

SCHEDULE 12

SCOPE OF SERVICES OF INDEPENDENT EXPERT

1. SCOPE OF SERVICES

- 1.1 The Independent Expert shall have a duty of care to both Parties to act in good faith on a fair and just basis in:
 - (a) giving an opinion; or
 - (b) expressing an Evaluation Report.
- 1.2 Both Parties have the right to consult with the Independent Expert with regard to any Project-related matter and the Independent Expert shall have a duty to give impartial and independent advice to the Parties.
- 1.3 Unless otherwise specified, words with capitalized letters in this Schedule 12 shall have the same meaning as the definitions in the Project Agreement.

2. OBLIGATIONS OF THE INDEPENDENT EXPERT

The Independent Expert shall perform the following, when required by the Parties:

- 2.1 check whether the progress of the Construction Works is in compliance with the construction timetable / Construction Programme as and when required;
- 2.2 undertake inspections during the Construction Period and Operation and Maintenance Period of the quality assurance and quality control system and referred to in the Project Agreement as and when required;
- 2.3 undertake inspections of the Operation and Maintenance Performance Standards;
- 2.4 Review the production of relevant Designs, approvals, consents and authorisations, test results, inspection records, Performance Standards reports, SQE Documentation, Additional Drawings and as As-Built Drawings of Works, and monitor the timely handover of such documentation;
- 2.5 Undertake a visual inspection of the Project Road (or any section thereof) before handover to the Contracting Authority, to see whether the appearance is generally acceptable and in accordance with the Contracting Authority's requirements as set out in the Project Agreement;

- 2.6 Assist the Project Company in preparing any Completion Certificate and in taking-over of the completed Project Road;
- 2.7 Assist the Project Company in preparing a list of outstanding punch list items to be listed in the Completion Certificate, including defects and remedial works existing at the date of issue of the relevant Completion Certificate under the Project Agreement and determine the periods of time reasonably required for the completion thereof;
- 2.8 Inspect rectification works which have previously prevented the Independent Expert from issuing a requested Completion Certificate;
- 2.9 Comply with any applicable Law in the performance of the above duties.

3. REPORTING

- 3.1 Where the Independent Expert is of the opinion that the construction contractor has constructed or executed, is constructing or executing or is preparing to construct or to execute, any part of the Works which may not be in compliance with the Design and Construction Standards, the Detailed Design, and/or the quality control requirements specified in the Project Agreement, the Independent Expert shall promptly give written notice to the Project Company and the construction contractor stating the grounds for its opinion.
- 3.2 The Independent Expert shall be responsible at all times and in all situations to promptly provide both Parties with complete and accurate copies of all requests, communications, information, documents, reports, analyses or other materials provided to the Independent Expert by or on behalf of any Party [or the Senior Lenders], or provided by the Independent Expert to any Party [or the Senior Lenders]. In respect of any reports and information to be supplied by the Independent Expert to the Lenders (or the Lenders' Representative), both Parties shall be entitled to review and to comment to the Independent Expert on all such reports and information, before such reports and information are sent to the Senior Lenders (or the Lenders' Representative). The Independent Expert shall, acting reasonably, take such comments into account (as far as appropriate) prior to submitting the relevant reports and information to the Lenders (or the Lenders' Representative).
- 3.3 The Independent Expert shall provide the Parties, the Senior Lenders or the Lenders' Representatives with all relevant information and documentation that support and/or complement any reports prepared either according to Clause **Error! Reference source not found.**

4. SCOPE OF SERVICES and OBLIGATIONS

4.1 Completion Certificate

When the Works satisfy in all material respects the conditions precedent specified in Clause 17.2 (*Inspection and Acceptance*) of the Project Agreement, the Independent Expert shall prepare the Evaluation Report for Contracting Authority's issuance of the Completion Certificate for the Project Road.

4.2 Handback Survey

The Independent Expert shall, in the written Initial Handback Survey, identify any Remedial Works that are required in order that the Project Road achieve the Handback Requirements as at the Expiry Date and the estimated cost of carrying out such Remedial Works.

4.3 Determination of Costs and Time Extensions

If there is any dispute between the Parties, the Independent Expert will determine the cost and expenses and the extension of the Scheduled Completion Date, the Longstop Date and the Term due to a Relevant Event pursuant to the terms and conditions of the Project Agreement, and such determination shall be binding on the Parties.

4.4 Any other Tasks and Duties

The Independent Expert will undertake any other tasks and duties required pursuant to the Project Agreement, Section 65 of the PPP Act read with Regulation 56 of the PPP Regulations.

4.5 Evaluation Reports

The Independent Engineer shall be responsible for completing any Evaluation Report in a timely manner pursuant to the terms and conditions of the Project Agreement.

5. SELECTION PROCEDURE OF THE INDEPENDENT EXPERT

5.1 Requested Qualification of the Independent Expert:

- (a) The Independent Expert shall be familiar with the Design and Construction Standards (specified in the Project Agreement) that are applicable to this Project.
- (b) The Independent Expert shall have experience in undertaking the role of "Independent Expert" in international projects relating to the design,

construction, operations and maintenance and financing of expressway/motorway/highway projects granted on a “Build Operate Transfer” basis.

5.2 Selection procedure of the Independent Expert

Both Parties shall nominate 2 or 3 companies (or individuals), which shall comprise the Independent Expert short list of candidates. Then the Parties shall carry out the pre-qualification procedure within the short list according to the above qualification requirement outlined in paragraph 5.1 of this Schedule 12. Those companies who pass the pre-qualification shall be eligible to participate in a competitive tender as candidates for Independent Expert. Both Parties shall jointly determine the successful bidder of the tender, on the basis of merit against the qualification requirements. The successful bidder and the Parties shall then sign the Service Agreement of the Independent Expert.