>P.O. Box 49712-00100, Nairobi</u></p>
31.2	Expected date for the commencement of the Services:

	Date: <u>7 days from the date of Contract Signing at: Nairobi County</u>
32.1	Public Procurement and Disposal Act, 2016

Section 3. Technical Proposal – Standard Forms

{Notes to Independent Expert shown in brackets { } throughout Section 3 provide guidance to the Independent Expert to prepare the Technical Proposal; they should not appear on the Proposals to be submitted.}

CHECKLIST OF REQUIRED FORMS

Required for FTP	FORM	DESCRIPTION	<i>Page Limit</i>
✓	TECH-1	Technical Proposal Submission Form.	
✓ If applicable	TECH-1 Attachment	If the Proposal is submitted by a joint venture, attach a letter of intent or a copy of an existing agreement.	
✓ If applicable	Power of Attorney	No pre-set format/form. In the case of a Joint Venture, several are required: a power of attorney for the authorized representative of each JV member, and a power of attorney for the representative of the lead member to represent all JV members	
✓	TECH-2	Independent Expert's Organization and Experience.	
✓	TECH-2A	A. Independent Expert's Organization	
✓	TECH-2B	B. Independent Expert's Experience	
✓	TECH-3	Comments or Suggestions on the Terms of Reference and on Counterpart Staff and Facilities to be provided by the Client.	
✓	TECH-3A	A. On the Terms of Reference	
✓	TECH-3B	B. On the Counterpart Staff and Facilities	
✓	TECH-4	Description of the Approach, Methodology, and Work Plan for Performing the Assignment	
✓	TECH-5	Work Schedule and Planning for Deliverables	
✓	TECH-6	Team Composition, Key Experts Inputs, and attached Curriculum Vitae (CV)	
✓	TECH-7	Code of Conduct (ESHS)	

All pages of the original Technical and Financial Proposal shall be initialed by the same authorized representative of the Independent Expert who signs the Proposal.

FORM TECH-1**TECHNICAL PROPOSAL SUBMISSION FORM**

{Location, Date}

To: *[Name and address of Client]*

Dear Sirs:

We, the undersigned, offer to provide the consulting services for *[Insert title of assignment]* in accordance with your Request for Proposals (RFP) dated *[Insert Date]* and our Proposal. We are hereby submitting our Proposal, which includes this Technical Proposal and a Financial Proposal sealed in a separate envelope”.

{If the Independent Expert is a joint venture, insert the following: We are submitting our Proposal a joint venture with: {Insert a list with full name and the legal address of each member, and indicate the lead member}. We have attached a copy {insert: “of our letter of intent to form a joint venture” or, if a JV is already formed, “of the JV agreement”} signed by every participating member, which details the likely legal structure of and the confirmation of joint and severable liability of the members of the said joint venture.

{OR

If the Independent Expert’s Proposal includes Sub-Independent Experts, insert the following: We are submitting our Proposal with the following firms as Sub-Independent Experts: {Insert a list with full name and address of each Sub-Independent Expert.}

We hereby declare that:

- (a) All the information and statements made in this Proposal are true and we accept that any misinterpretation or misrepresentation contained in this Proposal may lead to our disqualification by the Client.
- (b) Our Proposal shall be valid and remain binding upon us for the period of time specified in the Data Sheet, ITC 10.1.
- (c) We have no conflict of interest in accordance with ITC 3.
- (d) In competing for (and, if the award is made to us, in executing) the Contract, we undertake to observe the laws against fraud and corruption, including bribery, in force in the country.

- (g) Except as stated in the Data Sheet, ITC 10.7, we undertake to negotiate a Contract on the basis of the proposed Key Experts. We accept that the substitution of Key Experts for reasons other than those stated in ITC 10 and ITC 26.4 may lead to the termination of Contract negotiations.
- (h) Our Proposal is binding upon us and subject to any modifications resulting from the Contract negotiations.

We undertake, if our Proposal is accepted and the Contract is signed, to initiate the Services related to the assignment no later than the date indicated in ITC 31.2 of the Data Sheet.

We understand that the Client is not bound to accept any Proposal that the Client receives.

We remain,

Yours sincerely,

Signature (of Independent Expert's authorized representative) {In full and initials}:

Full name: {insert full name of authorized representative}

Title: {insert title/position of authorized representative}

Name of Independent Expert (company's name or JV's name):

Capacity: {insert the person's capacity to sign for the Independent Expert}

Address: {insert the authorized representative's address}

Phone/fax: {insert the authorized representative's phone and fax number, if applicable}

Email: {insert the authorized representative's email address} _____

{For a joint venture, either all members shall sign or only the lead member, in which case the power of attorney to sign on behalf of all members shall be attached}

FORM TECH-2 (FOR FULL TECHNICAL PROPOSAL ONLY)

INDEPENDENT EXPERT’S ORGANIZATION AND EXPERIENCE

Form TECH-2: a brief description of the Independent Expert’s organization and an outline of the recent experience of the Independent Expert that is most relevant to the assignment. In the case of a joint venture, information on similar assignments shall be provided for each partner. For each assignment, the outline should indicate the names of the Independent Expert’s Key Experts and Sub-Independent Experts who participated, the duration of the assignment, the contract amount (total and, if it was done in a form of a joint venture or a sub-consultancy, the amount paid to the Independent Expert), and the Independent Expert’s role/involvement.

A - Independent Expert’s Organization

1. Provide here a brief description of the background and organization of your company, and – in case of a joint venture – of each member for this assignment.
2. Include organizational chart, a list of Board of Directors, and beneficial ownership. *[If required under Data Sheet ITC 32.1, the successful Independent Expert shall provide additional information on beneficial ownership, using the Beneficial Ownership Disclosure Form.]*

B - Independent Expert’s Experience

1. List only previous similar assignments successfully completed in the last 5 years.
2. List only those assignments for which the Independent Expert was legally contracted by the Client as a company or was one of the joint venture members. Assignments completed by the Independent Expert’s individual experts working privately or through other consulting firms cannot be claimed as the relevant experience of the Independent Expert, or that of the Independent Expert’s partners or sub-Independent Experts, but can be claimed by the Experts themselves in their CVs. The Independent Expert should be prepared to substantiate the claimed experience by presenting copies of relevant documents and references if so requested by the Client.

Duration	Assignment name/& brief description of main deliverables/outputs	Name of Client & Country of Assignment	Approx. Contract value (in KShs equivalent)/ Amount paid to your firm	Role on the Assignment
{e.g., Jan.2009–Apr.2010}	{e.g., “Improvement quality of.....”: designed master plan for rationalization of; }	{e.g., Ministry of, country}	{e.g., US\$1 mill/US\$0.5 mill}	{e.g., Lead partner in a JV A&B&C}
{e.g., Jan-May 2008}	{e.g., “Support to sub-national government.....” : drafted secondary level regulations on.....}	{e.g., municipality of....., country}	{e.g., US\$0.2 mil/US\$0.2 mil}	{e.g., sole Independent Expert}

FORM TECH-3 (FOR FULL TECHNICAL PROPOSAL)**COMMENTS AND SUGGESTIONS ON THE TERMS OF REFERENCE, COUNTERPART STAFF, AND FACILITIES TO BE PROVIDED BY THE CLIENT**

Form TECH-3: comments and suggestions on the Terms of Reference that could improve the quality/effectiveness of the assignment; and on requirements for counterpart staff and facilities, which are provided by the Client, including: administrative support, office space, local transportation, equipment, data, etc.

A - On the Terms of Reference

{improvements to the Terms of Reference, if any}

B - On Counterpart Staff and Facilities

{comments on counterpart staff and facilities to be provided by the Client. For example, administrative support, office space, local transportation, equipment, data, background reports, etc., if any}

FORM TECH-4 (FOR FULL TECHNICAL PROPOSAL ONLY)

DESCRIPTION OF APPROACH, METHODOLOGY, AND WORK PLAN IN RESPONDING TO THE TERMS OF REFERENCE

Form TECH-4: a description of the approach, methodology and work plan for performing the assignment, including a detailed description of the proposed methodology and staffing for training, if the Terms of Reference specify training as a specific component of the assignment.

{Suggested structure of your Technical Proposal (in FTP format):

- a) Technical Approach and Methodology
 - b) Work Plan
 - c) Organization and Staffing}
- a) **Technical Approach and Methodology.** {Please explain your understanding of the objectives of the assignment as outlined in the Terms of Reference (TORs), the technical approach, and the methodology you would adopt for implementing the tasks [*Note to Client: add the following for supervision of civil works contracts:* including the Environmental, Social (including sexual exploitation and abuse (SEA) and gender based violence (GBV)), Health and Safety (ESHS) aspects] to deliver the expected output(s), and the degree of detail of such output. Please do not repeat/copy the TORs in here.}
- b) **Work Plan.** {Please outline the plan for the implementation of the main activities/tasks of the assignment, their content and duration, phasing and interrelations, milestones (including interim approvals by the Client), and tentative delivery dates of the reports. The proposed work plan should be consistent with the technical approach and methodology, showing your understanding of the TOR and ability to translate them into a feasible working plan. A list of the final documents (including reports) to be delivered as final output(s) should be included here. The work plan should be consistent with the Work Schedule Form.}
- c) **Organization and Staffing.** {Please describe the structure and composition of your team, including the list of the Key Experts, Non-Key Experts and relevant technical and administrative support staff.}

FORM TECH-5 (FOR FTP AND STP)

WORK SCHEDULE AND PLANNING FOR DELIVERABLES

N°	Deliverables ¹ (D-..)	Months											TOTAL	
		1	2	3	4	5	6	7	8	9	n		
D-1	{e.g., Deliverable #1: Report A													
	1) data collection													
	2) drafting													
	3) inception report													
	4) incorporating comments													
	5) delivery of final report to Client}													
D-2	{e.g., Deliverable #2:.....}													

- 1 List the deliverables with the breakdown for activities required to produce them and other benchmarks such as the Client’s approvals. For phased assignments, indicate the activities, delivery of reports, and benchmarks separately for each phase.
- 2 Duration of activities shall be indicated in a form of a bar chart.
- 3 Include a legend, if necessary, to help read the chart.



FORM TECH-6 (FOR FTP AND STP)

TEAM COMPOSITION, ASSIGNMENT, AND KEY EXPERTS' INPUTS

N°	Name	Expert's input (in person/month) per each Deliverable (listed in TECH-5)										Total time-input (in Months)			
		Position		D-1		D-2		D-3	D-...			Home	Field	Total
KEY EXPERTS															
K-1	{e.g., Mr. Abbbb}	[Team Leader]	[Home]	[2 month]	[1.0]	[1.0]									
			[Field]	[0.5 m]	[2.5]	[0]									
K-2															
K-3															
n															
											Subtotal				
NON-KEY EXPERTS															
N-1			[Home]												
			[Field]												
N-2															
n															
											Subtotal				
											Total				

1 For Key Experts, the input should be indicated individually for the same positions as required under the Data Sheet ITC21.1.

- 2 Months are counted from the start of the assignment/mobilization. One (1) month equals twenty two (22) working (billable) days. One working (billable) day shall be not less than eight (8) working (billable) hours.
- 3 “Home” means work in the office in the expert’s country of residence. “Field” work means work carried out in the Client’s country or any other country outside the expert’s country of residence.

 Full time input
 Part time input

**FORM TECH-6
(CONTINUED)**

CURRICULUM VITAE (CV)

Position Title and No.	{e.g., K-1, TEAM LEADER}
Name of Expert:	{Insert full name}
Date of Birth:	{day/month/year}
Country of Citizenship/Residence	

Education: {List college/university or other specialized education, giving names of educational institutions, dates attended, degree(s)/diploma(s) obtained}

Employment record relevant to the assignment: {Starting with present position, list in reverse order. Please provide dates, name of employing organization, titles of positions held, types of activities performed and location of the assignment, and contact information of previous clients and employing organization(s) who can be contacted for references. Past employment that is not relevant to the assignment does not need to be included.}

Period	Employing organization and your title/position. Contact information for references	Country	Summary of activities performed relevant to the Assignment
[e.g., May 2005-present]	[e.g., Ministry of, advisor/Independent Expert to... For references: Tel...../e-mail.....; Mr. Hbbbb, deputy minister]		

Membership in Professional Associations and Publications:

Language Skills (indicate only languages in which you can work): _____

Adequacy for the Assignment:

Detailed Tasks Assigned on Independent Expert’s Team of Experts:	Reference to Prior Work/Assignments that Best Illustrates Capability to Handle the Assigned Tasks
{List all deliverables/tasks as in TECH- 5 in which the Expert will be involved}	

Expert’s contact information: (e-mail, phone.....)

Certification:

I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes myself, my qualifications, and my experience, and I am available, as and when necessary, to undertake the assignment in case of an award. I understand that any misstatement or misrepresentation described herein may lead to my disqualification or dismissal by the Client.

{day/month/year}

Name of Expert Signature Date

{day/month/year}

Name of authorized Representative of the Independent Expert (the same who signs the Proposal) Signature Date

Section 4. Financial Proposal - Standard Forms

{*Notes to Independent Expert* shown in brackets { } provide guidance to the Independent Expert to prepare the Financial Proposals; they should not appear on the Financial Proposals to be submitted.}

Financial Proposal Standard Forms shall be used for the preparation of the Financial Proposal according to the instructions provided in Section 2.

- FIN-1 Financial Proposal Submission Form
- FIN-2 Summary of Costs
- FIN-3 Breakdown of Remuneration, including Appendix A “Financial Negotiations - Breakdown of Remuneration Rates” in the case of QBS method
- FIN-4 Reimbursable expenses

FORM FIN-1
FINANCIAL PROPOSAL SUBMISSION FORM

{Location, Date}

To: [Name and address of Client]

Dear Sirs:

We, the undersigned, offer to provide the consulting services for [Insert title of assignment] in accordance with your Request for Proposal dated [Insert Date] and our Technical Proposal.

Our attached Financial Proposal is for the amount of {Indicate the corresponding to the amount(s) currency(ies)} {Insert amount(s) in words and figures}, [Insert “including” or “excluding”] of all indirect local taxes in accordance with ITC 23.1 in the Data Sheet. The estimated amount of local indirect taxes is {Insert currency} {Insert amount in words and figures} which shall be confirmed or adjusted, if needed, during negotiations. {Please note that all amounts shall be the same as in Form FIN-2}.

Our Financial Proposal shall be valid and remain binding upon us, subject to the modifications resulting from Contract negotiations, for the period of time specified in the Data Sheet, ITC 10.1.

Commissions and gratuities paid or to be paid by us to an agent or any third party relating to preparation or submission of this Proposal and Contract execution, paid if we are awarded the Contract, are listed below:

Name and Address of Agents	Amount and Currency	Purpose of Commission or Gratuity

{If no payments are made or promised, add the following statement: “No commissions or gratuities have been or are to be paid by us to agents or any third party relating to this Proposal and Contract execution.”}

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

We remain,

Yours sincerely,

Signature (of Independent Expert’s authorized representative) {In full and initials}:

Full name: {insert full name of authorized representative}
Title: {insert title/position of authorized representative}
Name of Independent Expert (company's name or JV's name):
Capacity: {insert the person's capacity to sign for the Independent Expert}
Address: {insert the authorized representative's address}
Phone/fax: {insert the authorized representative's phone and fax number, if applicable}
Email: {insert the authorized representative's email address} _____

{For a joint venture, either all members shall sign or only the lead member/Independent Expert, in which case the power of attorney to sign on behalf of all members shall be attached}

FORM FIN-2 SUMMARY OF COSTS

Item	Cost			
	{Independent Expert must state the proposed Costs in accordance with ITC 16.4 of the Data Sheet; delete columns which are not used}			
	{Insert Foreign Currency # 1}	{Insert Foreign Currency # 2, if used}	{Insert Foreign Currency # 3, if used}	{Insert Local Currency, if used and/or required (16.4 Data Sheet)}
Cost of the Financial Proposal				
Including:				
(1) Remuneration				
(2) Reimbursables				
Total Cost of the Financial Proposal: {Should match the amount in Form FIN-1}				
Indirect Local Tax Estimates – to be discussed and finalized at the negotiations if the Contract is awarded				
(i) {insert type of tax e.g., VAT or sales tax}				
(ii) {e.g., income tax on non-resident experts}				
(iii) {insert type of tax}				
Total Estimate for Indirect Local Tax:				

Footnote: Payments will be made in the currency(ies) expressed above (Reference to ITC 16.4).

FORM FIN-3 BREAKDOWN OF REMUNERATION

When used for Lump-Sum contract assignment, information to be provided in this Form shall only be used to demonstrate the basis for the calculation of the Contract’s ceiling amount; to calculate applicable taxes at contract negotiations; and, if needed, to establish payments to the Independent Expert for possible additional services requested by the Client. This Form shall not be used as a basis for payments under Lump-Sum contracts

A. Remuneration								
No.	Name	Position (as in TECH-6)	Person-month Remuneration Rate	Time Input in Person/Month (from TECH-6)	{Currency # 1- as in FIN-2}	{Currency # 2- as in FIN-2}	{Currency# 3- as in FIN-2}	{Local Currency- as in FIN-2}
Key Experts								
K-1			[Home]					
			[Field]					
K-2								
Non-Key Experts								
N-1			[Home]					
N-2			[Field]					
Total Costs								

FORM FIN-4 BREAKDOWN OF REIMBURSABLE EXPENSES

When used for Lump-Sum contract assignment, information to be provided in this Form shall only be used to demonstrate the basis for calculation of the Contract ceiling amount, to calculate applicable taxes at contract negotiations and, if needed, to establish payments to the Independent Expert for possible additional services requested by the Client. This form shall not be used as a basis for payments under Lump-Sum contracts

B. Reimbursable Expenses					
N°	Type of Reimbursable Expenses	Unit	Unit Cost	Quantity	{Local Currency- as in FIN-2}
	{e.g., Per diem allowances**}	{Day}			
___	{e.g., International flights}	{Ticket}			
___	{e.g., In/out airport transportation}	{Trip}			
	{e.g., Communication costs between Insert place and Insert place}				
	{ e.g., reproduction of reports}				
	{e.g., Office rent}				
				
	Capacity Building and Graduate Internship Programme	Provisional Sum	100,000,000		100,000,000
Total Costs					

Legend:

“Per diem allowance” is paid for each night the expert is required by the Contract to be away from his/her usual place of residence. Client can set up a ceiling.

Section 5. Terms of Reference

1. Background

1.1 The Contracting Authority (Kenya National Highways Authority) and the Project Sponsor (China Road and Bridge Corporation) jointly seek the services of a qualified firm to provide consultancy services as Independent Expert for the Nairobi Expressway Project to be developed on DBOT basis. The Project is located in Nairobi and Machakos Counties in Kenya and starts at Mlolongo, passing through Mombasa Road, Uhuru Highway, Waiyaki Way ending at James Gichuru will be largely constructed within the existing central median. The Terms of Reference (the “TOR”) for this assignment are specified below.

1.2 The Project will involve the construction of a dual carriageway of 27.1km constructed at-grade (18.2km) and as an elevated highway for the remaining section. The dual carriageway will be 4 lane carriageway from Mlolongo to Eastern Bypass Interchange, 6 lane carriageway from Eastern Bypass Interchange to Southern Bypass Interchange, and 4 lane carriageway for the remaining section of road from Southern Bypass Interchange to James Gichuru.

1.3 The Expressway is a Toll Road and will have 10 Interchanges constructed to serve as entry and exit points to on and off the Nairobi Expressway. The entry and exit locations will be equipped by toll plazas for payment of tolls.

1.4 The scope will include the construction of removal and reconstruction of 5 No. footbridges and newly constructed footbridge at the Start of the project in Mlolongo.

1.5 The Independent Expert shall be guided in the assignment by the Project Agreement executed between the Project Proponent and Authority.

1.6 The Independent Expert shall have a duty of care to both Parties to act in good faith on a fair and just basis.

2. Objective(s) of the Assignment

The Independent Expert, designated as the Independent Expert for the civil works contracts as defined in the Project Agreement between the Kenya National Highways Authority (KeNHA) and China Road and Bridge Corporation (CRBC), will assist KeNHA and CRBC (the Employer) to oversee the civil, building and associated electrical mechanical works for the road sections, and ensuring compliance with road safety standards, environmental protection measures, and social safeguards.

3. Scope of Services, Tasks (Components) and Expected Deliverables

The Independent Expert is expected to play an independent role in discharging the functions, thereby facilitating the orderly development and implementation of the Project.

The role and functions of the Independent Expert shall include the following:

- (i) The Independent Expert shall discharge its duties and functions substantially in accordance with the provisions set forth in Schedule 12 of the Project Agreement.

- (ii) The Independent Expert shall review the designs, drawings and other technical information submitted by CRBC in compliance with the Project Agreement.
- (iii) The Independent Expert shall submit regular periodic reports (at least once every month) to the Employer in respect of the duties and functions set forth in the Project Agreement and this TOR.
- (iv) The Independent Expert shall procure that the Tests are carried out in accordance with the provisions of the Project Agreement to ensure that the Quality Assurance Plan developed by the Project Company is being implemented
- (v) A true copy of all communications sent by KeNHA to the Independent Expert and by the Independent Expert to KeNHA shall be sent to the Project Company/Concessionaire;
- (vi) A true copy of all communications sent by the Independent Expert to the Project Company/Concessionaire and by the Project Company /Concessionaire to the Independent Expert shall be sent by the Independent expert to the Authority.
- (vii) Review the Project Company's working drawings and oversee the civil works to ensure that the quality and the completed works meet all the standards and specifications as laid out in Schedules 2 and 3 of the Project Agreement, including the environmental protection measures, set out in the works contract documents;
- (viii) Ensure that all works comply with the agreed schedules in the Project Agreement
- (ix) Monitor and report on progress and quality of works during the periods and times agreed upon in the TOR;
- (x) Provide general guidance to the Employer and the EPC Contractor;
- (xi) Accordingly advise the Employer on engineering aspects, work progress, quality control, and implementation issues of the Project.

The specific tasks of the Independent Expert will include, but not limited to the following:

A. Oversee Implementation of the Works

- (i) Ensure that the construction methods proposed by the Project Company for carrying out the works are satisfactory;
- (ii) Inspect Project Company's construction equipment, results of material and soil tests, safety of the works, property and personnel, and schedule of mitigation measures for adverse environmental impacts;
- (iii) Notify Project Company to remedy works and materials that fail to comply with the specifications;
- (iv) Monitor and supervise (a) progress of Project Company's works vis-à-vis contract schedule, and (b) quality of Project Company's works vis-à-vis applicable technical specifications and design;

- (v) Check that ‘as-built’ drawings are prepared by the Project Company’s for all works as construction progresses;
- (vi) Ensure that road safety design requirements are implemented;
- (vii) Interrogate and Monitor the quality assurance system and quality control plan for provisions of asphalt-concrete pavement, fill and formation layers, subbase and base layers; reinforced concrete for bridges; associated electro-mechanical installations for the works;
- (viii) Establish procedures to verify Project Company’s performance and to report progress and problems on time, including quality control reports, and Project Company’s claims;
- (ix) Evaluate any proposed changes (e.g., time, scope) by the Project Company during the course of the Project;

B. Documentation and Reporting

- (i) Report and update the works implementation schedule, highlight any unforeseen delays, and timely propose corrective measures.
- (ii) Undertake project performance monitoring and evaluation and reporting up to project completion.
- (iii) Prepare and submit reports as indicated in Section 5 (Reporting Requirements) in this TOR.
- (iv) Develop and maintain a storage and retrieval system of records documenting information supplied by the field teams, decisions made at meetings, progress on works, achievements and milestones, any deviations from or changes to the contract plans (scope, cost, materials, time), correspondences, site diaries, test data and quality control reports, as-built drawings, and progress reports.

Environmental Safeguard Oversight.

The Independent Expert will:

- (i) Undertake a cumulative assessment of the potential environmental impact of the Project;
- (ii) Monitor and Report on the Project Company’s ESMP to ensure compliance and assess the monitoring framework associated with the implementation of the mitigation measures and the ESMP;
- (iii) Provide guidance and quality assurance in undertaking the environmental monitoring as outlined in the ESMP;
- (iv) Monitor compliance with environmental mitigation and management plans, Project Company health and safety plan;
- (v) Report quarterly on environmental safeguard compliance;
- (vi) In liaison with the Employer conduct regular consultation with groups to be affected by the project;

Social Development and Resettlement Oversight

The Independent Expert will:

- (i) Conduct the monitoring and reporting of the land acquisition and resettlement plan (LARP) implementation;
- (ii) Prepare land acquisition and resettlement plan Implementation Report, quarterly or bi-monthly if the need arises;
- (iii) Develop Grievance Database (electronic format), and oversee the performance of the grievance redress system that helps consolidating, tracking, collating and analysing received grievances per type, gender of complainant, solutions, status;
- (iv) In the event of new acquisition requirements, facilitate needed survey, consultations and preparation of land acquisition and resettlement plan (as a supplementary document); and submit to the Employer to secure all requisite clearances, and compensation to Affected Persons thereof;
- (v) Monitor the Project Company's compliance with and performance of required actions regarding HIV/AIDS Sensitisation and Awareness Campaigns, implementation Covid-19 Prevention Measures and labour laws for workers.

C. Training and Capacity Building of the Client's Technical Personnel

The Independent Expert shall provide a structured program for training and enhancing the capacity of the Client's Technical Personnel in Project Management and knowledge base in Public-Private Partnerships.

This will be delivered as modular training for the 8 No. Technical Personnel along the following thematic areas:

Module 1: Project Management

Module 1A: Project Monitoring and Control Systems

Module 1B: Project Risk Management

Module 1C: Project Reporting and Document Management

Module 2: Public-Private Partnerships

Module 2A: Structuring of PPPs

Module 2B: Management of PPP Contracts

Internship Program for Graduate Engineers

The Independent Expert will be required to manage an Internship Programme for 5 No. Graduate Engineers to be selected and vetted by the Client.

- 4 No. Civil Engineering Graduates
- 1 No. Electrical Engineering Graduate (Power and Lighting Option)

Actual training programme will be decided between the Employer and the Independent Expert

D. Document Management System

The Independent Expert shall develop a solution for a Document Management System suitable to the Construction Sector. The solution will form the basis of document sharing, emailing, retrieval of documents and tracking of correspondence to be accessible by the Contracting Authority, the Project Company and Members of the Independent Experts Team at a **provisional sum of Kshs 50 million**. The cost should cater for unlimited user licenses and operation of the System for the entire period of the Construction and 1 year into Operations and Maintenance.

4. Team Composition & Qualification Requirements for the Key Experts (and any other requirements which will be used for evaluating the Key Experts under Data Sheet 21.1 of the ITC)

4.1 STAFF INPUTS

4.1.1 KEY EXPERTS

Minimum Inputs. The Employer will select a Local Firm either in association with other Foreign Firms, Foreign Experts or Local Experts or, to carry out the tasks in this TOR. The Quality Cost Based Selection QCBS selection method will be used. Consulting services require a total minimum 341 man-months and will cover period of 48 months (36 months construction + 12 months Operation Maintenance).

Ref	Key Expert	Inputs During the Construction Phase	Inputs During the O&M Phase	Total Inputs
K-1	Project Director cum Infrastructure Expert (Team Leader)	4	2	6
K-2	Project Manager/[Project Management and Highway Design]	36	12	48
K-3	Quality Assurance and Control Specialist [QA/QC Pavement & Materials/Geotech Engineering background]	36	12	48
K-4	PPP Expert-1 [Project Finance and Modelling Expert]	9	6	15
K-5	PPP Expert-2 [PPP Contracts, Operations and Maintenance]	18	24	42
K-6	Bridge/Drainage Engineer (SBE) [drainage and hydrology]	18	6	24
K-7	Architect and Landscape Designer	9	6	15
K-8	Environmental Expert	9	2	11

Ref	Key Expert	Inputs During the Construction Phase	Inputs During the O&M Phase	Total Inputs
K-9	Social Safeguards Expert [Community Liaison]	36	12	48
K-10	Electrical Engineer/Lighting Specialist	18	6	24
K-11	Communications Expert	36	24	60
	TOTAL	229	112	341

The Independent Expert shall form a multi-disciplinary team (the “Consultancy Team”) for undertaking this assignment. The following Key Personnel whose experience and responsibilities are briefly described herein will be considered during evaluation of the Technical Proposal.

Other expertise such as that required for financial analysis, material investigation characterisation, quantity survey, social impact assessment etc. for the Project shall be included in the Team either through the Key Personnel specified below or through other Professional Personnel, as necessary.

K-1 Project Director cum Infrastructure Expert

Must be a Graduate in Civil or Transportation Engineering with 20 years of experience in similar projects. He/she will lead, coordinate and supervise the multi-disciplinary team. It will be his responsibility to guide the team in arriving at solutions within the constraints specified in the TOR.

K-2 Project Manager [Project Management and Highway Design]

Must be a Graduate in Civil or Highway Engineering with 15 years of experience in similar projects. He/she must have experience in project management and an understanding of Highway Engineering to adequately oversee aspects of design. He/she will lead, coordinate and supervise on a daily the multi-disciplinary team. It will be his responsibility to guide the team in arriving at solutions within the constraints specified in the TOR.

K-3 Quality Assurance and Control Specialist

Must be a Graduate in Civil, Highway Engineering or equivalent with 15 years of experience in similar projects. He/she must have an understanding of quality assurance and control systems and a background in Pavement, Materials and Geotechnical Engineering. He/she will be responsible for providing the specified services in respect of all quality controls on materials used in the road and pavement works, concrete and steel structures. He/she will be responsible for providing the specified services in respect of all structures, stability of slopes and for all soil related activities.

K-4 PPP Expert 1 – Project Finance and Modelling

Must be a Graduate in Finance or Commerce or Economics and a certified PPP Expert with 8 years of experience in similar projects. He/she must have exposure in the management of PPP Contracts. He/she will be responsible for review of the commercial terms and Financial Model and monitoring and reporting on the Project Risks.

K-5 PPP Expert 2 – Project Contracts and Operations and Maintenance

Must be a Graduate in Engineering, Law, Finance or Commerce or Economics and a certified PPP Expert with 8 years of experience in similar projects. He/she must have exposure in the management of PPP Contracts and Contract Law. He/she will be responsible for interpretation of the Terms of the Project Agreement, review of Claims and review and assessment of the operation and maintenance procedures developed by the Project Company.

K-6 Bridge/Drainage Engineer

Must be a Graduate in Civil/Structural Engineering or equivalent with 15 years of experience in similar projects. He/she will be responsible for providing the specified services in respect of all structures including bridges, buildings, platforms, trestle, pavement, utilities, services, breakwater, piling revetment, stability of slopes. He/she will be responsible for reviewing the drainage system designs prepared by the Project Company and providing the specified services in respect of all drainage works

K-7 Architect and Landscape Designer

Must be a Graduate in Architecture with 15 years of experience in similar projects. He/she will be responsible for the review of building and landscape architectural designs and coordinating works related to the Building Structures and Landscaping works.

K-8 Environmental Expert

Must be a Graduate in Environmental Science or equivalent with 10 years of experience in similar projects. He/she will be responsible for providing the specified services in respect of all environmental issues related to the Project including ensuring adherence of conditions stipulated in the Relevant Environmental Laws in Kenya and monitoring Implementation of the EMSP.

K-9 Social Safeguards Expert [Community Liaison]

Must be a Graduate in Anthropology, Sociology, Applied Social Science, or other related fields with 6 years of experience in similar projects. He/she will be responsible for providing the specified services in respect of all social safeguards issues related to the Project including

ensuring adherence of conditions stipulated in the Relevant Laws in Kenya and monitoring Implementation of the Social Aspects under the EMSP and Implementation of the RAP. He/she should also have had exposure in community liaison and development of Grievance Redress Mechanisms.

K-10 Communications Expert

Must be a Graduate in Journalism, Communication, or other related field with 6 years of experience in similar projects. He/she shall be responsible for preparation of a communication plan and preparing communication strategies. He/she should have had exposure in stakeholder mapping and engagement with additional experience in liaising with media journalist, government officials, NGOs, Civil Society and private sector.

K-11 Electrical Engineer and Lighting Specialist

Must be a Graduate in Electrical Engineering or equivalent with 10 years of experience in similar projects. He/she will be responsible for providing the specified services in respect of all electrical and electronics parts of the Project.

4.1.2 NON-KEY EXPERTS

The following support staff will be engaged on the Independent Expert's Team

Ref	Key Expert	Inputs During the Construction Phase	Inputs During the O&M Phase	Total Inputs
SP-1	Assistant Project Manager & Measurements Engineer [Assisting the Project Manager on tasks under his/her purview and specifically on utility relocation issues]	36	12	48
SP-2	Engineering Surveyor	36	12	48
SP-3	Quality Assurance Technicians - Concrete	36	12	48
SP-4	Quality Assurance Technicians - Road/Pavement	36	12	48
SP-5	Office Administrator and Records Manager	36	24	60
	TOTALS			252

SP-1 Assistant Project Manager & Measurements Engineer

Must be a Graduate in Civil/Highway Engineering or equivalent with 10 years of experience in similar projects. He/she will be responsible for measurement of quantities executed in the Contract and preparation of project implementation costs.

SP- 2 Engineering Surveyor

Must be a Graduate in Engineering Survey or equivalent with 10 years of experience in similar projects. He/she shall be responsible for performing controls on road and structure levels, and must be proficient in CAD software.

SP-3 Quality Assurance Engineer

The Quality Assurance Engineer should have a degree in civil engineering degree or related field with preferably 10 years of work experience including preferably 7 years in quality assurances and quality control in road and building construction works, and materials testing. The Quality Assurance Engineer should possess knowledge and skills in supervision of works, and laboratory and in-situ testing.

SP-3 Quality Assurance Technician – Concrete Works

Must be a Diploma holder in Civil or Highway Engineering with 10 years of experience in similar projects. He/she shall be responsible for material testing and quality controls on road and pavement construction works for all layers.

SP-4 Quality Assurance Technician – Road/Pavement Works

Must be a Diploma holder in Civil/Highway/Building Engineering with 10 years of experience in similar projects. He/she shall be responsible for material testing and quality controls on concrete structures and pavement construction works for all layers.

SP-5 Office Administrator and Records Manager

Must be a Diploma holder in Business Administration with 8 years' of experience in similar environment. Must be proficient in Microsoft Office Packages and have knowledge of document management systems and record keeping.

Other Support Staff (to be indicated by the Independent Expert in submission of the Proposal and costed in the Form FIN 3)

The Project shall provide the Independent Expert with Office Accommodation. All the Key Personnel shall be deployed at this office within 4 (four) weeks of the date of the Agreement and as specified in the **Staff Deployment Schedule** forming part of the Agreement.

The Independent Expert shall mobilise and demobilise the Key Personnel and Non-Key Personnel only with the concurrence of the Client and shall maintain the time sheet/attendance sheet of the working of all Personnel in the Project Office. These time sheets/attendance sheets shall be made available to the Client as and when asked for and a copy of such record shall be submitted to the Client at the end of each calendar month.

5. Reporting Requirements and Time Schedule for Deliverables

The Independent Expert shall deliver the following deliverables (the “Deliverables”) during the course of this Consultancy. 2 (two) hard copies professionally bound and 4 (four) soft copies in CDs/USB Drive of all the final reports, drawings, etc. shall be submitted to the Client. For draft reports, if requested, only 2 (two) hard copies and 3 (three) soft copies in CD/USB Drive shall be submitted to the Authority. The size of drawings shall be A3 (maximum). Soft copy of all drawings shall be submitted in pdf as well as a digital format editable in AutoCAD.

i) Inception Report

On commencement of the Consultancy, the Independent expert shall submit an Inception Report. The Inception Report shall include the Independent Expert’s submissions towards understanding of the RFP, the methodology to be followed and the Work Plan.

ii) Monthly Report

A Monthly Report shall be submitted by the Independent Expert to the Authority in compliance with all its obligations under the Concession Agreement and this TOR.

The Monthly Inspection Report shall contain all the data and particulars relevant to the provisions of the Concession Agreement and shall include all reports and documents specified therein.

iii) Quarterly Report on Environmental and Social Safeguards

A Quarterly Report will be submitted by the Independent Expert to the Client on the level of compliance and implementation of mitigation measures under

iv) Construction Completion Report

Final ‘As-Built’ drawings, compiled final design of the Expressway, design data, investigation reports etc. in respect of all structures and elements of the Project shall be compiled and submitted to the Authority for record and reference. The Drawings shall include electrical, structural, pavement and architectural drawings.

v) Framework Document for Project Handback

Development of a Framework Document that will be developed further during Operation and Maintenance Period and used during Handback Period. This report will be developed as a Preliminary Document to be submitted to the Client 6 months into Operation & Maintenance and the Draft Final Document to be submitted to the Client 12 months into Operation & Maintenance.

The Document to detail the Handback Requirements, monitoring and inspection procedures and financial/incentive securities. The Framework to be developed using as a guide Schedule 17 on Handback Requirements of the Project Agreement.

vi) Ad Hoc reports

Any Reports that are not listed above that will be required from time to time by the Employer.

6. Client’s Input and Counterpart Personnel

(a) Services, facilities and property to be made available to the Independent Expert by the Client:

i) Project Office

The Independent Expert will be provided with space for the Project Office by the Project Company. [6 No. Offices] including a 30-seater Boardroom and Conference equipped with Projector and Projector Screen

ii) Office Equipment

The Independent Expert will be required to equip their offices with the following equipment:

- 5 No. Lenovo Desktop Computer with fully licensed Microsoft Office and AutoCAD Civil 3D or equivalent
- 5 No. HP Laptop Computers for the exclusive use of the Contracting Authority with the following minimum specifications: 8th Generation Intel Core i7, 12GB RAM, 512GB SSD + 1TB HDD, NVIDIA GeForce graphics, Fully licensed Microsoft Windows, MS Office, and AutoCAD Civil 3D or equivalent
- 4 No. Colour (A3) Printer with scanning functionality
- 1 No. Colour Multifunctional Photocopier and Printer equivalent to the functionality of the Kyocera TASKalfa 6000 series

iii) Materials Testing Laboratory

The Project Company shall set up a Laboratory to which the Independent Expert will have full access for purposes of assessing the quality assurance of the Materials Testing Plan and to carry out their individual confirmatory testing and quality assurance checks.

iv) Project Supervision Vehicles

The Project Company will provide the Independent Expert with the following vehicles (or equivalent) for use on site, to facilitate oversight of the Project

- | | | |
|--|---|-------|
| 1. 4WD SUV Type Vehicles, 3000cc, Diesel/Petrol Engine | - | 4No. |
| 2. Double cabin pickup, min 2400 cc, Diesel Engine | - | 2No. |
| 3. 14-seater Minibus, min 2500cc, Diesel Engine | - | 1 No. |

PART II

Section 6. Conditions of Contract and Contract Forms

1. .

**INDEPENDENT EXPERTS CONTRACT
AGREEMENT**

**Independent Expert's
Services**

INDEPENDENT EXPERT'S AGREEMENT

THIS INDEPENDENT EXPERT'S AGREEMENT (hereinafter referred to as the "**Agreement**") is made on [□], 2020,

BETWEEN:

- (1) **THE KENYA NATIONAL HIGHWAYS AUTHORITY**, a state corporation established under the Kenya Roads Act, 2007 (hereinafter referred to as the "**Contracting Authority**");

AND

- (2) **CHINA ROAD AND BRIDGE CORPORATION** a limited liability company, duly incorporated under the laws of Kenya, and having its registered office [□] (hereinafter referred to as the "**Project Company** ");

AND

- (3) [**INDEPENDENT EXPERT**] [Insert legal form and description] having its registered office at [□] (hereinafter referred to as the "**Independent Expert**").

RECITALS

- A. The Contracting Authority and the Project Company have entered into an agreement for the Design, Build, Operate, and Transfer (DBOT) of the Nairobi Expressway Project under a Public-Private Partnership initiative Framework ("Project Agreement") under the terms of which they have jointly agreed to appoint an independent expert.
- B. The Independent Expert shall, for the purposes of this Agreement and the Project Agreement fulfil the roles of the Independent Engineer as set out in the Public Private Partnership Regulations, 2014. The Independent Expert is an independent adviser willing to provide services to the Contracting Authority and the Project Company.
- C. The Contracting Authority and the Project Company jointly engage the Independent Expert to perform the duties and obligations which are ascribed to the Independent Expert in the Project Agreement upon the terms of this Agreement which are set out in Schedule 14 of the Project Agreement upon the terms and conditions set out below.
- D. This Agreement sets out the terms and conditions upon which the appointment of the Independent Expert shall be made in terms of the Project Agreement.

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1. In this Agreement, the following terms shall have the meanings given to them below:

"**Additional Fees**" means the fees to be paid to the Independent Expert in respect of any Additional Services in accordance with Paragraph 4.2 below;

"**Party**" means each of the Contracting Authority and the Project Company, and "Parties" means both of them;

"**Fees**" means the Initial Fees and the Additional Fees;

"**Final Date for Payment**" has the meaning given to it in Paragraph 4.3;

"**Initial Fees**" means the fees to be paid to the Independent Expert in respect of the Initial Services in accordance with Paragraph 4.1, as set out in Schedule 12 of the Project Agreement;

"**Initial Services**" means the services listed in Schedule 12 of the Project Agreement;

"**Joint Notice**" means a notice in writing issued jointly by the Parties;

"**Project Agreement**" means the PPP contract signed between the Contracting Authority and the Project Company

"**Project Network**" means all the roads included in the Project Agreement entered into by the Project Company and the Contracting Authority

"**Route**" means an individual road included in the Project Agreement

"**Services**" means together the Initial Services and the Additional Services;

"**Additional Services**" means any services provided by the Independent Expert in addition to the Initial Services, or any variation to the Initial Services undertaken by the Independent Expert, in each case in accordance with Paragraph 2.2.

1.2. Unless the context otherwise requires, words and expressions defined in the Project Agreement have the same meanings in this Agreement as in the Project Agreement.

1.3. The headings in this Agreement do not affect its interpretation.

1.4. Unless the context otherwise requires, all references to clauses and schedules are references to clauses of and schedules of the Project Agreement and references to paragraphs are references to this Agreement.

2. APPOINTMENT

2.1. The Parties also jointly engage the Independent Expert to perform:

2.1.1 the Initial Services as outlined in the Terms of Reference and Schedule 12 of the Project Agreement; and

2.1.2 any Additional Services commissioned pursuant to Paragraph 2.2, upon the terms and conditions set out below.

2.2. If the Parties or any of the Parties require any Additional Services:

2.2.1 the Parties or the requesting Party shall issue a notice to the Independent Expert specifying:

2.2.1.1 the services required;

2.2.1.2 which of the Parties will pay the Fees associated with the relevant services (or, if more than one Party is to pay, the proportion of the Fees for which each Party will be responsible); and

2.2.1.3 the proposed timing of payment of the Fees associated with the relevant services;

2.2.2 within 5 business days after issuance of the notice, the Independent Expert shall provide the Parties with a written quote of the cost of the relevant services, which cost shall:

2.2.2.1 wherever possible be based on the rates contained in a schedule of rates that would have formed part of the bid submission of the Independent Expert and set forth as Appendix 2; and

2.2.2.2 take into account any reduction in work or other expense which may occur as a result of the required variation to the Services, together with any other information reasonably required by any Party (such as a method statement setting out how the Independent Expert intends to carry out the relevant services); and

2.2.3 if the Parties (or the requesting Party) are satisfied with the Independent Expert's proposal they shall issue a further notice instructing the Independent Expert to undertake the Additional Services and the Independent Expert shall undertake the Additional Services at the time agreed by the Parties or, in the absence of agreement, as soon as reasonably practicable.

2.2.4 If only one of the Parties is requesting for the Additional Services, the requesting Party shall seek the consent of the other Party.

2.3. The Independent Expert shall provide the Services independently, fairly and impartially to and as between each of the Parties following Good Industry Practice. Whilst the Independent Expert may take account of any representations made by the Parties, the Independent Expert shall not be bound to comply with any representations made by any of them in connection with any matter on which the Independent Expert is required to exercise his professional judgement.

2.4. The Independent Expert shall provide the Services:

- 2.4.1 with the reasonable care, skill and diligence to be expected of a properly qualified and competent professional adviser who has held itself out as competent and experienced in rendering such services for projects of a similar size, nature, scope and complexity to the Project;
- 2.4.2 in accordance with Good Industry Practice, all pertinent laws and the standards and specifications set forth in Schedule 2 and Schedule 3 of the Project Agreement; and
- 2.4.3 in accordance with the methodology component of the technical proposal submitted as part of the bid of the Independent Expert and as set forth in Appendix 3.

For the purposes of this Paragraph 2.4 "Good Industry Practice" shall mean using standards, practices, methods and procedures (as practised in Kenya) and exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator or other person (as the case may be) engaged in a similar type of undertaking as under this Agreement under the same or similar circumstances.

- 2.5. All instructions to the Independent Expert must be given jointly by the Contracting Authority's Representative, and the Project Company's Representative through a Joint Notice except when the provisions for a single Party in Paragraph 2.3 applies.
- 2.6. The Independent Expert shall comply with all reasonable instructions given to it by the Parties except and to the extent that the Independent Expert reasonably considers that any such instructions vary or might vary the Services, or its authority, or responsibilities under this Agreement, or prejudices or might prejudice the exercise by the Independent Expert of its professional judgment in accordance with Paragraph 2.4 above. The Independent Expert shall promptly confirm in writing to each of the Parties whether or not it shall comply with any such instruction setting out the grounds upon which the decision is made.
- 2.7. The Parties agree to co-operate with and provide reasonable assistance to the Independent Expert to familiarise the Independent Expert with all necessary aspects of the Project to enable the Independent Expert to carry out its obligations under this Agreement.
- 2.8. The Independent Expert shall be deemed to have full knowledge of the provisions of the Project Agreement and shall be deemed to be aware of and to have taken full account of all the undertakings and warranties, both expressed and implied, on the part of any of the Parties which are set out in the Project Agreement. The Project Company shall deliver to the Independent Expert a true and accurate copy of the Project Agreement as soon as practicable following:

- 2.8.1 the date of this Agreement; and

-
- 2.8.2 any variation to the Project Agreement which is likely to affect the performance of the Services by the Independent Expert.
- 2.9. The Independent Expert shall promptly and efficiently perform the Services as soon as reasonably practicable but consistent with the standards specified in Paragraph 2.4 above.
- 2.10. The Independent Expert shall include the list of experts described in Appendix 4 . Such persons shall have full authority to act on behalf of the Independent Expert for all purposes in connection with this Agreement.
- 2.11. None of the persons mentioned in Paragraph 2.10 shall be removed or replaced unless He/she ceases to work as a partner in or director or employee of the Independent Expert or He/she is unable to work because of death or ill-health or by agreement of the Parties. The Independent Expert shall notify (giving a minimum of ten (10) Business Days' notice) the Parties of any such circumstances and shall be responsible for finding a replacement whose appointment shall be subject to approval in writing of the Parties.
- 2.12. The Parties agree that, the Independent Expert shall only be liable under this Agreement in respect of claims whether for any breach of this Agreement or in tort, negligence, for breach of statutory duty or otherwise which are notified to the Independent Expert before the expiration of the period of six (6) years from the date of completion of all of the Services under the terms of this Agreement.

3. DURATION

- 3.1. The Services shall commence 14 days from the date of this Agreement and cease upon the expiry of four years from the date of the Agreement or on termination of this Agreement in accordance with Paragraph 6.
- 3.2. This Agreement governs all of the Services provided by the Independent Expert in relation to the Project whether before or after the date hereof.

4. FEES

- 4.1. Each of the Parties shall pay the Initial Fees to the Independent Expert his share in respect of the Initial Services. The Independent Expert shall issue invoices to the Project Company for the Initial Fees in accordance with Part 1 of Appendix 2.
- 4.2. The Independent Expert shall be entitled to be paid Additional Fees in respect of any Additional Services it provides. The Independent Expert shall issue an invoice to the Party responsible for payment on the date agreed by the Parties at the time the Additional Services were commissioned pursuant to Paragraph 2.2 or, if more than one Party is responsible for payment, the Independent Expert shall issue an invoice to each of them on the relevant date, in the proportions agreed pursuant to Paragraph 2.2. Where more than one Party is

responsible for payment of Additional Services, their obligations to pay shall be several and not joint.

- 4.3. The date on which an invoice is received by the Project Company or the Contracting Authority (as appropriate) shall constitute the due date. The final date for payment by the Project Company or the Contracting Authority (as appropriate) shall be thirty (30) days after receipt of the Independent Expert's invoice ("Final Date for Payment").
- 4.4. Not later than five (5) Business Days after the due date ascertained in accordance with Paragraph 4.3, the Project Company or the Contracting Authority (as appropriate) may give written notice to the Independent Expert stating the amount which it proposes to pay and the basis on which the amount is calculated.
- 4.5. Where the Project Company or the Contracting Authority (as appropriate) intends to withhold payment of any amount stated in the invoice, it shall give written notice to the Independent Expert not later than five (5) Business Days before the Final Date for Payment. The notice shall state the amount to be withheld and the ground or grounds for withholding the payment and if there is more than one ground, the notice shall identify the amount attributable to each ground.
- 4.6. If any Party fails to pay the Independent Expert any sum payable under this Agreement by the Final Date for Payment, the relevant Party shall pay the Independent Expert simple interest on that sum from the Final Date for Payment until the actual date of payment at the Default Interest Rate and such rate is agreed as a fair and reasonable rate.
- 4.7. If any Party fails to pay the amounts properly due pursuant to these provisions and no notice to withhold the payment has been given pursuant to Paragraph 4.5, the Independent Expert may suspend performance of any or all of the Services. This right is subject to the Independent Expert first giving each of Parties not less than seven (7) Business Days' notice in writing of such intention stating the grounds for suspension. The right to suspend performance shall cease when the Project Company (and/or the Contracting Authority (as appropriate)) pays the amount properly due.
- 4.8. No Party shall issue instructions or do anything which does or is reasonably likely materially to increase the fees payable to the Independent Expert without the prior written approval of the others (such approval not to be unreasonably withheld or delayed).
- 4.9. As soon as the Independent Expert becomes aware of the same and before acting on the same the Independent Expert shall inform the Contracting Authority and the Project Company of any instructions which any Party has given him which will or could reasonably be expected to increase the fees payable to the Independent Expert under the terms of this Agreement. The Independent Expert shall if requested by any of the Project Company or the Contracting Authority provide each Party with as detailed an estimate as is reasonably practicable of the increase to the fees payable to it if it carries out such instructions. The estimate of increased

fees shall be based upon the rates contained in part 2 of Appendix 2.

5. LIMITATIONS ON AUTHORITY

The Independent Expert shall not:

- 5.1. make or purport to make any alteration or addition to or omission from the Output Specification (including, without limitation, the setting of performance standards) or issue any instruction or direction to any contractor or professional consultant employed or engaged in connection with the Project; or
- 5.2. unless the Contracting Authority and the Project Company consent in writing consent or agree to any waiver or release of any obligation of the Contracting Authority or the Project Company under the Project Agreement or of any contractor or professional consultant employed or engaged in connection with the Project.

For the avoidance of doubt, the Independent Expert shall not express an opinion on and shall not interfere with or give any advice, opinion or make any representation in relation to any matters which are beyond its role and responsibilities under this Agreement.

6. TERMINATION

6.1. Automatic termination

This Agreement will terminate immediately upon receipt by the Independent Expert of a Joint Notice confirming that the Project Agreement has terminated.

6.2. Parties' right to terminate

- 6.2.1 The Parties may by Joint Notice immediately terminate this Agreement if the Independent Expert:
 - 6.2.1.1 is in breach of any of the terms of this Agreement which, in the case of a breach capable of remedy, shall not have been remedied by the Independent Expert within twenty one (21) days of receipt by the Independent Expert of a Joint Notice specifying the breach and requiring its remedy;
 - 6.2.1.2 is incompetent, guilty of gross misconduct and/or any material failure, negligence or delay in the provision of the Services and/or its other duties under this Agreement;
 - 6.2.1.3 fails to comply with Paragraphs 2.10 and 2.11;
 - 6.2.1.4 fails or refuses after written warning to provide the Services and/or its other duties under this Agreement reasonably and as properly

required of him.

6.2.2 The Parties may terminate this Agreement at any time by issuing a Joint Notice to the Independent Expert no later than (6) months prior to the proposed termination date.

6.3 Independent Expert's right to terminate

6.3.1 Subject to Paragraph 6.3.2 the Independent Expert may terminate this Agreement:

6.3.1.1 if any amount in excess of 20% of the IE Contract amount is due and payable to the Independent Expert by any of the Parties, and 30 days has passed since the Final Date for Payment of such amount; or

6.3.1.2 any of Parties is otherwise in material breach of its obligations.

6.3.2 The Independent Expert shall neither exercise nor seek to exercise any right to terminate its engagement without giving the Parties not less than twenty (20) Business Days' written notice of its intention to do so specifying the grounds for the proposed termination and identifying who is in breach of this Agreement ("Step-in Notice").

6.3.3 The Independent Expert's right to terminate its engagement under this Agreement or to discontinue the performance of the Services shall cease if a Party who is not in breach of this Agreement gives notice to the Independent Expert within 20 Business Days of receiving a Step-in Notice under Paragraph 6.3.2 requiring the Independent Expert to continue the performance of the Services, provided that a Party giving such notice must agree to assume all the obligations of the defaulting Party and undertake to discharge all payments which are or may subsequently become due to the Independent Expert from the defaulting Party under this Agreement.

6.3.4 If a Party issues a notice in accordance with Paragraph 6.3.3 this Agreement shall continue in full force and effect as if the right of termination or discontinuance on the part of the Independent Expert had not arisen and on the basis that all references in this Agreement to the defaulting Party thereafter shall be read and construed as references to the Party which issued the notice.

6.3.5 Where a Party has given notice in compliance with Paragraph 6.3.3 and has given an undertaking of the type described in that paragraph the defaulting Party shall reimburse and indemnify that Party against each and every liability which that Party may have to the Independent Expert by virtue of such undertaking and assumption of responsibility and against any claims, demands, proceedings, damages, costs and expenses sustained, incurred or payable by that Party as a consequence thereof.

6.4 Consequences of Termination

6.4.1 Following any termination of this Agreement, but subject to any set-off or

deductions which the Parties may be entitled properly to make as a result of any breach of this Agreement by the Independent Expert, the Independent Expert shall be entitled to be paid in full and final settlement of any valid claim which the Independent Expert may have in consequence thereof, any fees due under Paragraph 4 above in respect of the Services carried out in accordance with this Agreement prior to the date of termination.

- 6.4.2 Termination of this Agreement shall be without prejudice to any accrued rights and obligations under this Agreement as at the date of termination (including the right of either Party to recover damages from the Independent Expert).
- 6.4.3 If this Agreement is terminated in accordance with this Paragraph 6, the Parties shall use reasonable endeavours to engage an alternative independent expert within 30 days, subject to law and public procurement rules. In case of termination caused by the IE, then if within such period the Parties are unable to procure the appointment of an alternative independent expert on reasonable commercial terms, the Independent Expert shall pay to the Parties any reasonable incremental loss, damage or extra costs suffered by each of them.
- 6.4.4 Termination of this Agreement shall not affect the continuing rights and obligations of the Parties under Paragraph 5 (Limitations on Authority), this Paragraph 6, Paragraph 7 (Confidential Information and Copyright), Paragraph 8 (Professional Indemnity Insurance) or Paragraph 16 (Dispute Resolution Procedure) or under any other clause which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

7. CONFIDENTIAL INFORMATION AND COPYRIGHT

- 7.1. The Independent Expert shall treat as secret and confidential and shall not at any time for any reason disclose or permit to be disclosed to any person or otherwise make use of or permit to be made use of any unpublished information relating to either Party's technology or other know-how business plans or finances or any such information relating to a subsidiary, supplier, customer or client of either Party where the information was received during the period of this Agreement. Upon termination of this Agreement for whatever reasons the Independent Expert shall deliver up to the relevant Party all working papers, computer disks and tapes or other digital storage material and copies provided to or prepared by him pursuant either to this Agreement or to any previous obligation owed to that Party.
- 7.2. The copyright in all reports, calculations and other similar documents provided by the Independent Expert in connection with the Project shall remain vested in the Independent Expert but the Independent Expert grants to the Parties and their nominees with full title guarantee a non-exclusive irrevocable royalty free licence to copy and use such drawings and other documents and to reproduce the designs contained in them for any purpose related to

the Project including (but without limitation) the construction, completion, maintenance, letting, promotion, advertisement, reinstatement, extension and repair of the Project. Such licence shall include a licence to grant sub-licences and to transfer the same to third parties.

8. PROFESSIONAL INDEMNITY INSURANCE

- 8.1. Without prejudice to its obligations under this Agreement, or otherwise at law, the Independent Expert shall maintain professional indemnity insurance with a limit of indemnity of not less than 10% of the Independent Expert Contract for each claim or series of claims that arise from the same cause or a single source or event in respect of any neglect, error or omission on the Independent Expert's part in the performance of its obligations under this Agreement for the period commencing on the date of this Agreement and expiring [eight (8)] years after:
- 8.1.1 expiry of the Construction Period in accordance with the provisions of the Project Agreement; or
 - 8.1.2 the termination of this Agreement, whichever is the earlier, provided that such insurance is available in the marketplace at commercially reasonable rates and terms.
- 8.2. The Independent Expert shall maintain such insurance with reputable insurers carrying on business in Kenya who are acceptable to the Parties such acceptance not to be unreasonably withheld or delayed.
- 8.3. Any increased or additional premium required by insurers by reason of the Independent Expert's own claims record or other acts, omissions, matters or things particular to the Independent Expert shall be deemed to be within commercially reasonable rates.
- 8.4. The Independent Expert shall immediately inform the Parties if such insurance ceases to be available at commercially reasonable rates in order that the Independent Expert and the Parties can discuss means of best protecting the respective positions of the Parties and the Independent Expert in respect of the Project in the absence of such insurance.
- 8.5. The Independent Expert shall fully co-operate with any measures reasonably required by the Parties including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above commercially reasonable rates if the Parties undertake in writing to reimburse the Independent Expert in respect of the net cost of such insurance to the Independent Expert above commercially reasonable rates or, if the Parties effect such insurance at rates at or above commercially reasonable rates, reimbursing the Parties in respect of what the net cost of such insurance to the Parties would have been at commercially reasonable rates.

- 8.6. The Independent Expert shall, prior to commencing the provision of the Services and no less than ten (10) days after renewal dates, produce for inspection by the Parties documentary evidence that such insurance is being properly maintained.
- 8.7. The above obligations in respect of professional indemnity insurance shall continue notwithstanding termination of this Agreement for any reason whatsoever, including (without limitation) breach by either Party.

9. NOTICES, REPORTING, MEETINGS AND COMMUNICATIONS

- 9.1. All notices or other communications required in connection with this Agreement shall be in writing and sent by hand, by first class pre-paid post or by email transmission to the relevant address set out below or to such other address or facsimile number as a Party may notify to the other Parties in writing:

If to the Contracting Authority:

Address: []
Email: []

If to the Project Company: []

Address: []
Email: []

If to the Independent Expert: []

Address: []
Email: []

- 9.2. Service shall be deemed to have been effected as follows:

- 9.2.1 if personally delivered, at the time of delivery to the addressee;
- 9.2.2 if sent by first class pre-paid post, on the second (2nd) Business Day after it is put in the post; and
- 9.2.3 if sent by email transmission, at the time of transmission or if the time of transmission is outside normal working hours (which shall be deemed to be 8.00am to 5.00pm Monday to Friday excluding public holidays), at 8.00am on the next Business Day.

10. ASSIGNMENT

- 10.1. The Independent Expert shall not assign or transfer any of its rights or obligations under this Agreement or sub-contract the whole of the Services. The Independent Expert shall be entitled to sub-contract part of the Services subject to consent of the Parties which shall not be unreasonably withheld or delayed. For the avoidance of doubt the Independent Expert shall remain responsible for all the Services undertaken by any sub-contractor as if the same had been undertaken by the Independent Expert.
- 10.2. Neither of the Parties shall be entitled to assign or transfer any of their respective rights or obligations under this Agreement save where such assignment or transfer is contemporaneous to the assignment or transfer of the Project Agreement and is made to the same assignee or transferee. In the event that the Project Agreement is novated to a third party, the term "Project Agreement" shall include any replacement contract arising from such novation.
- 10.3. The Independent Expert shall not be entitled to contend that any person to whom this Agreement is assigned in accordance with Paragraph 10.2 is precluded from recovering under this Agreement any loss incurred by such assignee resulting from any breach of this Agreement (whenever happening) by reason that such person is an assignee and not a named promisee under this Agreement.

11. CUMULATIVE RIGHTS AND ENFORCEMENT

- 11.1. Any rights and remedies provided for in this Agreement whether in favour of the Project Company or the Contracting Authority or the Independent Expert are cumulative and in addition to any further rights or remedies which may otherwise be available to the parties.
- 11.2. The duties and obligations of the Independent Expert arising under or in connection with this Agreement are owed to the Parties jointly and severally and the Contracting Authority and the Project Company may accordingly enforce the provisions hereof and pursue their respective rights hereunder in their own name, whether separately or with each other.
- 11.3. The Parties covenant with each other that they shall not waive any rights, remedies or entitlements or take any other action under this Agreement which would or might reasonably be expected to adversely affect the rights, remedies or entitlements of the other without the other's prior written consent, such consent not to be unreasonably withheld or delayed.

12. WAIVER

The failure of any Party at any one time to enforce any provision of this Agreement shall in no way affect its right thereafter to require complete performance by any other Party, nor shall the waiver

of any breach or any provision be taken or held to be a waiver of any subsequent breach of any provision or be a waiver of the provision itself.

13. SEVERABILITY

In the event that any term, condition or provision contained in this Agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, clause or provision shall, to that extent, be omitted from this Agreement and the rest of this Agreement shall stand, without affecting the remaining clauses.

14. COUNTERPARTS

This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

15. VARIATION

A variation of this Agreement is valid only if it is in writing and signed by or on behalf of each party.

16. DISPUTE RESOLUTION PROCEDURE

- 16.1. All disputes shall be resolved in accordance with terms equivalent (*mutatis mutandis*) to the Dispute Resolution Procedure as set out in the Project Agreement.
- 16.2. The Project Company, the Contracting Authority and the Independent Expert shall co-operate to facilitate the proper, just, economical and expeditious resolution of any and all such disputes which arise under this Agreement.

17. GOVERNING LAW AND JURISDICTION

- 17.1. Subject to Paragraph 16 above, this Agreement shall be governed by and construed in accordance with the laws of Kenya, and (subject as aforesaid) the Parties hereby submit to the non-exclusive jurisdiction of the courts of Kenya.
- 17.2. No action or proceedings may be commenced against the Independent Expert for any breach of this Agreement after the expiry of six (6) years following the date of completion of the Services or the termination of this Agreement, whichever is the earlier.

18. THIRD PARTY RIGHTS

A person who is not a party to this Agreement shall have no right to enforce any term of this Agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

IN WITNESS WHEREOF the Parties have executed and delivered this Agreement on the date first written above.

SIGNED, SEALED (but not delivered until the date hereof) by the Contracting Authority:

)
)
)
 [Authorised Officer])
)
)
)
)
)

EXECUTED (but not delivered until the date hereof) by the Project Company acting by two of its directors or a director and its secretary:

)
)
 Director)
)
)
 Director/Secretary)
)
)

EXECUTED (but not delivered until the date hereof) by [Independent Expert] acting by two of its directors or a director and its secretary [or as appropriate]:

)
)
 Director)
)
)
 Director/Secretary)
)
)

APPENDIX 1**Terms of Reference – Independent Expert**

Refer to Schedule 12 of the Project Agreement for the Terms of Reference (ToR) of the Independent Expert.

APPENDIX 2

Initial Fees

Part 1 - Fee Instalments

[details to be inserted]

Part 2 - Fee Rates

[details to be inserted]

APPENDIX 3

Methodology to Respond to Scope of Services, and minutes of negotiations.

[to be inserted]

APPENDIX 4

Profile of the experts.

Schedule 1 – Services

Scope of Services - Independent Expert

[The scope of services of the Independent Expert shall be enclosed herein after the execution of this Agreement]

Schedule 2 – Conditions of Particular Application
Reference from Clauses

[This Schedule shall be prepared at the time of execution of the Agreement]

Schedule 3 – Remuneration and Payment
Invoicing

[Details of Fees shall be enclosed in this Schedule at the time of the execution of this Agreement]

Schedule 4 – Sub-Contracting Arrangements

Schedule 5 — FORM OF ADVANCE PAYMENTS GUARANTEE*[See Clause 18.1.1 _Independent Expert Agreement]**{Guarantor letterhead or SWIFT identifier code}***Bank Guarantee for Advance Payment****Guarantor:** _____ *[insert commercial Bank's Name, and Address of Issuing Branch or Office]***Beneficiary:** _____ *[insert Name and Address of Client]***Date:** _____ *[insert date]* _____**ADVANCE PAYMENT GUARANTEE No.:** _____ *[insert number]* _____

We have been informed that _____ *[name of Consultant or a name of the Joint Venture, same as appears on the signed Contract]* (hereinafter called "the Consultant") has entered into Contract No. _____ *[reference number of the contract]* dated _____ *[insert date]* _____ with the Beneficiary, for the provision of _____ *[brief description of Services]* (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum of _____ *[insert amount in figures]* (_____ *[amount in words]*) is to be made against an advance payment guarantee.

At the request of the Consultant, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of _____ *[amount in figures]* (_____ *[amount in words]*)¹ upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's a written statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Consultant is in breach of their obligation under the Contract because the Consultant:

- (a) has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Consultant has failed to repay;
- (b) has used the advance payment for purposes other than toward providing the Services under the Contract.

¹ The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency(ies) of the advance payment as specified in the Contract, or in a freely convertible currency acceptable to the Client.

It is a condition for any claim and payment under this guarantee to be made that the advance payment referred to above must have been received by the Consultant on their account number _____ at _____ *[name and address of bank]*.

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Consultant as indicated in certified statements or invoices marked as “paid” by the Client which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of the payment certificate or paid invoice indicating that the Consultant has made full repayment of the amount of the advance payment, or on the ___ day of *[month]*_____, *[year]*__,² whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 revision, ICC Publication No. 758.

[signature(s)]

{Note: All italicized text is for indicative purposes only to assist in preparing this form and shall be deleted from the final product.}

² Insert the expected expiration date. In the event of an extension of the time for completion of the Contract, the Client would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Client might consider adding the following text to the form, at the end of the penultimate paragraph: “The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Client’s written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.”