



**KENYA NATIONAL
HIGHWAYS AUTHORITY
(KeNHA)
Contracting Authority**



**CHINA ROAD AND BRIDGE
CORPORATION (CRBC)
Procurement Secretariat /
Administrative Lead**



**NATIONAL SOCIAL
SECURITY FUND (NSSF)
Private-Side Sponsor**

REQUEST FOR PROPOSALS

CONSULTANCY SERVICES FOR THE SELECTION OF THE INDEPENDENT EXPERT (IE)

CONSTRUCTION STAGE

**RIFT EXPRESSWAY - RIRONI-GILGIL (A8) & RIRONI-MAAI MAHIU-NAIVASHA (A8
SOUTH) ROAD PPP PROJECT**

Tender No.: [RFXWY/CS-IE/2026/S1]

Issue Date: 23 October 2026

Open International Request for Proposals - Quality and Cost Based Selection (QCBS)

One-stage, Two-Envelopes

Procurement Secretariat: China Road and Bridge Corporation (Kenya)

Hard-copy submission: Tender Box at Kenya National Highways Authority, Barabara Plaza, JKIA, Nairobi,
Off Mazao Road (Opposite KCAA Headquarters), Block C, Second Floor, P. O. Box 49712 - 00100,
Nairobi, Kenya

DISCLAIMER

This RFP is issued solely for the purpose of selecting an Independent Expert for the Project. The Project Agreement is not made available to Bidders generally and will be provided only after the successful Bidder has been identified; the Terms of Reference in Section 6 reproduce the applicable duties, time limits and interface provisions sufficient to provide a complete basis for tendering. Each Bidder shall independently review this RFP and all information made available through the Project Websites and shall satisfy itself as to the requirements of the assignment.

Neither the Contracting Authority, CRBC, NSSF (each a “Party”, and together the “Parties”) nor their employees or advisers gives any warranty as to the completeness of information provided for Bid preparation. Each Bidder shall bear all costs of preparing and submitting its Bid.

The issuance of this RFP does not oblige the Parties to appoint any Bidder. The Parties may amend the RFP, extend the Bid Due Date, reject a Bid, discontinue the process or take any other action permitted by the Project Agreement, this RFP and applicable law.

Capitalised terms have the meanings given in Section 2 or, where not defined in this RFP, the meanings assigned in the Project Agreement.

SUMMARY OF RFP DOCUMENT

PART I - SELECTION PROCEDURES AND REQUIREMENTS	
Section 1	Open Request for Proposals Letter / Invitation
Section 2	Instructions to Bidders and Tender Data Sheet
Section 3	Qualification Documents - Standard Forms
Section 4	Technical Proposal - Standard Forms
Section 5	Financial Proposal - Standard Forms and Assumptions
Section 6	Terms of Reference - Construction-Stage Independent Expert
PART II - CONTRACT CONDITIONS AND FORMS	
Section 7	Independent Expert Agreement

PART I - SELECTION PROCEDURES AND REQUIREMENTS

1. SECTION 1 - OPEN REQUEST FOR PROPOSALS LETTER / INVITATION

- 1.1. The Kenya National Highways Authority (KeNHA), as Contracting Authority, and the private party project sponsors, China Road and Bridge Corporation (CRBC) and National Social Security Fund (NSSF), are implementing the Rift Expressway - Rironi-Gilgil (A8) and Rironi-Maai Mahiu-Naivasha (A8 South) Road PPP Project under the Project Agreement.
- 1.2. Pursuant to Clause 13 of the Project Agreement, the Independent Expert (IE) is to be engaged jointly by the Contracting Authority and the Project Company / Private Party, in coordination with the PPP Directorate. The Public Private Partnerships Act, Cap. 430 provides that the provisions of the Public Procurement and Asset Disposal Act, Cap. 412C shall not apply where the funding for a project is provided by a private party. As such, KENHA, CRBC and NSSF have developed this procurement process in consultation with the PPP Directorate. For purposes of the procurement exercise, CRBC shall act as the Procurement Secretariat and administrative lead for this tender process. This administrative role does not alter the joint participation and unanimous appointment mechanism required by the Project Agreement.
- 1.3. Eligible consulting firms and consortia are invited to submit proposals for the Construction-Stage IE assignment. The Services cover Early Works verification and cost certification, construction-stage inspection, testing, monitoring, contractual certification and determinations, completion certification, Punch List and construction close-out support.
- 1.4. The selection will be conducted as a One-Stage Open RFP. There is no separate EOI or pre-shortlisting stage. Any firm or consortium meeting the eligibility and qualification requirements of this RFP may submit a Bid.
- 1.5. The procurement will use a one-stage, two-envelope procedure: Envelope 1 - Qualification Documents and Technical Proposal; and Envelope 2 - Financial Proposal. Envelope 1 will be opened at a single opening session. Qualification will be assessed first on a Pass/Fail basis against the mandatory requirements, and only the Technical Proposals of Bidders passing that assessment will be evaluated. Envelope 2 of a Bidder that fails the mandatory requirements, or that does not achieve the minimum technical score, will remain unopened.
- 1.6. The selection method is Quality and Cost Based Selection (QCBS). The minimum technical score is 80 points out of 100. The final combined score will apply an 80% weight to the Technical Proposal and a 20% weight to the Financial Proposal.
- 1.7. The Tender Notice will be published in two (2) newspapers of nationwide circulation in Kenya and on the Project Websites, being the official websites of KeNHA CRBC and NSSF. The complete RFP, anonymised Question Log, clarifications and Addenda will be issued simultaneously through the Project Websites identified in the Tender Data Sheet, which are the authoritative publication channels. Bids shall not be submitted by email. Signed and stamped hard-copy originals, each enclosing an identical electronic copy on a sealed USB drive, shall be delivered to the Tender Box at Kenya National Highways Authority, Barabara Plaza, JKIA, Nairobi, Off Mazao Road (Opposite KCAA Headquarters), Block C, Second Floor, P. O. Box 49712 - 00100, Nairobi, Kenya, as specified in the Tender Data Sheet.
- 1.8. The RFP comprises Sections 1 to 7 listed in the Summary of RFP Document. Bidders shall examine all Sections, forms and all Addenda before submission. The Project Agreement itself is not issued with this RFP; the provisions applicable to the IE are reproduced in the Terms of Reference.
- 1.9. Following evaluation, due diligence and negotiations, the recommended Bidder will be submitted for the joint confirmation required under the Project Agreement. A Letter of Award (LOA) shall only be issued after the required joint approval has been obtained.

2. SECTION 2 - INSTRUCTIONS TO BIDDERS AND TENDER DATA SHEET

A. GENERAL PROVISIONS

2.1. Definitions

Term	Meaning
Bid	the complete submission comprising Envelope 1 and Envelope 2.
Bidder	a single eligible consulting entity or a Consortium submitting a Bid under this RFP.
Bid Due Date	the date and time stated in the Tender Data Sheet, as amended by Addendum if applicable.
CA / Contracting Authority	Kenya National Highways Authority (KeNHA).
Construction Stage	the period commencing with the IE Notice to Proceed, including pre-Effective Date Early Works verification, and continuing through the Construction Period and the limited Construction Close-Out / Punch List support period stated in the IE Agreement.
Day / Business Day	A Business Day is a day other than a Saturday, Sunday or public holiday recognised in Kenya. IE action periods prescribed in Business Days in Section 6 or the Project Agreement shall be counted in Business Days. A Day otherwise means a calendar day, unless expressly stated otherwise. The Bid validity period, Query Deadline and other tender periods expressly stated in calendar days are not converted to Business Days.
Employer	KeNHA and the Private Party
IE	Independent Expert.
IE Agreement	the agreement in Section 7, as finalised at contract signature.
Project Websites	the official websites of KeNHA , CRBC and NSSF, on each of which the RFP, anonymised Question Log, clarifications, Addenda and other official tender documents are published simultaneously. Each Project Website is an authoritative channel. Where any discrepancy arises between the versions published on the Project Websites, the version published on the KeNHA website prevails.
"Party" and "Parties"	For the purposes of the procurement provisions of this RFP, a Party is KeNHA as Contracting Authority, CRBC or NSSF, and Parties means those entities together. Where they are required to act jointly, all three entities shall participate in the relevant decision. In the IE Agreement, Parties has the meaning given in that Agreement and includes the Independent Expert; the Counterparties are the Contracting Authority and the Private Party, comprising CRBC and NSSF acting jointly until the Project Company is substituted under the novation provisions in Clause 2 of the IE Agreement.
PA / Project Agreement	the Project Agreement between KENHA and the Private Party
Private Party	CRBC and NSSF acting jointly as the Sponsors until the effective substitution of the duly incorporated Project Company under Clause 2 of the IE Agreement, and thereafter the Project Company. Incorporation alone does not make the Project Company a party to the IE Agreement.
Procurement Secretariat	CRBC (Kenya)
Project	the Rift Expressway - Rironi-Gilgil (A8) and Rironi-Maai Mahiu-Naivasha (A8 South) Road PPP Project.
Tender Email	the dedicated email account, nnm.s1.tender@gmail.com, identified in the Tender Data Sheet for the receipt of clarification requests and formal tender communications only, and not for the submission of Bids.

2.2. Procurement Framework and Roles

This procurement is conducted pursuant to the Project Agreement and the Public Private Partnerships Act Cap. 430, including the provisions governing engagement of the Independent Expert. The procedures stated in this RFP constitute the tender rules applicable to this selection process.

CRBC shall administer the tender as Procurement Secretariat. The Parties shall jointly participate in material procurement decisions, evaluation and final appointment in accordance with the agreed procurement arrangements and the Project Agreement.

All official tender communications to Bidders shall be issued through the channels identified in the Tender Data Sheet. No oral communication shall amend this RFP.

2.3. Eligibility, Independence and Conflict of Interest

A Bidder may be a single consulting entity or a Consortium of not more than three (3) members. A Bidder shall submit only one Bid. No entity may participate in more than one Bid as a Bidder or Consortium Member. The Bidder and all Consortium Members must be legally established, financially capable and eligible to contract, and must not be insolvent, in receivership, bankrupt or subject to winding-up proceedings.

The IE must remain institutionally and professionally independent. The Bidder shall disclose all ongoing and recent relationships with KeNHA, CRBC, NSSF, the Project Company, the Construction Contractor, Senior Lenders and other material Project participants. Any actual or perceived conflict of interest may result in disqualification.

A Bidder shall not derive an unfair competitive advantage from having prepared Project tender documents, design submissions or other materials whose prior involvement would impair the independence required of the IE.

2.4. Prohibited Practices and Integrity

Bidders shall not engage in corrupt, fraudulent, collusive, coercive, restrictive or other improper practices in connection with the tender. The Bidder shall complete the integrity / KYC declarations in Section 3 and shall promptly disclose any matter that could materially affect eligibility or independence.

B. PREPARATION OF BIDS

2.5. General Considerations

Each Bidder shall examine the complete RFP and satisfy itself as to the scope, resources, timing, risks and contractual obligations of the assignment. The Bidder bears all costs of Bid preparation and submission.

2.6. Language

The Bid and all tender correspondence shall be in English. Supporting documents in another language shall be accompanied by an accurate English translation and, where the translation is made outside Kenya, the translation shall be duly notarised. The English version shall prevail for evaluation.

2.7. Proposal Validity

Bids shall remain valid for one hundred and twenty (120) calendar days after the Bid Due Date, unless a different period is stated in the Tender Data Sheet or subsequently agreed in writing.

2.8. Clarifications and Addenda

Clarification requests must be submitted in writing through the Tender Email (nnm.sl.tender@gmail.com) by the Query Deadline, which is five (5) calendar days before the Bid Due Date. Telephone calls, oral queries and questions submitted through any other channel do not constitute formal clarification requests. CRBC shall maintain the official anonymised Question Log. Material clarifications and Addenda shall be issued only after joint confirmation by KeNHA, CRBC and NSSF, shall state the relevant document number, version and issue date, and will be published simultaneously on the Project Websites without identifying the source of a query. Where an Addendum materially affects Bid preparation, the Bid Due Date will be extended by an appropriate period. Bidders are responsible for monitoring those channels throughout the tender period.

2.9. Site Familiarisation

Bidders are encouraged to familiarise themselves with the Project and relevant site conditions at their own cost. Any site visit shall not constitute an opportunity for private tender clarification; formal questions must be submitted through the official clarification channel.

2.10. Documents Comprising the Bid

Envelope	Contents
Envelope 1 - Qualification Documents and Technical Proposal	Eligibility and legal documents; authority to submit; Consortium documents if applicable; institutional experience, including the mandatory PPP Independent Engineer experience evidence and Employer reference required by paragraph 2.11; financial capacity; the signed independence and conflict of interest declaration in Annex-3K; integrity/KYC declarations; Bid Security if required; all forms in Section 3; and the full Technical Proposal using the forms in Section 4, including firm experience, methodology, Early Works methodology, work plan, mobilisation, staffing, CVs of the proposed Key Personnel, reporting and document management arrangements and evidence of Kenyan professional participation and knowledge transfer. The entire contents of Envelope 1 shall be bound together as a single document, with a table of contents and continuous page numbering, and shall not be submitted as separate volumes, binders or loose documents. No Financial Proposal, proposed fees or bid-price information shall appear in Envelope 1; the financial-capacity evidence expressly required by this RFP shall be included.
Envelope 2 - Financial Proposal	Financial Proposal using the Section 5 forms, including Early Works / Construction Stage fees, Construction Close-Out / Punch List fees, reimbursables and Additional Services rates, priced on the basis of the initial 24-month term.

2.11. Minimum Qualification Requirements - Envelope 1

Requirement	Minimum Requirement / Evidence
Legal existence and status of the Bidder, and of each Consortium Member	Certified copy of the certificate of incorporation or registration; CR12 or equivalent record of shareholding and directorship issued not more than six (6) months before the Bid Due Date; constitutional documents. For a Bidder incorporated outside Kenya, the equivalent documents issued by the competent authority of its jurisdiction, with a certified English translation where not in English; any such translation made outside Kenya shall be duly notarised. Declaration that the Bidder is not insolvent, in receivership, bankrupt or subject to winding-up or analogous proceedings.
Authority to submit the Bid, and consortium arrangements	Annex-3B notarised authority or power of attorney designating the authorised representative and specimen signature. For a Consortium: Annex-3C for each member, together with an executed consortium or joint venture agreement identifying the lead member, confirming joint and several liability to the Contracting Authority and the Private Party, and stating each member's scope and share.
Tax and statutory compliance	Valid Tax Compliance Certificate issued by the Kenya Revenue Authority and current at the Bid Due

	Date, together with the KRA PIN certificate; or, for a Bidder incorporated outside Kenya, the equivalent certificate of tax good standing from the competent authority of its jurisdiction. Where applicable, a valid single business permit. Required for the Bidder and for each Consortium Member.
Relevant experience (mandatory qualification requirement)	The Bidder must have completed a similar assignment as Independent Engineer on a PPP project in Kenya within the five (5) years preceding the Bid Due Date, with a construction cost exceeding USD 450 million. The Bidder shall provide a reference letter from the Employer confirming satisfactory completion. The supporting evidence shall identify the project, its location in Kenya and PPP structure, the construction cost, the entity that performed the assignment and its relationship to the Bidder, the Independent Engineer role and the date of completion. This evidence shall be clearly identified in Envelope 1 as evidence of the mandatory experience requirement. Every Bidder shall also complete Annex-3E and Annex-3F for the experience scoring under paragraph 2.20, Part B. Failure to satisfy this mandatory experience requirement shall result in rejection before technical scoring.
Independence and absence of conflict of interest	Signed independence and conflict of interest declaration in the form set out in Annex-3K, disclosing every current or recent engagement with the Procuring Entity, and confirming that neither the Bidder nor any Consortium Member, affiliate or proposed individual is engaged on the Project in any other capacity. No actual or perceived conflict that could impair the IE role.
Integrity, debarment and litigation record	Annex-3H and Annex-3J; self-declaration that the Bidder is not debarred, suspended or excluded by a public body, multilateral institution or the Public Procurement Regulatory Authority; declaration of non-participation in corrupt, coercive, collusive, obstructive or fraudulent practices; certification of absence of a material unsatisfactory performance record; and disclosure of any material litigation or arbitration in the last five (5) years arising from independent expert, independent engineer or construction supervision services.
Capability and experience	Financial capacity and standing, professional registration and licensing, completeness of the proposed Key Personnel, local content and mobilisation ability in Kenya are not mandatory qualification requirements. They are assessed and scored under paragraph 2.20 Part A (Capability Criteria). The relevant experience requirement above is mandatory; experience is also scored under paragraph 2.20 Part B after the Bidder has satisfied the mandatory requirements.

The requirements in this paragraph are gating requirements. They are assessed on a Pass/Fail basis only, each being capable of verification at face value from the forms and documents in Envelope 1. A Bid is first checked

for preliminary responsiveness - receipt by the Bid Due Date in correctly sealed and marked envelopes, a signed Bid Submission Letter, bid validity for the period stated in the Tender Data Sheet, and a valid Bid Security - and is rejected without further evaluation if it fails any of those requirements. A Bid that then fails any mandatory eligibility requirement in this paragraph is rejected and is not scored under paragraph 2.20. No qualitative or comparative assessment is made at this stage. Clarification may be requested for submitted information, but a Bidder shall not be permitted to cure a fundamental failure to satisfy a mandatory eligibility or qualification requirement after the Bid Due Date.

2.12. Bid Security

Bid Security shall apply only if the Tender Data Sheet states that it is required. If required, the amount, beneficiary, acceptable form, issuing institution, validity period and demand conditions shall be those stated in the Tender Data Sheet, and shall be reflected consistently in the Tender Data Sheet, the qualification forms and the Bid Security form in Section 3.

C. SUBMISSION, OPENING AND EVALUATION

2.13. Hard-Copy Submission with Sealed Electronic Copies

The Bid must be submitted in signed and stamped hard-copy form, together with an identical electronic copy on a USB drive sealed within the corresponding envelope, by the Bid Due Date. Bids shall not be submitted by email, and the Tender Email shall not be used for the submission of Bids. The sealed envelopes shall be delivered to the Tender Box at Kenya National Highways Authority, Barabara Plaza, JKIA, Nairobi, Off Mazao Road (Opposite KCAA Headquarters), Block C, Second Floor, P. O. Box 49712 - 00100, Nairobi, Kenya, as stated in the Tender Data Sheet. Each of Envelope 1 and Envelope 2 shall be separately and securely sealed, and each shall be clearly marked on the outside with: (a) the Tender Number and the name of the Project; (b) the envelope number and title, namely “ENVELOPE 1 – QUALIFICATION DOCUMENTS AND TECHNICAL PROPOSAL” or “ENVELOPE 2 – FINANCIAL PROPOSAL”; (c) the name and address of the Bidder; and (d) the words “DO NOT OPEN BEFORE” followed by the date and time of bid opening. Both sealed envelopes shall then be enclosed within a single sealed outer envelope bearing the same markings, other than the envelope number and title. A Bid submitted in an unsealed or unmarked envelope may be rejected. If an inconsistency exists between the electronic and the signed hard-copy versions, the signed hard-copy original shall prevail.

2.14. Two-Envelope Electronic Copy Format

The electronic copy of Envelope 1 and the electronic copy of Envelope 2 shall be provided as separate PDF files on separate USB drives, each sealed within its corresponding hard-copy envelope. The Envelope 2 USB must remain sealed within Envelope 2 and must not be accessed before the financial opening stage.

2.15. Late Bids

A Bid received after the Bid Due Date shall be treated as late and shall not be evaluated, unless the Parties determine that a documented system failure attributable solely to the official submission channel prevented timely receipt.

2.16. Opening of Envelope 1 and Evaluation of Qualification and Technical Proposals

Envelope 1, containing both the Qualification Documents and the Technical Proposal, will be opened at the Board Room, Second Floor, Block C, Kenya National Highways Authority, Barabara Plaza, JKIA, Nairobi, Off Mazao Road (Opposite KCAA Headquarters), on 20 November 2026 at 12:00 noon (East Africa Time). Bid opening shall be jointly witnessed by KeNHA, CRBC and NSSF, and all material matters shall be recorded in the presence of the Bidders. The Parties will jointly participate in the qualification evaluation, administered by CRBC. Bidders will be recorded as PASS or FAIL against the mandatory requirements. The Technical Proposal of a FAIL Bidder will not be evaluated and its Envelope 2 will remain unopened.

2.17. Technical Evaluation

Only Bidders passing the mandatory qualification requirements will have their Technical Proposals evaluated. Technical Proposals will be scored against the criteria stated in the Tender Data Sheet. The minimum technical score is 80/100. Envelope 2 of a Bidder scoring below 80 will remain unopened.

2.18. Financial Opening and Evaluation - Envelope 2

Only Bidders meeting the technical threshold will proceed to financial opening. The lowest evaluated Financial Proposal will receive a financial score of 100. Other financial scores will be calculated as $S_f = 100$

$\times F_m / F$, where F_m is the lowest evaluated price and F is the evaluated price of the Bid under consideration.

2.19. Combined Evaluation

The final combined score shall be $S = S_t \times 80\% + S_f \times 20\%$, where S_t is the technical score and S_f is the financial score. The Bidder achieving the highest combined score will be invited first for due diligence and negotiations.

2.20. Technical Evaluation Criteria

Part A - Capability Criteria (40 marks)

Part A scores capability. It is reached only by a Bid that has passed the preliminary responsiveness check and satisfied every mandatory eligibility requirement at paragraph 2.11; those matters are gating requirements and are not scored again here. Each of the five capability criteria below carries equal weight: a criterion is marked either satisfied, scoring eight (8) marks, or not satisfied, scoring nil, and no partial marks are awarded. Clarification may be sought on a clerical or arithmetical omission, but a material omission cannot be cured after the Bid Due Date.

No.	Capability criterion	Evidence required	Satisfied (8 marks)	Not satisfied (0 marks)
1	Financial capacity and standing.	Annex-3G; audited financial statements for the financial years 2022, 2023 and 2024; average annual turnover over that period of not less than the amount stated in the Tender Data Sheet; and a banker's reference or evidence of access to credit lines.		
2	Professional registration and licensing.	Certificate of registration of the Bidder as a consulting firm with the Engineers Board of Kenya under the Engineers Act, 2011, or equivalent registration in its country of origin; for each proposed individual, the registration required under Kenyan law for the discipline concerned or the equivalent registration in the jurisdiction of qualification.		
3	Completeness of the proposed Key Personnel.	Section 4 team composition schedule covering every position listed at paragraph 6.6, with an Annex 1 curriculum vitae for each named individual, each signed by that individual, and a statement of committed availability. No position left unfilled and no individual named for a position whose minimum qualifications that individual does not meet. The quality and adequacy of the team is scored separately under Part B, criterion B9.		
4	Local content.	Schedule identifying which of the proposed Key Personnel are Kenyan citizens, with a copy of the national identity card or passport of each. For this criterion, the percentage is the number of Kenyan citizens divided by the total number of distinct individuals proposed as Key Personnel, multiplied by 100. Each individual is counted once. At least 40% scores eight (8) marks; less than 40% scores nil. For eighteen (18) proposed Key Personnel, at least eight (8) must be Kenyan		

		citizens to satisfy this criterion.		
5	Operational presence in Kenya and mobilisation programme.	Evidence of existing office premises in Kenya and a mobilisation programme showing the period from Letter of Award to full deployment on Site, consistent with the Notice to Proceed date in the Tender Data Sheet.		
	PART A TOTAL	Five criteria of equal weight, eight (8) marks each	40	

Part B - Experience, Qualifications and Methodology (60 weighted marks; 68 raw marks)

Part B has two components. Component B(i) scores the experience and qualifications of Bidders that have satisfied the mandatory requirements in paragraph 2.11, including the mandatory PPP Independent Engineer experience requirement. Marks are awarded on the evidence in Annex-3E and Annex-3F only, and a single project may be counted under more than one sub-criterion. Component B(ii) scores the technical proposal and methodology on the material submitted under Section 4.

Ref	Criterion	Evidence required	Scoring range	Max raw score
B(i)	EXPERIENCE AND QUALIFICATIONS			43
B1	Road PPP project experience - the number of road projects procured as a public-private partnership or concession in which the Bidder has participated.	Annex-3E, with a client reference contact for each project.	No qualifying project - 0 marks; one project - 8 marks; two projects - 12 marks; three or more projects - 15 marks.	15
B2	Value of road PPP experience, by reference to the highest-value qualifying project.	Annex-3E (project value stated and supported by the client reference).	Up to USD 100 million - 0 marks; above USD 100 million up to USD 300 million - 2 marks; above USD 300 million up to USD 600 million - 3 marks; above USD 600 million up to USD 1 billion - 4 marks; above USD 1 billion - 5 marks.	5
B3	Scale of highway and expressway experience, by reference to the longest qualifying project on which the Bidder acted as Independent Expert, Independent Engineer, Independent Certifier, Engineer, Employer's Representative or construction supervision consultant.	Annex-3F (route length stated and supported by the client reference).	No qualifying project - 0 marks; below 50 km - 1 mark; 50 km up to 75 km - 4 marks; above 75 km - 6 marks.	6
B4	Localised experience - the region in which the qualifying experience under B1 and B3 was performed.	Annex-3E and Annex-3F (country stated for each project and assignment).	No qualifying experience in Africa - 0 marks; qualifying experience elsewhere in Africa - 3 marks; qualifying experience in East Africa outside Kenya - 5 marks; qualifying experience in Kenya - 7 marks. The highest applicable band applies; marks are not cumulative.	7
B5	Depth of Sub-Saharan African experience - the number of qualifying projects or assignments under B1 or B6 performed in Sub-Saharan Africa, comprising road PPP or concession projects and highway and expressway	Annex-3E and Annex-3F, identifying each qualifying project or assignment in Sub-Saharan Africa and a client reference contact.	None - 0 marks; one - 4 marks; two or more - 7 marks.	7

	assignments. Count each project or assignment only once under this criterion, even if it qualifies under both B1 and B6.			
B6	Number of qualifying highway and expressway assignments performed by the Bidder in the roles specified under criterion B3.	Annex-3F, with a client reference contact for each assignment.	No qualifying assignment - 0 marks; the first qualifying assignment - 3 marks. The maximum score is 3 marks.	3
B(ii)	TECHNICAL PROPOSAL AND METHODOLOGY			25
B7	Proposed approach to the measurement, verification and certification of completed work quantities, including measurement conventions, site records, joint survey and verification procedures, valuation of work done, treatment of disputed quantities and the certification trail.	Section 4 methodology statement, with sample measurement and certification formats.	Marks awarded on the evidence submitted: 0 = not addressed or unsupported; up to 40% of the maximum: addressed but generic or incomplete; up to 70%: sound and project-specific; up to 100%: comprehensive, project-specific and demonstrably deliverable.	8
B8	Construction-stage methodology: inspection, testing, quality assurance, progress monitoring, completion certification and contractual determinations.	Section 4 methodology statement; inspection and test plan approach.	Marks awarded on the evidence submitted: 0: not addressed or unsupported; up to 40% of the maximum: addressed but generic or incomplete; up to 70%: sound and project-specific; up to 100%: comprehensive, project-specific and demonstrably deliverable.	7
B9	Expertise, availability and adequacy of the proposed Key Personnel, assessed on the qualifications and experience of each individual, committed inputs and continuity of presence. Mere completeness of the team is assessed under Part A criterion 3 and is not scored again here.	Section 4 team composition and Annex 1 CVs; the staffing schedule and availability statements, assessed against the Key Personnel requirements in paragraph 6.6.	Marks awarded on the evidence submitted: 0: not addressed or unsupported; up to 40% of the maximum: addressed but generic or incomplete; up to 70%: sound and project-specific; up to 100%: comprehensive, project-specific and demonstrably deliverable.	6
B10	Work plan, organisation, mobilisation programme, reporting and document management arrangements.	Section 4 work plan, organisation chart and reporting plan.	Marks awarded on the evidence submitted: 0: not addressed or unsupported; up to 40% of the maximum: addressed but generic or incomplete;	4

			up to 70%: sound and project-specific; up to 100%: comprehensive, project-specific and demonstrably deliverable.	
	PART B RAW TOTAL			68

Combined Technical Score

The raw score for Part B is the sum of its criteria, out of 68 marks: 43 for Component B(i) and 25 for Component B(ii). Convert the Part B raw score to its weight of 60 marks using: Part B weighted score = Part B raw score $\times$ 60 / 68. The technical score St = Part A score + Part B weighted score, out of 100 marks. The minimum technical score required to proceed to financial evaluation is 80/100. Use the unrounded technical score to determine whether the threshold is met and to calculate the combined score under paragraph 2.19.

D. DUE DILIGENCE, NEGOTIATIONS AND AWARD

2.21. Due Diligence

The Parties may verify references, corporate information, the availability of the proposed Key Personnel, insurance capacity and any other material information submitted by the highest-ranked Bidder before or during negotiations.

2.22. Negotiations

Negotiations may address the TOR, methodology, mobilisation, the availability of the proposed Key Personnel, reporting arrangements, reimbursables, tax treatment, special conditions and finalisation of the IE Agreement. Negotiations shall not materially alter the competitive basis of the tender. If negotiations fail, the Parties may invite the next-ranked Bidder.

2.23. Notification of Intention to Award

Following successful negotiations and internal joint approval, the Procurement Secretariat may issue a Notification of Intention to Award identifying the proposed successful Bidder and the principal evaluation outcome.

2.24. Letter of Award

Following resolution of any tender-process complaint, the LOA may be issued jointly by the Parties.

2.1 Signing of IE Agreement

The appointment is completed by execution of the IE Agreement by the relevant Parties and the Independent Expert. The Successful Bidder shall satisfy all post-award conditions stated in the LOA and IE Agreement before commencement.

2.25. Tender Process Complaints

Any tender-process complaint shall be submitted in writing to the contact identified in the Tender Data Sheet promptly after the relevant decision has been notified. No additional fixed contractual standstill period is imposed by this RFP. This does not override any applicable statutory review period, restriction on award or execution, or suspension ordered by a competent authority. Nothing in this RFP limits or excludes any statutory remedy available to a Bidder under applicable law, including section 75 of the Public Private Partnerships Act, Cap. 430 and the Fair Administrative Action Act, 2015. Where section 75 applies, a petition shall be lodged with the Petition Committee in the prescribed form, with the prescribed fee, within seven (7) days from the date of the relevant decision. Submitting a complaint to the Procurement Secretariat does not extend or suspend that statutory period.

2.26. Governing Law

The RFP and the tender process shall be governed by the laws of Kenya and interpreted consistently with the Project Agreement and applicable PPP framework.

E. TENDER DATA SHEET

Item	Tender-Specific Requirement
Tender / Assignment	Construction-Stage Independent Expert for Rift Expressway - Rironi-Gilgil (A8) & Rironi-Maai Mahiu-Naivasha (A8 South) Road PPP Project
Tender No.	[RFXWY/CS-IE/2026/S1]
Contracting Authority	Kenya National Highways Authority (KeNHA)
Private Party / Project Sponsors	China Road and Bridge Corporation (CRBC) and National Social Security Fund (NSSF); Project Company upon establishment where applicable
Procurement Secretariat / Administrative Lead	China Road and Bridge Corporation (Kenya)
Selection Method	One-Stage Open RFP; Quality and Cost Based Selection (QCBS); Full Technical Proposal; One-Stage Two-Envelopes
Prior EOI / Shortlisting	None. No separate EOI or shortlisting stage applies.

Tender Advertisement	Two (2) newspapers of nationwide circulation in Kenya, and the official websites of KeNHA, CRBC and NSSF (the Project Websites).
Official RFP / Clarification / Addenda Channel	Project Websites – KeNHA: www.kenha.co.ke ; NSSF: www.nssf.co.ke . The RFP, anonymised Question Log, clarifications and Addenda are published simultaneously on all three websites.
Official Tender Email	nm.s1.tender@gmail.com . This is the sole official channel for tender enquiries and requests for clarification. Communications sent to any other address, or to any individual, will not be treated as official tender correspondence and will not be answered. Bids shall not be submitted to this address.
Hard-Copy Submission Address	Tender Box at Kenya National Highways Authority, Barabara Plaza, JKIA, Nairobi, Off Mazao Road (Opposite KCAA Headquarters), Block C, Second Floor, P. O. Box 49712 - 00100, Nairobi, Kenya. All deadlines are stated in East Africa Time.
RFP Issue Date	23 October 2026
Query Deadline	15 November 2026 at 12:00 noon (East Africa Time), being five (5) calendar days before the Bid Due Date
Bid Due Date and Time	20 November 2026 at 12:00 noon (East Africa Time)
Tender Opening (Envelope 1)	Board Room, Second Floor, Block C, Kenya National Highways Authority, Barabara Plaza, JKIA, Nairobi, Off Mazao Road (Opposite KCAA Headquarters). Date and time: 20 November 2026 at 12:00 noon (East Africa Time).
Proposal Validity	120 calendar days after Bid Due Date
Bid Security	Required. Amount: KES 5,000,000 (Kenya Shillings Five Million). Joint beneficiaries: Kenya National Highways Authority (KeNHA), China Road and Bridge Corporation (CRBC) and National Social Security Fund (NSSF). Form: irrevocable, unconditional on-demand bank guarantee under Annex-3I, issued by a bank licensed by the Central Bank of Kenya to operate in Kenya. Validity: 150 calendar days after the Bid Due Date, including 30 days beyond proposal validity; extend accordingly if proposal validity is extended with the Bidder's agreement. Payable on the Beneficiaries' first written demand stating the Bidder's breach of the Bidding Documents, including withdrawal during bid validity or failure to execute the IE Agreement following award. The original paper Guarantee shall accompany the Bid submitted to KeNHA at the address above.
Minimum Average Annual Turnover	USD 1,500,000 over the financial years 2022, 2023 and 2024. Used for the financial capacity assessment at paragraph 2.20 Part A, criterion 1.
Professional Indemnity Insurance	Professional indemnity cover shall be not less than the Indemnity Limit calculated under Clause 1 of the IE Agreement: the lesser of USD 5,000,000 (or its KES equivalent) and the greater of the total Fees paid and payable when the relevant claim arises or twice the Annual Fee for the most recent completed twelve (12)-month period. Until a twelve (12)-month period has been completed, the Fee for the initial twelve (12) months stated in Schedule 3 shall be used. Reimbursables, Additional Services and separately stated indirect taxes are excluded from that calculation. The USD 5,000,000 ceiling

	prevails if twice the Annual Fee exceeds it. The Central Bank of Kenya mean USD/KES exchange rate on the date the relevant claim arises shall apply. Bidders submit an undertaking supported by an insurer's letter of intent or confirmation of capacity; the policy is not required at Bid stage. The Successful Bidder shall effect the policy and deliver the policy or certificate of currency within thirty (30) calendar days of the Letter of Award and before commencement of the Services, with cover throughout the Agreement and any extension and with additional provision for legal fees and costs as required by Clause 18. For placement and maintenance of insurance, the prospective calculation shall be made as stated in Clause 18.2; this does not alter the claim-date calculation of the Indemnity Limit. Schedule 3 shall state the calculation basis and record the limit and applicable exchange rate when a relevant claim arises.
Technical Threshold	80 / 100
Technical / Financial Weight	80% / 20%
Financial Evaluation Currency	Kenya Shillings (KES) for evaluation. Any conversion between USD and KES shall use the exchange rate published by the Central Bank of Kenya as at the Bid Closing Date.
Expected IE Mobilisation	As soon as practicable following award, with Early Works verification to commence immediately upon Notice to Proceed.
Construction Close-Out / Punch List Support	Indicative close-out / Punch List support period of up to twelve (12) months following construction completion, subject to the final Project Programme. Services beyond the initial IE contract term require a written extension in accordance with Clause 3 of the IE Agreement.
Contract Term	Initial term of twenty-four (24) months from the Notice to Proceed / effective date of the IE Agreement, which may precede the Effective Date of the Project Agreement for Early Works verification and certification. An extension requires an extension notice or addendum signed by both Counterparties and the Independent Expert. The monthly Fee during an extension, excluding reimbursables and Additional Services, shall not exceed the total Fees on that same basis payable for the twelve consecutive months immediately preceding the extension, divided by twelve; no escalation shall arise solely by reason of the extension. Approved reimbursables and Additional Services shall be stated separately and shall not be used to increase the Fee indirectly. Personnel inputs, pricing and the deliverables programme shall be prepared on the basis of the initial 24-month term, subject to Clause 3 of the IE Agreement.
Local content	Local content is assessed under paragraph 2.20, Part A, criterion 4. At least 40% of the proposed Key Personnel must be Kenyan citizens to satisfy that scoring criterion. The percentage shall be calculated and evidenced as stated in that criterion.
Continuous Long-Term O&M IE Services	Excluded from this procurement.
Uniform CPD / on-site training Provisional Sum — Annex 5D, Item 1.03	KES 8,000,000 (Kenya Shillings Eight Million) as a Provisional Sum for CPD / on-site training under Annex 5D, Item 1.03. All Bidders shall include this same amount, inclusive of overhead and profit, without alteration. The Provisional Sum shall be administered and paid in accordance with Annex 5D and Clause 19 of the IE Agreement. Any amendment to the specified amount after issue shall be notified uniformly by Addendum before the Bid Due Date.

3. SECTION 3 - QUALIFICATION DOCUMENTS - STANDARD FORMS

QUALIFICATION DOCUMENTS

Annex-3A: Bid Submission Letter

Annex-3B: Notarised Authority to Submit a Bid and Designate an Authorized Representative

Annex-3C: Consortium Member's Notarised Authority to Participate in Consortium, Submit a Bid, and Designate Lead Member and Other Consortium Members

Annex-3D: Details of the Bidder

Annex-3E: Road PPP Project Experience (evidence for paragraph 2.20, criteria B1, B2, B4 and B5)

Annex-3F: Highway and Expressway Experience (evidence for paragraph 2.20, criteria B3, B4, B5 and B6)

Annex-3G: Statement of Financial Capacity

Annex-3H: Certification of Absence of Unsatisfactory Performance Record

Annex-3I: Form of Bid Security

Annex-3J: KYC Questionnaire

Annex-3K: Independence and Conflict of Interest Declaration

ANNEX -3A: BID SUBMISSION LETTER

[Letterhead]

Date: [●]

To,

Procurement Secretariat for the Independent Expert Tender
China Road and Bridge Corporation (Kenya)
Plot LR.330/265,Hatheru Road , Lavington
P.O.BOX 39037-00623

NAIROBI

Tender No.: [RFXWY/CS-IE/2026/S1]

SELECTION OF THE INDEPENDENT EXPERT FOR THE CONSTRUCTION STAGE OF THE RIFT EXPRESSWAY - RIRONI-GILGIL (A8) & RIRONI-MAAI MAHIU-NAIVASHA (A8 SOUTH) ROAD PPP PROJECT

I, (name), (citizenship), of legal age, with the office address at (address), acting as the authorized representative of (name of single Bidder/Lead Member), a (company, partnership, or corporation) having its registered office at (address), being the Bidder / Lead Member of [name of the Consortium] comprising of name of all Consortium Members) (organised and existing under the laws of [State and Country] / organised by an agreement among the Consortium Members], as indicated by the authorization certificate attached as Annex-3B being the authority to apply to qualify and designate the authorized representative (and Annex- 3C being the Consortium Member's notarized authority to participate in Consortium and apply to Qualify, and designation of Lead Member and Consortium Member/s], after having been duly sworn according to law, hereby declare and certify for and on behalf of (name of the Bidder) that:

Capitalised terms used but not defined herein will have the meaning assigned to such term in the Request for Proposal, No: [RFXWY/CS-IE/2026/S1] ("RFP").

1. The Bid for the Selection of an Independent Expert for Rift Expressway - Rironi-Gilgil (A8) & Rironi-MaaI Mahiu-Naivasha (A8 South) Road PPP Project are hereby submitted after fully reviewing and understanding the contents of the RFP.
2. The Bid submitted is unqualified and unconditional.
3. All statements made and the information and documents provided by us, being the Bidder [and all the Consortium Members, the Affiliates of the Bidder and the Consortium Members] in or as any part of the Bid, are true and correct and any misrepresentation or false statement made therein shall be a ground for our disqualification from the Bidding Process.
4. We, the Bidder, authorise the CA and PC to make enquiries to authenticate the statements, documents and information submitted in our Bid, and to seek clarification from us and, as applicable, from our board of directors / partners, Consortium Members, Affiliates, advisors, clients or bankers regarding any legal, technical and financial aspects.
5. We acknowledge the right of the CA and PC to reject our Application and to cancel the Bidding Process at any time in accordance with the PPP Act, the Project Agreement and this RFP, without incurring any liability, and accept all the terms and conditions of the RFP.
6. We, the Bidder, [including any of the Consortium Member/ Affiliate(s) named in the Bid as complying with the terms of the RFP], have not at any time engaged in any Corrupt, Fraudulent or Dishonest, Coercive, Undesirable or Restrictive Practices.
7. We, the Bidders [all the Consortium Members/ the Affiliate(s)] are not Prohibited Person.
8. We, the Bidder, confirm and warrant that:
 - a) The Bid has been prepared without consultation, communication or agreement for restricting competition with any other Bidder (including the Consortium Members/ the Affiliates of such other Bidder or their Consortium Members);

- b) the Bid have not been disclosed, nor will they be disclosed to any other Bidder, or Consortium Member of any other Bidder, or any of their Affiliates;
 - c) no attempt has been made nor will be made by us to induce any other person to submit or not to submit their Bid;
 - d) We (including any Consortium Member or Affiliate) confirm that we have no actual or perceived conflict of interest that may impair our independence in providing the IE Services. Except as expressly disclosed in the Bid, we have no ongoing or recent (within the last three (3) years) relationship or engagement with KeNHA, CRBC, NSSF, the Project Company, CALE Infrastructure Construction Company Limited, the Senior Lenders, or other material Project parties that would give rise to an actual or perceived conflict of interest.
 - e) We confirm that the Bidder satisfies the mandatory PPP Independent Engineer experience requirement in paragraph 2.11 and that the corresponding project evidence and Employer reference confirming satisfactory completion are included in Envelope 1. The completed and signed independence and conflict of interest declaration in Annex-3K is also enclosed.
9. We, the Bidder [and all the Consortium Members, the Affiliates of the Bidder or the Consortium Members] undertake to indemnify the CA and PC and hold it harmless from any loss, damage, liabilities, claims, actions, proceedings, demands, costs, charges or expenses of whatsoever nature suffered by the CA and PC for its refusal to disclose materials marked as being copyright material, trade secrets or other proprietary information to any person seeking the disclosure of such materials.
10. We, the Bidder [and all the Consortium Members / Affiliates], confirm that the nationality and local participation information submitted in our Bid is accurate. We acknowledge the local content provisions expressly stated in this RFP, including the criterion that at least 40% of the proposed Key Personnel are Kenyan citizens, assessed under paragraph 2.20, Part A, criterion 4. We undertake to provide the Kenyan professional participation, knowledge transfer and local operational support committed in our Bid. This declaration does not create an additional pass/fail qualification requirement beyond those expressly stated in paragraph 2.11.
11. We, the Bidder [and all the Consortium Members/ the Affiliates] confirm that the Bid shall remain valid for a period of one hundred and twenty (120) calendar days after the relevant Bid Due Date.
12. We, the Bidder shall undertake that in the event we become the Successful Bidder and are asked to execute the IE Agreement, we shall, pursuant to the PPP Act, the Project Agreement and we shall comply with all other requirements under the RFP.
13. We, the Bidder [and all the Consortium Members/ the Affiliates] are not established or have ultimate holding company established in a country listed either in the European Union (EU) list of non-cooperative jurisdictions for tax purposes or in the Organisation for Economic Co-operation and Development (OECD) list of Unco-operative tax havens or any other internationally recognised list debarring such non-cooperative jurisdictions for tax purposes

For and on behalf of (Name of Bidder / Lead Member together with all other Consortium Members mentioned in the attached list)

(Signature of authorised representative)

(Name)

(Designation)

[(Name of Entity / Lead Member), Lead Member of (name of Consortium)]

Note: Please insert, the information, as applicable, in the () or { } or [] parenthesis. Where any information is not relevant, the irrelevant part or the whole of the text with in the parenthesis/ brackets should be deleted.

ANNEX-3B: NOTARISED AUTHORITY TO SUBMIT A BID AND DESIGNATE AN AUTHORIZED REPRESENTATIVE

To be submitted by a Bidder which is a single Bidder or by the Lead Member

[Letterhead]

Date: [●]

To:

Procurement Secretariat for the Independent Expert Tender
China Road and Bridge Corporation (Kenya)
Plot LR.330/265, Hatheru Road, Lavington
P.O.BOX 39037-00623

NAIROBI

Tender No.: [RFXWY/CS-IE/2026/S1]

SELECTION OF THE INDEPENDENT EXPERT FOR THE CONSTRUCTION STAGE OF THE RIFT EXPRESSWAY - RIRONI-GILGIL (A8) & RIRONI-MAAI MAHIU-NAIVASHA (A8 SOUTH) ROAD PPP PROJECT

I, (name of authorised representative), hereby depose and state on behalf of (name of Bidder) that:

1. I am a citizen of (state and nationality), of legal age and a resident of (address);
2. (Name of single Bidder /Consortium) (the "Bidder"), is a (provide the legal structure i.e. Company, partnership or corporation/Consortium) (duly organised and existing under the laws of (State and Country/ organised by an agreement among the Consortium Members) (of which [name of Lead Member] is the Lead Member);
3. At a meeting of the (board of directors/partners) of the (single Bidder / Lead Member), held on (date) at (place), in which meeting a quorum was present throughout, the following Resolutions were unanimously passed and approved:

NOW IS IT HEREBY RESOLVED:

- 3.1 that (name of single Bidder /Lead Member) is, authorised submit a Bid as (a single Bidder /Lead Member of the [name] Consortium) for the selection of an Independent Expert for the Project; and
- 3.2 that (name of representative and designation) is hereby appointed as the authorised representative of the (Bidder /Lead Member) to make submissions/statements, commit, undertake, declare, execute, sign, certify, submit the Bid and receive any requests for clarification, additional information, authentication or verification and otherwise act in the name of, the (Bidder /Lead Member and the Bidder) in relation to the Bid; and
- 3.3 that any and all acts performed by (name of representative) under and by virtue of this Resolution are hereby, confirmed and ratified.
4. These resolutions have not been revoked, amended or modified and remain valid and binding on the Bidder; and
5. The above resolutions are in accordance with the records of the (Bidder /Lead Member).

Capitalised terms used herein but not defined herein will have the meaning assigned to such term in the Request for Proposal, No: [RFXWY/CS-IE/2026/S1] ("RFP"),

Place, Date of Execution.

(Signature of authorised representative) (Name)

(Designation) (Name of entity)

SUBSCRIBED AND SWORN TO before me this () day of (month and year) at (place), each affiant exhibiting to me his/her (proof of identity acceptable under the applicable laws) issued at (city) on (date) in support of his identity.

NOTARY PUBLIC

Note: Fill in the complete description/ strike out the non-applicable text, as applicable, so as to provide sufficient explanation mentioned within the () or [] parenthesis / brackets.

ANNEX 3C: CONSORTIUM MEMBER'S NOTARISED AUTHORITY TO PARTICIPATE IN CONSORTIUM, SUBMIT A BID, AND DESIGNATE LEAD MEMBER AND OTHER CONSORTIUM MEMBERS

For a Bidder which is a Consortium; to be submitted by each Consortium Member.

[Letterhead]

To,

Procurement Secretariat for the Independent Expert Tender
China Road and Bridge Corporation (Kenya)
Plot LR.330/265,Hatheru Road , Lavington
P.O.BOX 39037-00623
NAIROBI

Tender No.: [RFXWY/CS-IE/2026/S1]

SELECTION OF THE INDEPENDENT EXPERT FOR THE CONSTRUCTION STAGE OF THE RIFT EXPRESSWAY - RIRONI-GILGIL (A8) & RIRONI-MAAI MAHIU-NAIVASHA (A8 SOUTH) ROAD PPP PROJECT

I, (name of authorised representative), after having been duly sworn according to law, hereby depose and state that:

1. I am a citizen of (state and nationality), of legal age and a resident of (address);
2. I am duly appointed authorized representative of (name of Consortium Member), a (provide the legal structure i.e. Company, partnership, or corporation) organised and existing under and by virtue of the laws of (the place of incorporation/registration);
3. At a meeting of the (board of directors/partners) of (name of Consortium Member), held on (date) at (place), in which meeting a quorum was present throughout, the following resolutions were unanimously passed and approved:

RESOLVED, AS IT IS HEREBY RESOLVED, that the (name of Consortium Member) be, and is, authorised to participate in the Bidding Process as a Consortium Member and submit a Bid for

the selection of an Independent Expert for the Project through a Consortium consisting of the following Consortium Members;

Name of Consortium Members	Nationality	Role [i.e. Lead Member/ Consortium Members/ Others (please specify)]

RESOLVED, FURTHER, that the (name of Consortium Member) in exercise of its interest in the Consortium hereby designates (name of Lead Member of Consortium) as Lead Member of the Consortium with the authority to represent the Consortium on all matters whatsoever during the Bidding Process for the Project, with the power to appoint and sub-delegate any powers herein to any of its director, partner, officer or employee to act as the authorised representative of the Consortium and who shall have the authority to make submissions/statements, commit, undertake, declare, execute, sign, certify, submit the Bid and receive any requests for clarification, additional information, authentication or verification and otherwise act on our behalf and in the name of the Consortium.

RESOLVED, FURTHER, that any and all act done or performed by (name of Lead Member of Consortium) and its authorised representative under and by virtue of this resolution be, as they are hereby, confirmed and ratified.

RESOLVED, FURTHER, that in the event the Consortium is declared as the Successful Bidder, the (name of Consortium Member) will co-operate with the other Consortium Members to operate as an Independent Expert in the terms of the IE Agreement, the PA, and the PA, the PPP Act and other applicable laws of Kenya.

RESOLVED, FURTHER, that (name of the Consortium Member) binds itself jointly and severally for all the obligations of the Bidder under the RFP.

RESOLVED, FINALLY, that (name of the authorized representative of the Consortium Member) be and is hereby authorised to sign and issue all documents on behalf of (name of the Consortium Member) as may be required as a Consortium Member for submission of or in relation to the Bid.

4. These resolutions have not been revoked, amended or modified and remain valid and binding on the (Consortium Member); and
5. The above resolutions are in accordance with the records of the (name of the Consortium Member).

Capitalised terms used herein but not defined herein will have the meaning assigned to such term in the Request for Proposal, No: [RFXWY/CS-IE/2026/S1] ("RFP"),

Place, Date of Execution.

(Signature of authorised representative)

(Name) (Designation) (Name of Entity)

SUBSCRIBED AND SWORN TO before me this () day of (month and year) at (place), each affiant exhibiting to me his/her (proof of identity acceptable under the applicable laws) issued at (city) on (date) in support of his identity.

NOTARY PUBLIC

Note: Fill in the complete description/ strike out the non-applicable text, as applicable, so as to provide sufficient explanation mentioned within the () or [] parenthesis / brackets.

ANNEX -3D: DETAILS OF THE BIDDER

1. Following are the basic details of the Bidder:

a) Name of Bidder	
b) Single Bidder /Consortium	
c) Place of incorporation or registration	
d) Year of incorporation or registration	
e) Address	
f) Website	
g) Contact person	
i. Telephone	
ii. Fax	
iii. Email	

2. Contact Information of Consortium Members

a) Name of Consortium Member	
b) Role in Consortium (such as Lead Member/Consortium Member)	
c) Place of incorporation or registration	
d) Year of incorporation or registration	
e) Address	
f) Website	
g) Contact (Name and Designation)	
i. Telephone	
ii. Fax	
iii. Email	

[Note: Replicate table above for all Consortium Members]

3. Affiliates, if any, of the Single Bidder / any of the Consortium Member(s)

a) Name of Affiliate	
b) With whom Affiliated	
c) Place of incorporation or registration	
d) Year of incorporation or registration	
e) Address	
f)Website	
g) Contact (Name and Designation)	
i. Telephone	
ii. Fax	
iii. Email	

[Note: If the experience of more than one Affiliates, replicate table above]

For and on behalf of (Name of Bidder) (Signature of authorised representative) (Name, Title, and Date)

Note: Fill in the complete description/ strike out the non-applicable text, as applicable, so as to provide sufficient explanation mentioned within the () or [] parenthesis / brackets.

* Authorised representative of the Lead Member shall sign in case of a Consortium. Enclosures:

- In case of a Consortium, a copy of the Joint Bidding Agreement, clearly setting out the relationship between the Consortium Members of each of the Consortium Member duly certified by the authorised representative of the Lead Member;
- For an Bidder which is incorporated or registered in Kenya: (i) a certified true copy of the Certificate of Incorporation, or where such Bidder is not a Company, a certified true copy of the registration certificate issued by an appropriate authority evidencing legal existence of such Bidder and a letter from Bidder's authorised representative to the effect that the Bidder is not insolvent, in receivership, bankrupt or in the process of being wound up;
- For a Bidder which is incorporated or registered outside Kenya, (i) a certified true copy of the Certificate of Incorporation or an equivalent document issued by the appropriate authority in that country evidencing legal existence of such Bidder and a letter from Bidder's authorised representative to the effect that the Bidder is not insolvent, in receivership, bankrupt or in the process of being wound up.

ANNEX-3E: ROAD PPP PROJECT EXPERIENCE

To be completed by the Bidder for road PPP project experience scored under paragraph 2.20, criteria B1, B2, B4 and B5. The evidence of the mandatory PPP Independent Engineer experience required by paragraph 2.11 shall be clearly identified in Envelope 1. Where a road PPP project is relied upon for both qualification and scoring, identify the corresponding entry in this Annex.

Name of the Bidder	
Name of the entity proposed as fulfilling the Eligible Experience requirement	Relationship to the Bidder (Single Bidder itself/ Lead Member/ Consortium Member/ Affiliate)

List of Eligible Road PPP Projects

Ref #	Name of entity proposed as meeting the Road PPP Project Experience	Experience claimed by Single Bidder itself/ Lead Member/ Consortium Member/ Affiliate	Name of Eligible Project	Length of road/highway (in lane Km)
1.				
2.				
3.				
Total number of Eligible Road PPP Projects and the aggregate length of road/ highway (in Km)				

(Insert rows as necessary)

Description of each Eligible Road PPP Project

Ref #	
Name of Road	
Location	
Description of scope of work/ Terms of Reference	
Name of Eligible Project owner	
Name and contact details of contracting authority's contact person	
Name of entity which has completed the Road PPP Project referred to above (Single Bidder /Consortium Member/ Affiliate)	
Whether Length of the project in kilometres (indicate per section if necessary)	
Start Date of services	
End Date of services	

[Note: If more than one project is submitted, replicate table above] Required Attachments:

- 1) Documentary evidence from the relevant Eligible Project owner confirming completion / satisfactory performance of the Bidder's claimed IE, Independent Engineer, construction supervision, inspection, certification, contract-administration or comparable assignment, stating the role performed and the relevant dates.

- 2) Documentary evidence from each Eligible Project owner that the project has been implemented and completed specifying the date of completion of the project (e.g. project completion certificate).
- 3) Statement from the authorised representative of the Bidder claiming the Eligible Experience that the documentary evidence provided is the standard form of project acceptance in the jurisdiction from which Eligible Project is presented.
- 4) Extracts of the Terms of Reference of each Eligible Project cited in this Annex.
- 5) Certification from the authorised representative of the Bidder for correctness of the information furnished should be done in the following manner :

For and on behalf of:

(Name of Bidder)

For and on behalf of (Name of the Bidder /if Consortium, Name of Consortium and Lead Member)

(Signature of authorised representative) (Signature of authorized representative)

(Name, Title, and Date) (Name, Title, and Date)

Note: Fill in the complete description/ strike out the non-applicable text, as applicable, so as to provide sufficient explanation mentioned within the () or [] parenthesis / brackets.

* Authorised representative of the Lead Member shall sign in case of a Consortium.

ANNEX-3F: HIGHWAY AND EXPRESSWAY EXPERIENCE

To be completed by the Bidder for highway and expressway experience scored under paragraph 2.20, criteria B3, B4, B5 and B6.

Name of the Bidder	
Name of the entity proposed as fulfilling the Eligible Experience requirement	Relationship to the Bidder (Single Bidder itself/ Lead Member/ Consortium Member/ Affiliate)

List of Eligible Highway and Expressway Assignments

Ref #	Name of entity proposed as meeting the Highway and Expressway Experience	Experience claimed by Single Bidder itself/ Lead Member/ Consortium Member/ Affiliate	Name of Eligible Project	Route length of road/highway (route km)
1.				
2.				
3.				
Total number of Eligible Highway and Expressway Assignments and the aggregate route length of road/ highway (in Km)				

(Insert rows as necessary)

Description of each Eligible Highway and Expressway Assignment

Ref #	
Name of Road	
Location	
Description of scope of work/ Terms of Reference	
Name of Eligible Project owner	
Name and contact details of contracting authority's contact person	
Name of entity which has completed the Highway or Expressway Assignment referred to above (Single Bidder /Consortium Member/ Affiliate)	
Route length of the project in kilometres (state the length of each section, where applicable)	
Start Date of services	
End Date of services	

[Note: If more than one project is submitted, replicate table above] Required Attachments:

- 1) Documentary evidence from each Eligible Project owner confirming the Bidder's role in construction-stage IE, Independent Engineer, construction supervision, inspection, certification, claims administration or comparable services.

- 2) Documentary evidence from each Eligible Project owner that the project has been implemented and completed specifying the date of completion of the project (e.g. project completion certificate).
- 3) Statement from the authorised representative of the Bidder claiming the Eligible Experience that the documentary evidence provided is the standard form of project acceptance in the jurisdiction from which Eligible Project is presented.
- 4) Extracts of the Terms of Reference of each Eligible Project cited in this Annex.
- 5) Certification from the authorised representative of the Bidder for correctness of the information furnished should be done in the following manner :

For and on behalf of:

(Name of Bidder)	For and on behalf of (Name of the Bidder /if Consortium, Name of Consortium and Lead Member) (Signature of authorised representative) (Signature of authorized representative) (Name, Title, and Date) (Name, Title, and Date)
------------------	--

ANNEX 3G: STATEMENT OF FINANCIAL CAPACITY

To be submitted by the Bidder as fulfilling the Financial Capacity requirement, as identified in the

Annex-3D:

Name of the Bidder	
Single Bidder or Consortium	
Name of the Bidder proposed to fulfil the Financial Capacity requirements (Single Applicant /Lead Member in case of Consortium)	1. 2. 3.

I, (name), (citizenship), of legal age, with an office address at (address), as the (position/designation) of (name of Bidder / Lead Member meeting the Financial Capacity), a (state the legal structure, e.g. company, partnership or corporation, and attach its organisation chart) organised and existing under and by virtue of the laws of (place of incorporation/registration), hereby declare for and on behalf of (name of Bidder / Lead Member meeting the Financial Capacity) that the information stated in this Statement of Financial Capacity is true and that the attached documents are genuine and true copies of the originals.

The Bidder / Lead Member shall demonstrate adequate financial capacity to perform the assignment through its audited financial statements for the financial years 2022, 2023 and 2024. The Bidder shall provide its annual turnover, net assets / equity, profitability and other relevant indicators in the table below. No fixed minimum turnover shall apply unless expressly stated in the Tender Data Sheet by Addendum.

- The financial summary of (name of Bid) which is the Bidder itself / Consortium Member(s) / Affiliate meeting the Financial Capacity is as follows:

Name of the entity	Whether Single Bidder itself/ Lead Member	Annual Turnover (in USD)			Provide the exchange rate(s), reference date(s) and source of the exchange rate for the currency used
		Financial Year 2022 [state the period covered]	Financial Year 2023 [state the period covered]	Financial Year 2024 [state the period covered]	
Average Annual Turnover of the Bidder					

Date and Place of Execution.

For and on behalf of (Name of Bidder)

(Signature of authorised representative)

(Name) (Designation)

For and on behalf of (Name of Bidder /if Consortium, Name of Lead Member)

(Signature of authorised representative)

Required Attachments:

- Certified copies of the Audited Annual Reports / Financial Statements for the financial years 2022, 2023 and 2024.

2. Fill in the complete description/ strike out the non-applicable text, as applicable, so as to provide sufficient explanation mentioned within the () or [] brackets.

* Authorised representative of the Lead Member shall sign in case of a Consortium.

ANNEX-3H: CERTIFICATION OF ABSENCE OF UNSATISFACTORY PERFORMANCE RECORD

Note: To be submitted by a single Bidder / Consortium Member and Affiliates, as identified in Annex -3D

Name of Bidder	
Name of entity which fulfils Technical/ Financial Capacity	
Requirement being met	
Relationship to the Bidder	(i.e. Bidder / Consortium Member /Affiliate of Bidder or Consortium Member)

Certification of Absence of Unsatisfactory Performance Record

I, (name of authorized representative), (citizenship), of legal age, with office address at (address), as the (position/designation) of (name of entity represented), a (the legal structure i.e. Company, partnership, or corporation) [organised and existing under and by virtue of the laws of (name of State and Country)] do hereby certify, for and on behalf of (name of entity represented), that (name of entity represented) does not have any record of unsatisfactory performance for the last 3 (three) year preceding the Bid Due Date.

Date and Place of Execution

For and on behalf of (Name of Bidder)

(Signature of authorised representative)

(Name of authorised representative) (Designation)

Note: Fill in the complete description/ strike out the non-applicable text, as applicable, so as to provide sufficient explanation mentioned within the () or [] parenthesis/ brackets.

ANNEX-3I: FORM OF BID SECURITY

Note: This form applies only if the Tender Data Sheet confirms that Bid Security is required and specifies the required amount and validity period.

(To be issued by a bank licensed by the Central Bank of Kenya to operate in Kenya)

[Letterhead of Issuing Bank]

B.G. No.

Dated:

1. This Guarantee is issued in favour of Kenya National Highways Authority (KeNHA), China Road and Bridge Corporation (CRBC) and National Social Security Fund (NSSF) as joint beneficiaries, collectively referred to in this Guarantee as the Employer, for Tender No. RFXWY/CS-IE/2026/S1. The original paper Guarantee shall be submitted with the Bid to the Tender Box at Kenya National Highways Authority, Barabara Plaza, JKIA, Nairobi, Off Mazao Road (Opposite KCAA Headquarters), Block C, Second Floor, P. O. Box 49712 - 00100, Nairobi, Kenya.
2. Any such written demand made by the Employer stating that the Bidder is in default of the due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank.
3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of the Employer is disputed by the Bidder or not, merely on the first demand from the Employer stating that the amount claimed is due to the Employer by reason of failure of the Bidder to fulfil and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its Bid open during the Bid validity period as set forth in the Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee.
4. This Guarantee shall be irrevocable and remain valid for 150 calendar days after the Bid Due Date stated in the tender notice, as extended by any Addendum issued before that deadline. Where the Bidder agrees to extend its proposal validity, the Bank shall extend this Guarantee accordingly so that it remains valid for at least 30 calendar days after the extended proposal validity period. Any written demand must be received by the Bank on or before the applicable expiry date.
5. We, the Bank, further agree that the Employer shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents including, inter-alia, the failure of the Bidder to keep its Bid open during the Bid validity period set forth in the Bidding Documents, and the decision of the Employer that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the Employer and the Bidder or any dispute pending before any Court, Tribunal, Arbitrator or any other Authority.
6. The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.
7. In order to give full effect to this Guarantee, the Employer shall be entitled to treat the Bank as the principal debtor. The Employer shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said Bidding Documents or to extend time for submission of the Bids or the Bid validity period or the period for conveying acceptance of Letter of Award by the Bidder or the period for fulfilment and compliance with all or any of the terms and conditions contained in the said Bidding Documents by the said Bidder or to postpone for anytime and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in

the said Bidding Documents or the securities available to the Employer, and the Bank shall not be released from its liability under these presents due to exercise by the Employer of the liberty with reference to the matters aforesaid or by reason of time being given to the Bidder or any other forbearance, act or omission on the part of the Employer or any indulgence by the Employer to the said Bidder or by any change in the constitution of the Employer or its absorption, merger or amalgamation with any other person or any other matter or thing whatsoever.

8. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.
9. We undertake to make the payment on receipt of your notice of claim on us addressed to [name of Bank along with branch address] and delivered at our above branch which shall be deemed to have been duly authorised to receive the said notice of claim.
10. It shall not be necessary for the Employer to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which the Employer may have obtained from the Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealised.
11. We, the Bank, further undertake not to revoke this Guarantee during its currency on the instruction of the Bidder to do so or otherwise except with the previous express consent of the Employer in writing.
12. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, and the undersigned is duly authorised and has full power to execute this Guarantee for and on behalf of the Bank.
13. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to the Bid Security amount stated in the Tender Data Sheet, namely KES 5,000,000 (Kenya Shillings Five Million). The Bank shall be liable to pay the said amount or any part thereof only if a compliant written claim is served before the expiry date stated in this Guarantee.

Signed and Delivered by.....Bank

By the hand of Mr./Ms.,its.....and authorised official.

(Signature of the Authorised Representative)

(Official Seal)

ANNEX-3J: KYC Questionnaire (For Information Only)

Guidelines to the company:

- When answering the questionnaire, please answer in the column at the right of the question and/or provide further explanation if necessary. Supporting documentation shall be provided separately.
- If a question is non applicable in your specific situation, please answer N/A.

#	QUESTIONS	ANSWERS
1.	Name, legal organisation (Inc. Ltd, GmbH, SAS,...), business address and registration number of the company entering into the contractual or business relationship with the Employer	
2.	Shareholding List of the company's direct shareholders and their ownership percentage If the company is a publicly held company, please indicate the stock exchange the shares of the Company are traded on and the list of its shareholders who hold a stake greater than 5%	
3.	Ultimate beneficial owner Names of the ultimate beneficial owners of the Company, their legal organisation, head office and registration number (if a natural person, please also indicate the date of birth, nationality and address of residence) Please also indicate any intermediate entities or persons belonging to the chain of ownership If the company is ultimately owned by a publicly held company, please indicate the stock exchange the shares of the ultimate company are traded on and the list of the shareholders who hold a stake greater than 5%	
4.	Corporate governance List of the legal representatives, directors and CEO of the company including their name, date of birth, nationality and country of residence	
5.	Company's compliance policies What are the Company's main policies in respect of compliance with anti-corruption laws or in respect of the prevention of corruption and traffic of influence? Please attach any relevant policies and the company's Code of conduct in place, if any.	

#	QUESTIONS	ANSWERS
6.	Have the company's officers been trained on corruption risks? Are they familiar with the anti-corruption laws applicable to the Contract / the Project, including the Anti-Bribery Act, Cap. 79B, Laws of Kenya, the Anti-Corruption and Economic Crimes Act, Cap. 65, Laws of Kenya, and, where applicable, the French Loi Sapin II, the US Foreign Corrupt Practices Act (FCPA) and the UK Bribery Act 2010?	
7.	Is the company certified ISO 370001 "Anti bribery Management System"?	
8.	Investigation - conviction Has the company, any of its current directors or officers or, to the best of your knowledge, any past directors or officers or any company belonging to the same group of companies as the company ever been subject to suspension, charges, formal investigations, legal procedure or convicted for corruption, traffic of influence, improper payments, money laundering or similar within the last ten years? Or otherwise been called to hearing or as a witness in relation to any of those subjects within the last ten years? If so, please provide details.	
9.	Sanctions Is (i) the company, (ii) any of its current directors or officers or (iii) any entity or individual that directly or indirectly owns or controls the Company or (iv), to the best of your knowledge, any other entity belonging to the same group of companies as the company, identified or otherwise targeted by any Sanctions. For the purposes of this questionnaire "Sanctions" are defined as any economic or financial sanctions, trade embargoes or similar measures administered or enforced by: the European Union and any of its member states; the United Kingdom, the United States or Canada; the United Nations Security Council; any other country or organisation? If so, please provide details.	
10.	Is (i) the company, (ii) any of its current directors or officers or (iii) any entity or individual that directly or indirectly owns or controls the Company or (iv), to the best of your knowledge, any other entity belonging to the same group of companies as the company located in, from or organised under the Laws of any jurisdiction(taken as a whole) that is, or whose government (taken as a whole) is, targeted by Sanctions, including Iran, Cuba, Syria, Libya, North Korea, and Venezuela?	

For information purposes only and without this being restrictive, you can refer to the following lists: the European Union Consolidated Financial Sanctions List, the Consolidated list of financial sanctions targets in the UK, the U.S. Treasury Department's Office of Foreign Assets Control (OFAC) Sanctions

Lists, the Consolidated Canadian Autonomous Sanctions List and the United Nations Security Council Consolidated Lists.

	QUESTIONS	ANSWERS
11.	Is (i) the company, (ii) any of its current directors or officers or (iii) any entity or individual that directly or indirectly owns or controls the company or (iv), to the best of your knowledge, any other company entity belonging to the same group of companies as the Company, identified on : the World Bank Listing of Ineligible Firms & Individuals ; the list of entities and individuals that are ineligible to become an ERBD counterparty?	
12.	Relationship with CA or PC to the best of your knowledge, please list the previous (within the past two years) or current relationship of the company with the CA, the PC, its shareholders and Affiliates	
13.	Name, date of birth, nationality and country of residence of the company's officers or representatives principally responsible for the relationship with the CA, the PC, its shareholders and Affiliates in relation to the Contract or the Project	
14.	Authorisation - Licence Do the services, products or works that the company will perform under the Contract/ Project require a business licence or any other type of administrative authorization in the country where they are to be provided?	
15.	Conflict of interests Does any of the individuals who will take part in the preparation of the company's offer, negotiation or subsequent execution or performance of the Contract are in a situation such that a conflict of interests may exist? If so, please provide details	
16.	Public official or politically exposed person Is any of the individuals who will take part in the preparation of the Company's offer, negotiation or subsequent execution or performance of the Contract a person qualified as public official, or a family member (first and second degree relative) of a public official, or otherwise politically exposed. If so, please provide details	
17.	To the best of your knowledge, does any public official or a family member (first and second degree relative) of a public official have any interest in the company, or stand to benefit in any way, as a result of the contract. If so, please provide details	

	QUESTIONS	ANSWERS
18.	Agent Does the company intend to use any agent, consultant or other third party to deal in any way, directly or indirectly, with public officials in connection with the Contract/the Project? If so, please give details and provide the anti-corruption due diligence report conducted in relation with such third party	
19.	Subcontractor If the company intends to subcontract part of its scope of work under the Contract, please confirm that the Company has or will conduct an anti-corruption due diligence in relation with such subcontractor.	
20.	Name and title of the person completing the questionnaire	
21.	Email address of the person completing the questionnaire	

By signing this document, I, being duly authorised to respond to this questionnaire and provide attached documentation, represent that the company has performed all inquiries necessary to answer this questionnaire and that the information given is correct, accurate and complete as of the date hereof.

Dated:

Signature:

Name:

Title:

ANNEX-3K: INDEPENDENCE AND CONFLICT OF INTEREST DECLARATION

[Letterhead of the Bidder / Consortium Lead Member]

Tender No.: [RFXWY/CS-IE/2026/S1] Date: [insert]

Name of Bidder: [insert]

Consortium Members (if applicable): [insert the name of each member]

To: the Procuring Entity for this procurement

We, the undersigned, being duly authorised to make this declaration for the Bidder and the Consortium Members identified above, declare as follows:

1. We have disclosed below every current or recent engagement with the Procuring Entity. The disclosure covers the Bidder, each Consortium Member, affiliates and all proposed personnel.
2. Neither the Bidder nor any Consortium Member, affiliate or proposed individual is engaged on the Project in any other capacity.
3. We have no actual or perceived conflict of interest that could impair the independent performance of the IE role. The relationship disclosures required elsewhere in the RFP are provided in Annex 3J and Section 4E.
4. The information in this declaration and its attachments is true and complete. We shall promptly disclose any change that could affect our eligibility or independence, in accordance with the RFP.

Current or recent engagements with the Procuring Entity: [identify the entity or individual concerned, the client, the nature and scope of each engagement, its dates and any relevant relationship; state “None” if there are no engagements to disclose. Attach additional sheets if required.]

For and on behalf of the Bidder / Lead Member: [name]

Authorised signature: _____

Name and capacity of signatory: _____

Date: _____

For each other Consortium Member (repeat as required): [name]

Authorised signature: _____

Name and capacity of signatory: _____

Date: _____

4. SECTION 4 - TECHNICAL PROPOSAL - STANDARD FORMS

TECHNICAL PROPOSAL

(Selection No. & Title)

Cover Letter

Executive Summary

Section A: Consultant Organisation

Section B: Consultant's Experience

Section C: Comments/Suggestions on the Terms of Reference and Draft Contract

Section D: Description of Approach, Methodology and Work Plan

Section E: Contracts and Relationships with the Contracting Authority, Project Company and associated parties

Section F: Team Composition, Task Assignments & Level of Effort (LOE)

Annex 1: CV of Proposed Key Personnel

Annex 2: Work Schedule

SECTION A - Consultant Organisation

[Briefly describe the background and organisation of your consulting firm/organisation and the sub consultant/s that your consulting firm/organisation proposes to engage for this assignment.

- Description of the Lead Party of the IE: No more than 5 pages
- Description of the nature / composition / structure of the Independent Expert team, including consortium partners/ sub-contractors (if applicable): nor more than ten pages]

SECTION B : Consultant's Experience

[Using the format below, provide information on at least 3 previous consulting assignments per Task Type similar to the assignment subject of this solicitation for which your consulting firm/organisation and the sub consultants for this assignment were engaged either individually as distinct corporate entities or jointly as members of an association or consortium of corporate entities. Please use one box for each assignment and use extra sheets, as necessary.

Assignment name:	Approx. value of the contract (in current USD):
Country: Location within country:	Duration of assignment (months):
Name of Client:	Total No. of staff-months of the assignment:
Contact Person, Title/Designation, Tel. No./Address:	
Start date (month/year): Completion date (month/year):	No. of professional staff-months provided by your consulting firm/organisation or your sub consultants:
Name of associated Consultants, if any:	Name of senior professional staff of your consulting firm/organisation involved and designation and/or functions performed (e.g. Project Director/Coordinator, Team Leader):
Description of Project:	
Description of actual services provided by your staff within the assignment:	

Section C: Comments/Suggestions on the Terms of Reference and Draft Contract

[Present and justify here any modifications to the Terms of Reference your consulting firm/organisation would like to propose, if there are any, to perform the assignment better and more effectively (e.g. deleting some activity that you find unnecessary, adding others or proposing a different phasing of the activities). Such suggestions should be concise and incorporated in your Bid].

SECTION D - Description of Approach, Methodology and Work Plan

Technical approach, methodology and work plan are key components of the Technical Proposal. It is suggested that the Technical Proposal be divided into the following four sub-sections:

- a) Understanding of the role and responsibilities of the Independent Expert during Early Works, the Construction Stage and Construction Close-Out / Punch List period.

In this sub-section, the Bidder shall demonstrate its understanding of the role and responsibilities of the Independent Expert during the Early Works, Construction Stage and Construction Close-Out / Punch List period.

- b) Technical Approach and Methodology,

In this sub section you should explain your approach to the services, methodology for carrying out the activities and obtaining the expected output, and the degree of detail of such output. You should highlight the problems being addressed and their importance, and explain the technical approach you would adopt to address them. You should also explain the methodologies you propose to adopt and highlight the compatibility of those methodologies with the proposed approach.

- c) Work Plan,

In this sub section you should propose the main activities of the assignment, their content and duration, phasing and interrelations, milestones (including interim approvals by the Client), and delivery dates of the reports. The proposed work plan should be consistent with the technical approach and methodology, showing understanding of the TOR and ability to translate them into a feasible working plan. A list of the final documents, including reports, drawings, and tables to be delivered as final output, should be included here. The work plan should be consistent with the Terms of Reference; and

- d) Organisation and Staffing,

In this sub section you should propose the structure and composition of your team. You should list the main disciplines of the assignment, the Key Personnel member responsible for each, and the proposed technical and support staff. Each Key Personnel position shall be filled by the number of separate individuals stated in paragraph 6.6. No individual or input may be counted against more than one Key Personnel position. The Bidder shall disclose the actual inputs and availability of every proposed individual so that concurrent duties and level of effort can be assessed.

E - Contracts and Relationships with the Contracting Authority, Private Party, Project Company and Associated Parties

Disclose all ongoing and recent contracts, assignments and other relationships of the Bidder, each Consortium Member and proposed personnel with the Contracting Authority, CRBC, NSSF, the Project Company, the Construction Contractor, Senior Lenders and other material Project participants. Identify any actual or potential conflict of interest, explain the proposed safeguards and cross-refer to the declarations in Annex 3J, Annex 3K and paragraph 2.3. State expressly if there are no relationships or conflicts to disclose.

Section F: TEAM COMPOSITION, TASK ASSIGNMENTS& LEVEL OF EFFORT (LOE)

Key Personnel

Name of Staff & Firm associated with⁸	Area of Expertise Relevant to the Assignment	Designation for this Assignment⁹	Assigned Tasks or Deliverables	Location (Internationally based/ locally based)¹⁰	Number of Days¹¹

⁸Indicate if the proposed staff is an employee or agent of your consulting firm/organisation or a sub consultant.

⁹Title or position as described in the TOR or otherwise named in your proposed Organisation and Staffing under Section D, sub-section (d).

¹⁰Relative to the assignment subject of the Contract, indicate if the staff/consultant local or international.

¹¹The number of days should be on the basis of the initial 24-month contract term and the assumption that the Construction Schedule will be as set out in Section 6.9. Effort in respect of Additional Services should be excluded.

ANNEX 1: CURRICULUM VITAE (CV) OF PROPOSED KEY PERSONNEL

1. Name of Staff [Insert full name]:
2. Proposed Position
3. Employer:
4. Date of Birth:
5. Nationality:
6. Education

School, college and/or University Attended	Degree/certificate or other specialised education obtained	Date Obtained

7. Professional Certification or Membership in Professional Associations:
8. Other Relevant Training:
9. Countries of Work Experience: [List countries where staff has worked in the last ten years]:
10. Languages: [For each language indicate proficiency: good, fair, or poor in speaking, reading, and writing]:
11. Employment Record [Starting with present position, list in reverse order every employment held]:

From [Year]: To [Year]:

Employer: Positions held:

Detailed Tasks Assigned [List all tasks to be performed under this assignment]	Work Undertaken that Best Illustrates Capability to Handle the Tasks Assigned
	[Among the assignments in which the staff has been involved, indicate the following information for those assignments that best illustrate staff capability to handle the tasks listed under point 11.]
	Name of assignment or project:
	Year: Location: Client:
	Main project features:
	Positions held:
	Activities performed:

12. Do you currently or have you ever worked for the World Bank Group including any of the following types of appointments: Regular, term, ETC, ETT, STC, STT, JPA, or JPO? If yes, please provide details, including start/end dates of appointment.

Certification

I certify that (1) to the best of my knowledge and belief, this CV correctly describes me, my qualifications, and my experience; (2) that I am available for the assignment for which I am proposed; and (3) that I am proposed only by one Offer or and under one Bid.

I understand that any wilful misstatement or misrepresentation herein may lead to my disqualification or removal from the selected team undertaking the assignment.

Date: _____ Signature of staff member / authorised representative:

ANNEX 2: WORK SCHEDULE (EXCLUDING ADDITIONAL SERVICES) 1

[illegible]

- 1 Work schedule shall cover the initial twenty-four (24)-month contract term (n = 24 in the month headings), based on the construction schedule in Section 6.9. Show all months from 1 to 24, extending the template as necessary.
- 2 Indicate all main activities of the assignment, including delivery of reports (e.g.: inception, interim, and final reports), and other benchmarks such as Client approvals, etc. For phased assignments indicate activities, delivery of reports, and benchmarks separately for each phase.
- 3 Duration of activities shall be indicated in the form of a bar chart.

5. SECTION 5 - FINANCIAL PROPOSAL - STANDARD FORMS AND ASSUMPTIONS

Selection Number

Selection Title

Annex 5A: Financial Proposal Submission Form (to be completed and signed)

Annex 5B: Bill of Quantities - Key Personnel Remuneration

Annex 5C: Summary of Costs, Breakdown of Costs and Assumed Man Days for the Initial 24-Month Term

Annex 5D: Breakdown of Reimbursable Costs

ANNEX 5A: FINANCIAL PROPOSAL SUBMISSION FORM

[Location, Date]

To: [Contracting Authority] Tender No: [RFXWY/CS-IE/2026/S1] ■

Dear Sirs:

We, the undersigned, offer to provide the consulting services for the role of Independent Expert on the Project in accordance with your Request for Proposal dated 23 October 2026 and our Technical Proposal. We are hereby submitting our Financial Proposal, in a separate file.

Our Financial Proposal shall be binding upon us subject to the modifications resulting from negotiations, up to expiration of the validity period of the Bid.

Form 5B includes the substance of our Financial Proposal, and is inclusive of VAT and any other applicable taxes.

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

Yours sincerely,

[Authorised signature(s)] Name and Title of Signatory Name of Firm

Address

Attachments:

- Annex 5B: Bill of Quantities - Key Personnel Remuneration
- Annex 5C: Summary of Costs, Breakdown of Costs and Assumed Man Days for the Initial 24-Month Term
- Annex 5D: Breakdown of Reimbursable Costs

ANNEX 5B: BILL OF QUANTITIES - KEY PERSONNEL REMUNERATION

Bill of Quantities - Key Personnel Remuneration

The Bidder shall complete every rate and amount applicable to the thirteen (13) Key Personnel categories listed in paragraph 6.6, comprising eighteen (18) separate individuals and a total minimum input of two hundred and seventy-six (276) man-months for the initial twenty-four (24)-month term. The Bidder shall submit this BOQ both as a signed scanned copy and in Microsoft Excel format with traceable formulae and linkages.

N o.	Key Personnel Position	Qty	Minimum Aggregate Input (Man-Months per Category)	Monthly Fee Rate (USD)	Total Amount (USD)	Monthly Fee Rate (KSH)	Total Amount (KSH)
1	Project Director / IE Representative	1	24				
2	Team Leader & Senior Highway Engineer	1	24				
3	Structural & Bridge Engineer	2	36				
4	PPP Contracts Expert	1	12				
5	Geotechnical & Slope Stability Engineer	2	24				
6	Pavement & Materials Engineer	2	36				
7	Drainage & Hydraulic Engineer	2	24				
8	Traffic & Tolling Systems Engineer	1	16				
9	Environmental & Social Safeguards Specialist	2	24				
10	Measurement Engineer / Cost Engineer	1	24				
11	PPP Financial Specialist	1	8				
12	Legal Advisor (PPP / Infrastructure)	1	8				
13	Architect	1	16				
TOTAL MINIMUM KEY PERSONNEL / REMUNERATION SUBTOTAL		18	276				
Reimbursable Expenses (from Annex 5D)				n/a		n/a	

N o.	Key Personnel Position	Qty .	Minimu m Aggregat e Input (Man- Months per Category)	Monthly Fee Rate (USD)	Total Amount (USD)	Monthly Fee Rate (KSH)	Total Amount (KSH)
SUBTOTAL BEFORE INDIRECT TAXES				n/a		n/a	
VAT AND OTHER APPLICABLE INDIRECT TAXES				n/a		n/a	
TOTAL BID PRICE				n/a		n/a	

Total Bid Price in Words (USD): _____

Total Bid Price in Words (KSH): _____

Pricing formula: Total Amount for each Key Personnel category = Quoted Aggregate Input (Man-Months), which shall not be less than the stated minimum, × Monthly Fee Rate. Do not multiply that amount by the Qty. column again. Where more than one individual is required, the monthly fee rate shall be the input-weighted average rate per man-month for that category, supported by the individual deployment and cost breakdown. The minimum inputs across all thirteen categories total 276 man-months. For financial evaluation, any conversion between USD and KSH shall use the exchange rate published by the Central Bank of Kenya as at the Bid Closing Date, consistently with the Tender Data Sheet.

The Project Director, PPP Contracts Expert and Legal Advisor (PPP / Infrastructure) shall be “Home” based, with periodic site visits conducted when required.

The Financial Proposal shall be priced on the basis of the mandatory quantities and minimum man-months in paragraph 6.6 for the initial 24-month contract term and shall cover Early Works / pre-Effective Date services, Construction Stage services and the limited Construction Close-Out / Punch List support period. Any additional Key Personnel or man-months proposed by the Bidder shall be separately identified and included in the Bid Price. The occurrence of the Effective Date of the Project Agreement shall not remove outstanding Early Works verification or certification from the priced Services or entitle the Bidder to an additional Fee solely on that basis.

Non-Key Personnel shall not be priced as separate BOQ line items. All costs associated with Non-Key Personnel - including support, inspection, laboratory, survey, safety, planning, document-control and administrative staff - shall be included in the Key Personnel monthly fee rates. Reimbursable expenses shall be priced only in Annex 5D, and taxes shall be stated in accordance with Annexes 5A and 5C and the Tender Data Sheet.

ANNEX 5C: SUMMARY OF COSTS, BREAKDOWN OF COSTS AND ASSUMED MAN DAYS FOR THE INITIAL 24-MONTH TERM

A. Summary of Costs

Apply the Bid Prices to the initial twenty-four (24)-month contract term, using the Construction Schedule in Section 6.9 and the Assumed Volumes of Additional Services tasks in point C below for that same term.

Provide a Summary of Costs per the following format:

TOTAL PROJECT COST					
	COST COMPONENT	Early Works / Pre-Effective Date	Construction Stage Monitoring	Close-Out / Punch List Period	Additional Services / Total
	KSH	KSH	KSH	KSH	KSH
Remuneration -					
Reimbursable Expenses				n/a**	
TOTAL COST KSH*					
Total indirect local taxes (VAT and any other applicable tax)					
	USD	USD	USD	USD	USD
Remuneration -					
Reimbursable Expenses				n/a**	
TOTAL COST USD*					
Total indirect taxes applicable					

*** THE TOTAL COSTS ARE INCLUSIVE OF DIRECT TAXES, DUTIES, FEES AND OTHER IMPOSITIONS.**

** Reasonable reimbursables to be recharged at cost against provision of appropriate supporting documentation

B. Breakdown of Costs

Provide a Breakdown of Costs on the same basis per the following format:

REMUNERATION

Names	Position	Number of days	Daily Fee Rates USD	Total Fees USD
List of Key Personnel represented in the Technical Proposal Other functional Labour category relevant to the assignment				
TOTAL				

Names	Position	Number of days	Daily Fee Rates KSH	Total Fees KSH
List of Key Personnel represented in the Technical Proposal				
Other functional Labour category relevant to the assignment				
TOTAL				

Note: Costs shall be inclusive of all fringe benefits, applicable taxes and other labour-related costs. The individual days and daily rates in this breakdown shall reconcile with the category man-months and remuneration totals in Annex 5B and the deployment schedule in paragraph 6.7. State the conversion basis used between days and man-months; that conversion shall not reduce the mandatory aggregate input of 276 man-months for the initial twenty-four (24)-month term.

C. Assumed Man Days on Additional Services for the Initial 24-Month Term

Name of the Key Personnel member and the details of the organisation with which that individual is associated	Area of Expertise Relevant to the Assignme nt	Designation for this Assignment	Assigned Tasks or Deliverables	Location (Internationally based/ locally based)	Number of Days
Expert 1					
Expert 2					
Expert 3					
Expert 4					
Expert 5					
Expert 6					

Note: Add rows and experts as required and deemed fit

ANNEX 5D: BREAKDOWN OF REIMBURSABLE COSTS

Breakdown of Reimbursable Costs

Provide a breakdown of reimbursable costs for the initial twenty-four (24)-month contract term in the following format. For Item 1.03, all Bidders shall include the same Provisional Sum of KES 8,000,000 (Kenya Shillings Eight Million) stated in the Tender Data Sheet. Bidders shall carry that amount, unchanged and inclusive of overhead and profit, into the total reimbursable costs and the corresponding totals in Annexes 5B and 5C, counting it once only. The Provisional Sum shall be used only for CPD / on-site training instructed under this RFP. Payment shall be limited to reasonable, allowable and necessary costs supported by appropriate documentation, in accordance with the reimbursable-cost provisions of this RFP and Clause 19 of the IE Agreement; any unused balance shall not be payable. No separate overhead or profit mark-up shall be added. Any amendment to the specified Provisional Sum after issue shall be communicated uniformly by Addendum with sufficient time to incorporate it before the Bid Due Date.

Y/No.	Description	Unit	Quantity	Unit Price KES	Total Amount KES
1.01	Miscellaneous reimbursable allowance for IE activities, only where instructed or approved in writing by the Employer	LS	1	Bidder to Quote	Bidder to Quote
1.02	All overhead and profit shall be included in the Bidder's quoted amount for Item 1.01	N/A		N/A	N/A
1.03	CPD / on-site training for the Employer's counterpart staff, if instructed under the RFP — Provisional Sum	PS	1	8,000,000.00	8,000,000.00
1.04	All overhead and profit shall be included within the Provisional Sum for Item 1.03. No separate mark-up shall be added.	N/A		N/A	N/A
	TOTAL REIMBURSABLE COSTS				

REIMBURSABLE EXPENSES SHALL BE LIMITED TO REASONABLE, ALLOWABLE AND NECESSARY COSTS TO UNDERTAKE THE SERVICES DEFINED IN THE TERMS OF REFERENCE AND SHOULD BE COMMENSURATE WITH THE TECHNICAL PROPOSAL.

ASSUMPTIONS USED TO PREPARE THE FINANCIAL PROPOSALS

1. Evaluation Exchange Rate: the USD/KSH exchange rate published by the Central Bank of Kenya as at the Bid Closing Date, as stated in the Tender Data Sheet.
2. Assumed Percentage increase in price indices since IE RFP Submission

Year	Local CPI	US CPI
	***%	***%
	***%	***%
	***%	***%
	***%	***%

Note: Please refer the relevant provisions of the RFP

6. SECTION 6 - TERMS OF REFERENCE - CONSTRUCTION-STAGE INDEPENDENT EXPERT

6.1. Project Background

The Rift Expressway comprises the Rironi-Gilgil (A8) and Rironi-Maai Mahiu-Naivasha (A8 South) Road PPP Project in Kenya. The Project comprises approximately 138 km of strategic highway corridor, together with associated interchanges, bridges and structures, drainage and slope-stabilisation works, road-safety facilities, electrical / telecommunication / ITS systems, traffic and toll infrastructure interfaces and other Project facilities.

Early Works have commenced prior to the Effective Date. The IE is therefore expected to mobilise promptly and undertake retrospective and contemporaneous verification of Early Works quantities, site records, procurement and payment evidence and Early Works Costs. Following the Effective Date, the IE shall continue with construction-stage inspection, testing, progress monitoring, contractual certification and completion activities. Any outstanding Early Works verification and cost certification shall continue after the Effective Date of the Project Agreement and remain included in the Services; achievement of that date does not by itself dispense with certification.

6.2. General Principles

The IE shall act independently, fairly and impartially, owe a duty of care to both Parties, report directly and simultaneously to the Parties, promptly disclose conflicts of interest, and issue Evaluation Reports or other written decisions where required by the Project Agreement. The IE shall perform all construction-stage functions assigned to it under the Project Agreement and this RFP within the prescribed time limits.

6.3. Limits of Design Review

The Detailed Design for the Project is developed and approved under the Project Agreement, through the design review and approval process agreed between the Contracting Authority and the Private Party. The IE performs the Services on the basis of the design as so approved, and design approval and design certification remain matters for that process. The IE inspects, tests and certifies the Works against the approved design, the Design and Construction Standards, the Performance Standards and the other requirements of the Project Agreement, for the purposes of construction compliance and certification. Where, in the course of performing the Services, the IE identifies a matter in the Detailed Design, Additional Drawings, Shop Drawings or other design submissions that may bear on construction compliance, the IE may draw it to the attention of the Parties and offer its recommendations, for the Parties to address through the process under the Project Agreement.

6.4. Scope of Services

No.	Work Category	Construction-Stage TOR Requirement
1	Early Works verification and cost certification	Mobilise before the Effective Date as required and verify the scope, quantities, progress and supporting records for the Early Works. Certify the full costs incurred in respect of the Early Works, including mobilisation and demobilisation costs and investments in plant, equipment, facilities and materials required for the Works during the Construction Period, so that the certified Early Works Costs may be treated in accordance with the Project Agreement.
2	Independence, reporting and Evaluation Reports	Act independently, fairly and impartially and owe a duty of care to both the Contracting Authority and the Project Company. Fulfil reporting obligations directly and simultaneously to both Parties; immediately report any conflict of interest; give both Parties an opportunity to express their views before resolving a Dispute; and, whenever the Project Agreement requires the Independent Expert to provide an opinion, provide an Evaluation Report to both Parties stating the appropriate measures to be implemented.

No.	Work Category	Construction-Stage TOR Requirement
3	General contractual consents, approvals and notices	Give such consents, approvals, authorisations, notices, information, reports, opinions and determinations as the Project Agreement assigns to the IE, except that design matters shall be limited to review of the relevant design submissions and the issue of comments, observations and recommendations. The IE shall not grant design approval or design certification.
4	Changes of ownership or control and transfers of shares	Within twenty (20) Business Days after receipt of a request for consent to a change of ownership or control of the Project Company, or a transfer of shares in the Project Company, made under the applicable provisions of the Project Agreement governing such changes or transfers, consider the request and advise the Contracting Authority whether the change or transfer would adversely affect the financial, business, technical or legal standing of the Project Company or the relevant Shareholder in relation to the performance of that Shareholder's obligations.
5	Permanent Additional Land	Within twenty (20) Business Days after receipt of the Project Company's proposal, notify the Contracting Authority and the Project Company whether the Independent Expert agrees with the requirement for the proposed Permanent Additional Land and the proposed date by which the land is to be acquired and made available to the Project Company. If there is disagreement following that notice, negotiate in good faith with both Parties to agree the requirement and its timing within twenty (20) Business Days.
6	Connecting works, costs and Financial Loss / Relief	Assess reasonable construction-related connection costs and give opinions on Financial Loss or contractual relief where assigned to the IE. Where connecting works raise design issues affecting safety, constructability, interfaces or compliance, review the relevant design submissions and issue comments, observations and recommendations, but do not approve or certify the design.
7	Safety, Quality, Environmental and SQE management	Within twenty (20) Business Days after receipt, review and comment on the quality assurance and quality control system documentation (SQE Documentation) submitted before commencement of the Works or Services and on each subsequent revision. Approve the amended SQE Documentation where required under the Project Agreement, and monitor its implementation and compliance during the Construction Period. If the Independent Expert does not issue written comments, a rejection or an approval within that twenty (20) Business Day period, the Project Company may issue a written reminder to the Independent Expert. If the Independent Expert does not respond within a further five (5) Business Days after receipt of that reminder, the relevant SQE Documentation submission shall be deemed approved for the purpose of commencement of the relevant Works or Services, subject to satisfaction of all other applicable requirements of the Project Agreement. This mechanism applies only to SQE Documentation and does not constitute design approval or design certification, waive compliance with Applicable Law or the Project Agreement, or relieve the Project Company or its Contractors of their safety, quality, environmental or other obligations. The Independent Expert shall record and notify both Parties when that deemed approval takes effect and shall continue to monitor compliance; that record or notification is not a condition of deemed approval.

No.	Work Category	Construction-Stage TOR Requirement
8	Suspension of unsafe Construction Works	Recommend that the Contracting Authority immediately suspend any part or all of the Works where, acting reasonably, the Independent Expert believes that the Works threaten the safety of Users and/or pedestrians. Upon notice from the Project Company, inspect remedial measures and recommend whether the suspension may be lifted. Where delay results from a suspension caused by a Relevant Event not attributable to the Project Company, determine the extension to the relevant milestones and Scheduled Completion Date(s) to which the Project Company is reasonably entitled.
9	Construction Programme, progress and Recovery Programmes	Approve or reject the draft Construction Programme submitted by the Project Company under Clause 16.3 of the Project Agreement. Approve or reject an amended Programme within twenty (20) Business Days after receipt; rejection is permitted only where the Programme does not comply with Applicable Law, the Performance Standards, the Design and Construction Standards or the requirements of the Project Agreement. Where the Project Company resubmits the Programme after rejection, approve or reject it within ten (10) Business Days after receipt; if it is rejected within that period, the Contracting Authority shall make the decision on the Programme. Monitor the Works against the Programme and its clear milestones, reasonably request additional Works progress reports, and furnish Works progress reports whenever requested by the Contracting Authority. Notify the Contracting Authority where there are reasonable grounds to believe that a Scheduled Sectional Completion Date or Final Completion will not be achieved by the Longstop Date, and approve or object to the proposed Recovery Programme within ten (10) Business Days after receipt. Review progress against the Recovery Programme and, if the Project Company fails to achieve any revised Scheduled Sectional Completion Date or Final Completion Date stated in it, notify the Contracting Authority. Approve or object to the proposed second Recovery Programme within ten (10) Business Days after receipt.
10	Site inspection, defects, testing, retesting and post-Termination notice	Upon reasonable notice at any time before the Final Completion Date, open up and inspect any part of the Works reasonably believed to be defective. Where the Project Company takes remedial measures, require it to carry out, or cause to be carried out, the tests necessary to determine whether the remedial measures have brought the Works into compliance with the Performance Standards and the Design and Construction Standards; repeat that procedure until the Works comply. Notify the Project Company of any defects discovered on the Project Road during the period ending three hundred and sixty-five (365) calendar days after the Termination Date.

No.	Work Category	Construction-Stage TOR Requirement
11	Sectional / Final Completion, Punch List and Construction Performance Security	Attend the technical handover procedure for a Section on the date notified by the Project Company. Immediately after completing the inspection of the Section, prepare inspection minutes stating whether Provisional Completion has been achieved to the Independent Expert's satisfaction and procure the signatures of both Parties. Where satisfied, advise the Contracting Authority to issue, within five (5) Business Days after the inspection, a Sectional Provisional Completion Certificate co-signed by both Parties and accompanied by a Punch List of all outstanding unfinished works and minor defects to be completed before the Sectional Completion Certificate is issued. If the Project Road or any part does not conform to the Project Agreement and cannot be safely and reliably placed in operation, deliver a report to both Parties as soon as practicable and may advise the Contracting Authority to withhold the Sectional Provisional Completion Certificate until the defects are rectified to the Independent Expert's satisfaction. Where instructed as an Additional Service, estimate the cost of completing the outstanding works and minor defects on the basis of the Project Company's proposal. In consultation with the Contracting Authority, approve any Project Company request to extend the Punch List rectification period; after completion of all Punch List items has been confirmed and co-signed by both Parties, advise the Contracting Authority to issue the Sectional Completion Certificate. Where the Independent Expert is unable to issue a Sectional Provisional Completion Certificate or Final Completion Certificate, certify that fact to both Parties and state the events or circumstances because of which the Tests could not be held or had to be suspended. Attend the final inspection on the date notified by the Project Company and, immediately after the inspection, prepare minutes stating whether Final Completion has been achieved to the Independent Expert's satisfaction and procure the signatures of both Parties. The Independent Expert, rather than the Contracting Authority, shall issue the Final Completion Certificate within five (5) Business Days after the final inspection. Provide the advice or certification required for release of the Construction Performance Security.
12	Payment, invoice and termination-compensation verification	Within five (5) Business Days after receipt of a request from the Contracting Authority, confirm the validity of the invoice issued by the Project Company and confirm that the amount reflected in the invoice is due to the Project Company. Verify or determine any other construction-stage amount relating to compensation or termination where the Project Agreement assigns that function to the Independent Expert.
13	Compensation Events and Relief Events	For a Compensation Event, within twenty (20) Business Days after receipt of the required detailed information, issue the written notice required by the Project Agreement specifying adequate reimbursement, the form of payment, extensions to the Scheduled Sectional Completion Dates, Scheduled Final Completion Date and Longstop Date, and any exemption of the Project Company from its obligations. For a Relief Event, where the Project Company has satisfied the conditions for relief, issue a written notice to both Parties no later than twenty (20) Business Days after receipt of the required detailed explanation and other information; state that the Relief Event has occurred and set out the applicable exemptions and extensions to the Scheduled Sectional Completion Dates, Scheduled Final Completion Date and Longstop Date.

No.	Work Category	Construction-Stage TOR Requirement
14	Force Majeure and Political Events	Within twenty (20) Business Days after receipt of the Project Company's notice containing the required detailed explanation and other information, issue a written notice stating whether a Force Majeure Event has occurred and setting out the extensions to the Scheduled Sectional Completion Dates, Scheduled Final Completion Date and Longstop Date and the Project Company's exemptions from its obligations. Upon occurrence of a Political Event, verify the Force Majeure Costs against the supporting documents submitted by the Project Company.
15	Change in Law and related Capital Expenditure	Within twenty (20) Business Days, consider the implications of a Change in Law and, where appropriate, issue a written notice stating that a Qualifying Change in Law has occurred; set the reasonable form of payment, determine the postponement of the Scheduled Sectional Completion Dates, Scheduled Final Completion Date and/or Longstop Date, and exempt the Project Company from obligations in proportion to the impact of the Qualifying Change in Law. Give the determination required on whether the Project Company should incur Capital Expenditure in connection with the Qualifying Change in Law and address the related financial consequences.
16	Changes to Works / Project Company Changes / Reinstatement	Determine disputes between the Contracting Authority and the Project Company concerning a Contracting Authority Change Notice; consider a Project Company Change Notice and give an opinion on the reasonableness of the Project Company's proposals; and determine construction-related disputes concerning Reinstatement Works. Any Additional Services shall be instructed and administered in accordance with the IE Agreement.
17	Step-in and capacity / augmentation matters during the Construction Period	Determine disputes relating to the cause of an intervention or the costs incurred following delivery of a Step-in Notice during the Construction Period. If consulted by the Contracting Authority, consult with the Project Company and determine whether there are reasonable grounds to require an increase in capacity or augmentation of a Section and address the associated construction-cost matters. Review any related augmentation design submissions and provide comments, observations and recommendations on construction compliance and interfaces, but do not grant design approval or design certification.
18	Disputes, preliminary settlement and rectification determinations	Undertake the preliminary settlement of Disputes between the Parties where the Project Agreement assigns that role to the Independent Expert. Determine whether a Defect, breach and/or non-compliance has occurred and the period for rectification, provide the Parties with an opportunity to state their views, and issue the applicable Evaluation Report or determination.
19	Relevant Events and financial-model comments	Within five (5) Business Days after the Project Company submits a revised FC Financial Model in respect of Relevant Events, provide comments on that model to the Contracting Authority and perform the related construction-stage financial assessment assigned to the Independent Expert.
20	Asset condition upon Early Termination during the Construction Period	If Early Termination occurs during this appointment, deliver the report required by the Project Agreement stating whether the Project Road and Project Facilities comply with the applicable Performance Standards and, if not, assess the cost required to restore compliance, limited to the condition and construction status existing at the Termination Date.

No.	Work Category	Construction-Stage TOR Requirement
21	Construction-stage reporting and document management	Maintain an IE Execution Plan, Works progress reports, inspection and test records, Defects Reports, Inspection Reports, Evaluation Reports, notices, opinions, determinations, certificates, Punch Lists, issue logs and other records required by the Project Agreement and this RFP. Report directly and simultaneously to both Parties, preserve a complete audit-ready construction-stage record, and hand over that record at close-out.
22	Coordination with the CA Site Representative Team	Coordinate with the CA Site Representative Team throughout the Construction Period and the Construction Close-Out / Punch List Period in accordance with this Section 6.4 and Clause 13 of the IE Agreement. The Team shall complement, and shall not replace, reduce or duplicate, the IE's functions. Maintain clear role separation and the IE's independence: the IE shall remain solely responsible for the functions assigned to it under Clause 13 and Schedule 12 of the Project Agreement; for design matters, the IE's role is limited to review and the issue of comments, observations and recommendations and does not include design approval or design certification. Participate in a Weekly Site Progress Meeting chaired by the IE Site Inspection Engineer, a Monthly Joint Coordination Committee (JCC) chaired by the IE Team Leader, and any necessary Extraordinary Meeting convened within forty-eight (48) hours; the JCC shall be operational only and shall not modify, delay or subject any IE instrument to consensus. Circulate meeting minutes within five (5) Business Days. Exchange factual site records and required reports promptly, while maintaining a separate complete IE archive. Apply a single-channel protocol under which CA Site Representative Team inputs are submitted in writing to the IE Team Leader and do not constitute instructions to the Project Company, and any IE recommendation requiring a Contracting Authority Notice is submitted to the CA Representative for formal issuance. At inception, review relevant Early Works and pre-appointment records and document any reliance in the Inception Report. The CA Site Representative Team's staffing, facilities, transport, equipment and other facilitation costs are separate from the IE's fees. For the purposes of this Item, the Joint Coordination Committee (JCC) means the operational coordination forum for the Independent Expert, the CA Site Representative Team and the Project Company, chaired by the IE Team Leader. It does not replace the Project Liaison Committee or exercise that committee's functions under Clause 9 of the IE Agreement. For the purposes of this Item, a “Contracting Authority Notice” means a formal written notice issued by the Contracting Authority through its authorised representative in accordance with the applicable provisions of the Project Agreement. An Independent Expert recommendation is not itself a Contracting Authority Notice and does not constitute an instruction to the Project Company.

6.5. Key Deliverables

- IE Execution Plan, including work plan, resource plan, inspection and testing regime, communication protocols and reporting arrangements, to be issued within six (6) weeks of appointment and updated as required;
- Monthly Construction Stage Reports covering Early Works status, progress against Programme, quality, safety, environmental and social matters, key risks and delays, recovery measures, testing, certification and completion status;

- Provisional Sectional Completion: inspection minutes, Punch Lists and advice to the Contracting Authority for issue of the Sectional Provisional Completion Certificate; subsequent Sectional Completion advice and the Final Completion Certificate issued by the Independent Expert, together with related notices, in accordance with paragraph 6.4, Item 11 and the Project Agreement. The formal certificate title used in the Project Agreement shall prevail;
- Punch Lists, close-out verification records and reports;
- Early Works verification and cost-certification records and certificates required by the Project Agreement;
- Evaluation Reports, opinions, determinations and ad-hoc reports on matters referred to the IE under the Project Agreement;
- Other construction-stage reports jointly and reasonably required by the Project Representatives and within the IE contractual scope.

6.6. Key Personnel and Minimum Experience

Position	Qty	Minimum Aggregate Input (Man-Months per Category)	Educational Qualifications	Professional Experience
K1 - Project Director / IE Representative	1	24	Graduate degree in Civil Engineering, Highway Engineering, Transportation Engineering or Construction Management (required). An additional professional qualification or postgraduate degree in Law, Finance or Contract Management is desirable. Engineering-based qualifications must be the primary discipline for this position.	Minimum 20 years relevant professional experience; substantial PPP/EPC project management experience; previous senior role on major highway/expressway construction supervision or IE assignments.
K2 - Team Leader & Senior Highway Engineer	1	24	Graduate degree in Civil/Highway/Transportation Engineering; professional registration/accreditation.	Minimum 15 years relevant experience; substantial highway construction supervision/IE experience; PPP experience and claims/contract administration experience preferred.
K3 - Structural & Bridge Engineer	2	36	Graduate degree in Civil/Structural Engineering; professional registration/accreditation.	Minimum 12 years relevant structural/bridge construction, inspection, testing and certification experience.
K4 - PPP Contracts Expert	1	12	Graduate degree in Engineering, Law, Quantity Surveying, Contract Management.	Minimum 10 years relevant PPP/infrastructure contract administration, claims, compensation-event and dispute experience.

Position	Qty	Minimum Aggregate Input (Man-Months per Category)	Educational Qualifications	Professional Experience
K5 - Geotechnical & Slope Stability Engineer	2	24	Graduate degree in Civil/Geotechnical Engineering.	Minimum 12 years relevant geotechnical, earthworks and slope-stability experience; escarpment/highway terrain experience preferred.
K6 - Pavement & Materials Engineer	2	36	Graduate degree in Civil/Highway/Pavement/Materials Engineering.	Minimum 12 years relevant pavement, materials, QA/QC, testing and certification experience.
K7 - Drainage & Hydraulic Engineer	2	24	Graduate degree in Civil/Water/Hydraulic Engineering.	Minimum 10 years highway drainage, hydraulic structures and construction verification experience.
K8 - Traffic & Tolling Systems Engineer	1	16	Graduate degree in Civil or Electrical Engineering.	Minimum 10 years relevant traffic systems, ITS/toll infrastructure testing and construction-stage verification experience.
K9 - Environmental & Social Safeguards Specialist	2	24	Graduate degree in Environmental/Social Sciences/Engineering.	Minimum 10 years relevant E&S safeguards experience on major infrastructure projects in Africa; familiarity with Kenyan requirements and international safeguards.
K10 - Measurement Engineer / Cost Engineer	1	24	Graduate degree in Quantity Surveying, Construction Economics, Engineering; relevant professional registration where applicable.	Minimum 10 years experience in measurement, valuation, cost verification and certification of major infrastructure works; Early Works / contemporaneous cost-record review experience preferred.
K11 - PPP Financial Specialist	1	8	Graduate degree in Finance, Economics, Accounting, Engineering.	Minimum 10 years PPP/infrastructure financial analysis and financial-model experience, including compensation/change events.
K12 - Legal Advisor (PPP / Infrastructure)	1	8	LLB Law Degree; qualified legal practitioner.	Minimum 10 years infrastructure/PPP contract experience; familiarity with Kenyan law and PPP frameworks required.

Position	Qty	Minimum Aggregate Input (Man-Months per Category)	Educational Qualifications	Professional Experience
K13 - Architect	1	16	Graduate degree in Architecture ; relevant professional registration where applicable.	Minimum 10 years relevant experience in architectural services for infrastructure projects

The quantities and minimum inputs stated above are mandatory minimum requirements for the initial twenty-four (24)-month contract term: eighteen (18) separate individuals across thirteen (13) role categories, with 276 aggregate man-months in total. Man-months are aggregate inputs for each category, not the input required from each individual. The Bidder shall name and maintain at least the stated number of separate Key Personnel and shall not double-count any individual or man-month across two positions. The individual deployment schedule shall reconcile to the category totals and Annex 5B. Additional personnel or inputs may be proposed, but the stated minimums shall not be reduced.

The Project Director, PPP Contracts Expert and Legal Advisor (PPP / Infrastructure) shall be “Home” based, with periodic site visits conducted when required.

Non-Key Personnel (not listed individually; priced into the Key Personnel rates)

6.7. Indicative Staffing / Level of Effort

The quantities and minimum man-months stated in paragraph 6.6 are mandatory for the initial twenty-four (24)-month contract term. Bidders shall show in the following schedule how those minimum man-months will be allocated between the Construction Stage (including Early Works / pre-Effective Date services) and the Construction Close-Out / Punch List Period falling within that initial term. The combined inputs for each Key Personnel category shall not be less than the minimum stated in paragraph 6.6, and the total minimum input shall be 276 man-months. The individual deployment schedule shall identify the separate persons comprising each category. Any services and inputs extending beyond the initial term are subject to a written extension under the IE Agreement. Bidders shall separately propose sufficient Non-Key Personnel to discharge the Services.

Non-Key Personnel are not listed individually and shall not be priced separately. All costs associated with Non-Key Personnel – including support, inspection, laboratory, survey, safety, planning, document-control and administrative staff – are deemed to be included in the rates and fees quoted for the Key Personnel and will not be paid separately. The Independent Expert shall deploy such Non-Key Personnel as are necessary to perform the Services, and no claim for additional payment shall arise by reason of the number, grade or level of effort of Non-Key Personnel actually deployed.

The minimum establishment is eighteen (18) separate Key Personnel in thirteen (13) role categories. Categories K3, K5, K6, K7 and K9 each require two separate individuals; each of the other eight categories requires one individual. This gives 18 individuals in total. No individual may be counted against more than one category, and no man-month may be double-counted. The 276 man-months are aggregate category inputs, so the headcount does not require all 18 individuals to serve full-time for the entire twenty-four-month term. Bidders may propose additional personnel or man-months where required by their methodology, work fronts or programme.

The minimum man-months are pricing and resourcing baselines and do not limit the Independent Expert's

obligation to provide all resources necessary to perform the Services. Any additional Key Personnel or man-months proposed by the Bidder shall be clearly identified in its Technical and Financial Proposals.

Kenyan participation in the proposed Key Personnel is assessed under paragraph 2.20, Part A, criterion 4. To satisfy that criterion, at least 40% of the proposed Key Personnel shall be Kenyan citizens; for the minimum establishment of eighteen (18) Key Personnel, at least eight (8) shall be Kenyan citizens. The nationality percentage and Kenyan participation commitments on which the Bid was evaluated shall be maintained upon any replacement of personnel.

No.	POSITION	Construction Stage (including Early Works / pre-Effective Date) Man-Months	Close-Out / Punch List Period Man-Months
Key Personnel	Key Personnel	Key Personnel	Key Personnel
1	Project Director / IE Representative	Bidder to Propose	Bidder to Propose
2	Team Leader & Senior Highway Engineer	Bidder to Propose	Bidder to Propose
3	Structural & Bridge Engineer	Bidder to Propose	Bidder to Propose
4	PPP Contracts Expert	Bidder to Propose	Bidder to Propose
5	Geotechnical & Slope Stability Engineer	Bidder to Propose	Bidder to Propose
6	Pavement & Materials Engineer	Bidder to Propose	Bidder to Propose
7	Drainage & Hydraulic Engineer	Bidder to Propose	Bidder to Propose
8	Traffic & Tolling Systems Engineer	Bidder to Propose	Bidder to Propose
9	Environmental & Social Safeguards Specialist	Bidder to Propose	Bidder to Propose
10	Measurement Engineer / Cost Engineer	Bidder to Propose	Bidder to Propose
11	PPP Financial Specialist	Bidder to Propose	Bidder to Propose
12	Legal Advisor (PPP / Infrastructure)	Bidder to Propose	Bidder to Propose
13	Architect	Bidder to Propose	Bidder to Propose
Non-Key Personnel	Non-Key Personnel	Non-Key Personnel	Non-Key Personnel
14	Planning Engineer	Bidder to Propose	Bidder to Propose
15	Safety / HSE Specialist	Bidder to Propose	Bidder to Propose
16	Resident Site Inspection Engineers	Bidder to Propose	Bidder to Propose
17	Materials / Laboratory Inspectors	Bidder to Propose	Bidder to Propose
18	Structures Inspectors	Bidder to Propose	Bidder to Propose
19	Land Surveyors	Bidder to Propose	Bidder to Propose

6.8. Services Expressly Outside this Procurement

- Continuous long-term monitoring of Operation and Maintenance performance after completion of the

Construction Close-Out Period;

- Review of routine or heavy maintenance programmes and long-term O&M performance-management systems;
- Long-term O&M service-report / invoice monitoring unrelated to construction close-out;
- Initial or Final Handback Surveys occurring at the end of the concession term;
- Design approval, design certification and design liability, and any role replacing the Designer in checking or validating Detailed Design, Additional Drawings or Shop Drawings (limited and targeted design review with recommendations is within scope under paragraph 6.3).

6.9. Project Context and Indicative Programme

	Milestone	Indicative Timing
Pre-Effective Date / Early Works	Pre-Effective Date / Early Works	
1	Issue RFP / Tender Notice	23 October 2026
2	Appointment / Notice to Proceed for IE	As soon as practicable following award
3	Early Works baseline verification and cost-certification mobilisation	Immediately upon Notice to Proceed
Construction Stage	Construction Stage	
4	Effective Date of the Project Agreement / commencement of the Construction Period	Upon achievement of the Effective Date under the Project Agreement
5	Sectional Completion Certificate(s)	In accordance with approved Project Programme
6	Final Completion Certificate	In accordance with approved Project Programme
Construction Close-Out	Construction Close-Out	
7	Punch List / outstanding construction matters close-out	Up to 12 months after Final Completion, subject to the agreed Project Programme and any written extension required under Clause 3 of the IE Agreement
8	End of this IE construction-stage appointment	Expiry of the initial twenty-four (24)-month term or any extension agreed in writing under Clause 3 of the IE Agreement, unless earlier terminated

PART II - CONTRACT CONDITIONS AND FORMS

7. SECTION 7 - INDEPENDENT EXPERT AGREEMENT

INDEPENDENT EXPERT AGREEMENT

DATED [●], 2026

THE KENYA NATIONAL HIGHWAYS AUTHORITY

and

CHINA ROAD AND BRIDGE CORPORATION (CRBC)

and

NATIONAL SOCIAL SECURITY FUND (NSSF)

(together, the Private Party, pending novation to the Project Company)

and

[INDEPENDENT EXPERT]

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INDEPENDENT EXPERT'S AGREEMENT

THIS INDEPENDENT EXPERT'S AGREEMENT (hereinafter referred to as the "Agreement") is made on [■], 2026,

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 (CRBC), [a company established and existing under the laws of China having its principal office at No. 88 Andingmenwai Avenue, Beijing, China 100011], and National Social Security Fund (NSSF), [NSSF Building, Bishops Road, Upperhill, P.O. Box 43338-00100 Nairobi], each acting in its own capacity as a project sponsor (together, the "Sponsors" and, before the novation under Clause 2 takes effect, the "Private Party");

AND

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

WHEREAS:

- (A) The Contracting Authority and the Private Party have entered into the Project Agreement for the design, construction, financing, operation, maintenance and transfer of the Rift Expressway - Rironi-Gilgil (A8) & Rironi-Maai Mahiu-Naivasha (A8 South) Road, described in detail in the Project Agreement. The Project Company has not yet been incorporated, and the Sponsors therefore enter into this Agreement in their own names pending its incorporation and the novation provided for in Clause 2.
- (B) The provisions of the Project Agreement require the Contracting Authority and the Project Company / Private Party to jointly appoint the Independent Expert to perform the construction-stage services specified in the Project Agreement and this Agreement.
- (C) 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.

IT IS THEREFORE AGREED as follows:

1. Definitions and Interpretation

1.1. Capitalised terms used and not otherwise defined in this Agreement shall have the respective meanings assigned to such terms in the Project Agreement. In addition, the following terms have the meanings as specified below:

Term	Definition
"Additional Fee"	means the fee for the Additional Services calculated on such basis as the Independent Expert and the Counterparties agree and subject to Clause 21 (Additional Services) of this Agreement;
"Additional Services"	means the additional services which the Independent Expert is requested to perform from time to time in accordance with Clause 21 (Additional Services) of this Agreement;
"Additional Services Agreement"	has the meaning given to it in Clause 21 (Additional Services) of this Agreement;
"Agreement"	means this Independent Expert's Agreement;
"Counterparties"	means the Contracting Authority and the Private Party. Until the novation under Clause 2 takes effect, CRBC and NSSF constitute the Private Party Counterparty and shall act jointly wherever this Agreement requires a decision, instruction, approval or other action by that Counterparty; thereafter the duly incorporated Project Company shall constitute that Counterparty.
"Dispute"	has the meaning given to it in Clause 40 (Disputes)
"Effective Date"	means [●] or such other date as the Parties may agree in writing, being the date on which this Agreement comes into effect;
"Fee"	means the amount stated in Schedule 3 (Remuneration and Payment) to be payable to the Independent Expert in consideration of the performance of the Services;
"Force Majeure Event"	means any event that is beyond control of the Independent Expert which arises and prevents or delays the affected Party from discharging its obligations under this Agreement, including: act of God, extreme adverse weather conditions, lightning, earthquake, subsidence, landslide, cyclone, flood or volcanic eruption; fire or explosion including contamination or radiation or fire or explosion originating from a source external to the Site;
"Indemnity Limit"	means the lesser of (a) USD 5,000,000 (or its equivalent in KES) and (b) the greater of (i) the total Fees paid and payable to the Independent Expert under this Agreement at the time the relevant claim arises and (ii) twice the Annual Fee. For this purpose, "Annual Fee" means the Fee payable in respect of the most recent completed twelve (12)-month period at the time the relevant claim arises. Until a twelve (12)-month period has been completed, the Fee payable for the initial twelve (12) months as stated in Schedule 3 shall be used. Both Annual Fee and total Fees exclude reimbursable expenses, Additional Services and VAT or other separately stated indirect taxes. The Central Bank of Kenya mean USD/KES exchange rate on the date the relevant claim arises shall be used for all conversions required to calculate the Indemnity Limit. The USD 5,000,000 ceiling prevails if twice the Annual Fee exceeds that ceiling. The calculation and resulting amount, including the exchange rate used, shall be recorded in Schedule 3 when a relevant claim arises; subsequent recalculation shall not reduce the limit applicable to that claim;
"Party"	means a party to this Agreement and "Parties" means more than one of them;
"Project Agreement"	means the agreement of that name dated [5th day of May, 2026] entered into between the Contracting Authority and the Private Party in respect of the Project, as amended or novated in accordance with its terms.

Term	Definition
"Project Liaison Committee"	has the meaning given to it in Clause 9 (Project Liaison Committee) of this Agreement;
"Project"	has the meaning given to it in the Project Agreement; and
"Services"	means the services that the Independent Expert is required to perform in connection with the Project as set out in Schedule 1 of this Agreement.

1.2. Save where the context otherwise requires:

- 1.2.1. references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation, regulation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- 1.2.2. references to Laws of Kenya or Kenyan Law or Applicable Law or any regulation or statute having the force of law shall include the laws, acts, ordinances, rules, regulations, statutes, bye laws or notifications which have the force of law in the Republic of Kenya and as from time to time may be amended, replaced, modified, supplemented, extended or re-enacted;
- 1.2.3. references to a person and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) or two or more of the above and shall include any successors, transferees and assigns;
- 1.2.4. the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- 1.2.5. the words include and including are to be construed without limitation and shall be deemed to be followed by "without limitation" or "but not limited to" whether or not they are followed by such phrases;
- 1.2.6. references to a Business Day shall be construed as a reference to a day (other than weekends and public holidays recognised in Kenya);
- 1.2.7. any reference to a "day", "month" or "year" shall be to a calendar day, calendar month or calendar year, respectively, unless expressly stated otherwise; an IE action period prescribed in Business Days in Section 6 or the Project Agreement shall be counted in Business Days and shall not be shortened or altered by this interpretation provision;
- 1.2.8. references to any date or period shall mean and include such date or period as may be extended pursuant to this Agreement;
- 1.2.9. any reference to any period commencing from a specified day or date and until a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a Business Day, then the period shall run until the end of the next Business Day;
- 1.2.10. the words importing singular shall include plural and vice versa;
- 1.2.11. references to any gender shall include the other and the neutral gender;
- 1.2.12. references to the winding-up, dissolution, insolvency, or reorganisation of a Party shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such Party is incorporated, domiciled or any jurisdiction in which such Party carries on business or has assets including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;
- 1.2.13. **save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference;**
- 1.2.14. any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party;

1.2.15. the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement and any reference to this Agreement shall include the Schedules and the Recitals; and

1.2.16. references to Recitals, Articles, Clauses, sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears.

1.3. Unless expressly provided otherwise in this Agreement, any documentation required to be provided or furnished by the Independent Expert to the Counterparties shall be provided free of cost and in three (3) copies, and if the Counterparties are required to return any such documentation with their comments and/or approval, they shall be entitled to retain copies thereof.

2. Appointment of Independent Expert

2.1. The Counterparties hereby jointly appoint the Independent Expert to perform the Services and the Independent Expert hereby accepts the appointment and agrees to perform the Services in accordance with the terms of this Agreement.

2.2. Each Counterparty acknowledges, and the Independent Expert accepts, that the Independent Expert is an independent contractor and is not an agent, employee or representative of either of the Counterparties. Neither Counterparty is responsible or liable for the Independent Expert's acts or omissions, including the acts or omissions of its agents, employees, representatives or subcontractors.

2.3. The Counterparties shall act in good faith towards the Independent Expert at all times and shall co-operate with each other in relation to all matters relating to the duties of the Independent Expert and the implementation of the Project.

2.4. Pending novation, the Sponsors enter into this Agreement in their own names and shall be jointly and severally responsible for the obligations allocated to the Private Party under this Agreement. References in this Agreement to the Project Company in its capacity as a Counterparty shall, until novation takes effect, mean the Sponsors acting jointly; references describing the incorporated project vehicle shall not be construed as representing that it already exists.

2.5. The Sponsors shall procure that, promptly upon its incorporation, the Project Company executes and delivers to the other Parties a deed of accession and novation under which it accedes to this Agreement, assumes the rights and obligations of the Private Party and agrees to be bound by this Agreement, including Clause 42 (Arbitration). Each existing Party gives its consent in advance to that substitution. The substitution shall take effect automatically, without further consent of the existing Parties, on the later of the Project Company's incorporation and delivery of its duly executed deed of accession and novation to the other Parties. The Sponsors shall provide the other Parties with evidence of incorporation and the authority of the signatories, and shall coordinate this novation with any applicable novation requirements under Schedule 15 of the Project Agreement.

2.6. With effect from that substitution, the Project Company shall replace the Sponsors as the Private Party Counterparty for all future performance of this Agreement. The substitution shall not interrupt the Services, restart the initial term or change the Fee. Accrued rights and liabilities, including unpaid amounts and claims relating to pre-novation Services, shall remain enforceable against the Sponsors unless the deed of novation expressly provides otherwise with the written consent of the affected Parties. No obligation is imposed on a non-existent entity, and incorporation alone shall not release either Sponsor.

3. Duration

3.1. The appointment of the Independent Expert shall commence on the date stated in the Notice to Proceed / Effective Date of this IE Agreement, which may be prior to the Effective Date of the Project Agreement for purposes of Early Works verification and certification, and shall continue for an initial term of twenty-four (24) months, unless earlier terminated in accordance with this Agreement. If required for the Project, the initial term may be extended by an extension notice or addendum signed in writing by both Counterparties and the Independent Expert. The monthly rate of the Fee (excluding reimbursables and Additional Services) payable during any extension shall not

exceed the total Fees (excluding reimbursables and Additional Services) payable in respect of the twelve consecutive months immediately preceding the effective date of that extension, divided by twelve, and no escalation shall arise solely by reason of the extension. Reimbursables and Additional Services approved in writing in advance shall be stated separately and shall not be used to increase the Fee indirectly during any extension period.

4. The Services and General Obligations of the Independent Expert

- 4.1. The particulars of the Services to be provided by the Independent Expert are as detailed in the Schedule 1 to this Agreement.
- 4.2. The Independent Expert shall carry out and complete the Services in accordance with the terms and conditions of this Agreement and in accordance with all the reasonable instructions and directions given to it by the Counterparties.
- 4.3. The Independent Expert shall carry out and complete any Additional Services if so instructed by the Counterparties in writing.
- 4.4. The Independent Expert shall be deemed to have full knowledge and understanding of the duties of the Independent Expert prescribed in this Agreement and as prescribed under the Project Agreement. Independent Expert shall familiarise itself with the Project Agreement to the extent necessary to fulfil its obligations thereunder. For the avoidance of doubt, the Independent Expert shall not be relieved from the performance of any of its obligations hereunder or be entitled to any allowance of time or to any additional payment on the grounds that it was not cognizant of any provisions of the Project Agreement.
- 4.5. The Independent Expert shall at its own cost keep all records including test results available for inspection by the Counterparties and the Lender's Representative during the term of this Agreement and shall deliver all such records and results to the Counterparties and/or the Project Liaison Committee on expiration or earlier termination of this Agreement.
- 4.6. The Independent Expert shall co-operate with and provide all reasonable assistance to any contractors or other consultants, agents or other service providers who are or may be engaged by the Counterparties and/or the Lenders (including, without limitation, the Lenders' technical advisor) in connection with the Project and shall not interfere with or affect the work being performed by such other contractors, consultants or service providers.
- 4.7. The Independent Expert shall not in the performance of the Services and/or Additional Services cause any delay or disruption to the carrying out of the Works.
- 4.8. The Independent Expert shall provide office space to all its personnel for efficient management of this contract

5. Duty of Care and Exercise of Authority

- 5.1. The Independent Expert acknowledges that each of the Counterparties, including the Project Company acting for and on behalf of the Contractors, is relying on and will continue to rely on the professional skill and care of the Independent Expert required pursuant to Clause 5.2 in the performance of the Services and that it owes a duty of care to each of the Counterparties in relation to all aspects of the Services. For the avoidance of doubt, the Counterparties agree that nothing in this Clause shall affect their respective rights, remedies and obligations under the Project Agreement.
- 5.2. **The Independent Expert warrants to each of the Counterparties that it will exercise, in the performance of the Services all the reasonable skill, care and diligence as may reasonably be expected of a suitably qualified and competent professional experienced in providing services similar to the Services in relation to projects of a similar size, nature, scale, complexity, character and value as required for the implementation of the Project and acting in accordance with Good Industry Practice.**
- 5.3. The Independent Expert further warrants to each of the Counterparties that in the provision of the Services it will comply with:
 - 5.3.1. Applicable Law;

5.3.2.the Project Agreement;

5.3.3.all reasonable requirements of the Project Company, the Contracting Authority, and the Construction Contractor, in relation to Site safety; and

5.3.4.shall, at its own cost, ensure that it holds and will continue to hold all such licences and approvals as may be required for the performance of the Services.

5.4. In the performance of the Services the Independent Expert shall give full regard to any relevant requirements and/or obligations under the Project Agreement, the Construction Contract and the Financing Agreements and shall perform the Services in such manner and at such times that no act, omission or default of the Independent Expert in relation thereto shall constitute or cause any breach by the Counterparties of any such requirements and/or obligations contained in the Project Agreement and/or the Construction Contract and/or the Financing Agreements provided always that this shall not extend the obligations of the Independent Expert under this Agreement beyond the standard of skill, care and diligence as set out in the Clause 5.2 above.

5.5. Where, in the performance of the Services, the Independent Expert is required or entitled to exercise a discretion as between the Parties or the Counterparties and any third party, the Independent Expert shall at all times act objectively and impartially and shall in no circumstances place the interests of any one Party above those of any other Party including any third party.

5.6. All instructions to the Independent Expert shall be agreed jointly by the Counterparties and issued through the Project Liaison Committee. No enquiry, inspection, approval, sanction, comment, consent, decision or instruction at any time given by or on behalf of the Counterparties shall operate to exclude or limit the Independent Expert's obligation to exercise all the skill, care and diligence required by this Clause 5 (Duty of Care and Exercise of Authority).

5.7. The Independent Expert shall perform its obligations and discharge its duties in accordance with the provisions of this Agreement (and any applicable guidance issued by the PPP Directorate under Kenyan PPP law), whose main principles include, among others, the following terms and conditions:

5.7.1 the Independent Expert must act independently, fairly and impartially and shall have a duty of care to both the Contracting Authority and the Project Company;

5.7.2 the Independent Expert shall fulfil its reporting obligations to the Contracting Authority and the Project Company directly and simultaneously;

5.7.3 the Independent Expert shall provide its services at all times and in all circumstances in accordance with the provisions of this Project Agreement and the Independent Expert Agreement;

5.7.4 before resolving a Dispute, the Independent Expert shall provide the Contracting Authority and the Project Company with the opportunity to express their opinion regarding the relevant case; and

5.7.5 both the Contracting Authority and the Project Company are entitled to consult with the Independent Expert in respect of all aspects of any matter regarding the Works or any Early Works, Construction Works, construction close-out and other construction-stage matters within the Services.

6. Decisions by the Independent Expert

6.1. On all matters properly referred to it for consent, approval, review, decision or determination in accordance with the Project Agreement, the Independent Expert shall give its consent, approval, expression of satisfaction or dissatisfaction, observation, decision or determination in writing within the time period referred to in the relevant provision of the Project Agreement or if no such period is prescribed, within a reasonable time period which in such latter event, shall be no later than twenty (20) Business Days after being referred to the Independent Expert. The Independent Expert shall exercise its rights under this Agreement reasonably and fairly and shall not withhold or delay the giving of its consent, approval, expression of satisfaction or dissatisfaction, observation, decision or determination. Under the deemed-approval mechanism for SQE Documentation in Section 6.4, Item

7 of the RFP, if the Independent Expert has not responded within twenty (20) Business Days, the Project Company may issue a written reminder. The SQE Documentation submission shall be deemed approved for work commencement only if the Independent Expert fails to respond within a further five (5) Business Days after receipt of that reminder, subject to all other applicable requirements of the Project Agreement. This mechanism does not apply to other submissions or constitute design approval or design certification.

- 6.2.** With respect to the issuance of Sectional Provisional Completion Certificate, observations or comments concerning minor defects and/or unfinished works, made by Independent Expert, shall not result in the withholding of the issuance of Sectional Provisional Completion Certificate, provided that the Independent Expert certifies that such minor defects and/or works do not impair the safety of the Works and Users. Minor defects/works will be recorded in the Punch List.

7. Limitation of authority of the Independent Expert

- 7.1.** Except as expressly stated in this Agreement or in the Project Agreement, the Independent Expert shall have no authority or power to do any of the following:
- 7.1.1.** execute any document or enter into any agreement on behalf of either of the Counterparties, or otherwise bind or commit either of the Counterparties to any arrangement;
 - 7.1.2.** agree on behalf of either Counterparty to any amendment to the terms and conditions of any agreement or arrangement between such Party and any third party, or any waiver, compromise or abandonment of any of the obligations of either of the Counterparties;
 - 7.1.3.** grant any consents or approvals reserved to the Counterparties under the Project Agreement; or
 - 7.1.4.** make or purport to make any alteration or addition to or omission from the Design or Construction of the Works.
- 7.2.** The Independent Expert shall have no authority to act as agent on behalf of either Counterparty.
- 7.3.** The Independent Expert may not give instructions to any of Contractors, sub- contractors or other consultants, agents or other service providers who are or may be engaged by the Counterparties and/or the Senior Lenders in connection with the Project except in cases of emergency that create an immediate need and serious threat to public health, safety or security, when it may instruct such a Contractor, sub- contractor or other consultant, agent or other service provider to suspend work and shall immediately inform the Counterparties, fully explaining to the Counterparties the reasons for such instruction.

8. Reporting, Meetings and Communications

- 8.1.** The Independent Expert shall:
- 8.1.1.** keep the Counterparties informed, through the Project Liaison Committee, on all matters of interest which relate or pertain to the Project; and
 - 8.1.2.** send to the Counterparties, through the Project Liaison Committee, a copy of all communications sent by it to, or received by it from, any other party in connection with the Services.
- 8.2.** The Independent Expert must attend each meeting of the Project Liaison Committee, if requested by the Project Liaison Committee or one or both of the Counterparties.
- 8.3.** The Independent Expert must submit monthly written reports to the Project Liaison Committee (in addition to any other reports required under this Agreement) in accordance with the Project Agreement and this Clause 8, containing details of:
- 8.3.1.** Project Company's compliance and any non-compliance with the Project Agreement and any other agreements relevant to the Project;
 - 8.3.2.** Contracting Authority's compliance and any non-compliance with the Project Agreement and any other agreements relevant to the Project;
 - 8.3.3.** the results of any review of the Construction of the Works;
 - 8.3.4.** the review of any documents submitted to the Independent Expert in accordance with the Project Agreement and Schedule 1 (Services);

- 8.3.5.any notices given by the Counterparties and/or the Project Liaison Committee to the Independent Expert and any notices issued by the Independent Expert;
- 8.3.6.any Sectional Completion Certificates, Final Completion Certificate or other certificates issued or requested by Counterparties in relation to the Works as prescribed under the Project Agreement;
- 8.3.7.the forecasted cost of the Services (including for the current and following quarter), taking into account current expenditure, resourcing and future forecasts;
- 8.3.8.notification of reports requested by the Counterparties in accordance with Clause 8.4; and
- 8.3.9.such other matters in connection with the Services that the Counterparties and/or the Project Liaison Committee may reasonably request from time to time.

8.4. The Contracting Authority or the Project Company may request the Independent Expert to prepare a report which is not otherwise required by the Project Agreement or any other agreements relevant to the Project. The Independent Expert shall prepare the additional report(s) requested, except if the Independent Expert is:

- 8.4.1. of the reasonable opinion that it would be inappropriate to prepare the report(s) in light of the performance and nature of the Services; or
- 8.4.2. not reasonably capable of preparing the report(s).

8.5. The fees for the additional report(s) prepared in accordance with Clause 8.4 above will be paid to the Independent Expert in accordance with Schedule 3 (Remuneration and Payment).

9. Project Liaison Committee

- 9.1. The Contracting Authority and the Project Company shall establish and maintain throughout the duration of this Agreement a joint liaison committee (the "Project Liaison Committee"), consisting of [■] representatives of the Contracting Authority (one of whom shall be appointed chairman) and [■] representatives of the Project Company which shall have the functions described in this Agreement.
- 9.2. The Counterparties confirm that their respective representatives have the power and authority to bind the relevant Counterparty (as the case may be) for all purposes in connection with this Agreement. The designated representatives are specified in Schedule 2 (Conditions of particular application) of this Agreement and may be changed by written notice to the other Parties.
- 9.3. If a representative is unavailable (the other Counterparty's representatives may rely on the alternate's statement that the representative is unavailable) his alternate shall have the same rights and powers as the representative.

10. Procedures and practices

- 10.1. Subject to the provisions of this Agreement, the members of the Project Liaison Committee may adopt such procedures and practices for the conduct of the activities of the Project Liaison Committee as they consider appropriate from time to time and:
 - (a) may invite to any meeting of the Project Liaison Committee such other persons as its members may agree; and
 - (b) receive and review a report from any person agreed by its members.
- 10.2. **Recommendations and other decisions of the Project Liaison Committee must have the affirmative vote of all those voting on the matter, which must include not less than one (1) representative of the Contracting Authority, and not less than one (1) representative of the Project Company.**
- 10.3. Each member of the Project Liaison Committee shall have one (1) vote. The chairman shall not have a right to a casting vote.
- 10.4. The Project Liaison Committee shall meet at least once each quarter (unless otherwise agreed by its members) and from time to time as necessary.

- 10.5.** Any member of the Project Liaison Committee may convene a meeting of the Liaison Committee at any time in accordance with Clause 10.6.
- 10.6. Meetings of the Project Liaison Committee shall be convened on not less than ten (10) Business Days' notice (identifying the agenda items to be discussed at the meeting) provided that in emergencies a meeting may be called at any time on such written notice as may be reasonable in the circumstances.**
- 10.7.** Where the Project Liaison Committee decides it is appropriate, meetings may also be held by videoconference or another form of telecommunication, by which each participant can hear and speak to all other participants at the same time.
- 10.8.** Minutes of all recommendations (including those made by videoconference or other form of telecommunication) and meetings of the Project Liaison Committee shall be kept by the Project Company and copies circulated promptly, within five (5) Business Days of the making of a recommendation or the holding of a meeting. A full set of minutes shall be open to inspection by either Counterparty at any time, upon request.

11. Decisions by the Project Liaison Committee

- 11.1.** On all matters properly referred to them in writing by the Independent Expert, the Contracting Authority and Project Company shall directly or acting through the Project Liaison Committee, provide their decision in writing within the time prescribed in the Project Agreement and, if no time is prescribed, within [■] Business Days.

12. Information

- 12.1.** The Counterparties shall as soon as reasonably practicable after the Independent Expert's request make available to the Independent Expert, free of charge, all information and documents in respect of the Project as are requested by the Independent Expert which are in their possession or control and which are necessary and are reasonably required for the execution of the Services.

13. Access to the Site and Project Road

- 13.1.** The Project Company shall procure that the Independent Expert has all such access to the Site as it may reasonably require for the purposes of carrying out the Services and all purposes ancillary or related to this Agreement, provided that such access should not cause any hindrance in the performance of the obligations of the Project Company under the Project Agreement.
- 13.2.** The Independent Expert shall provide its fully furnished and serviced office space with all requisite office facilities during the Construction Stage and Construction Close-Out Period.
- 13.3.** CA's Site Representative Team and Coordination with the Independent Expert. The Contracting Authority may maintain a site representative team. The Independent Expert and that team shall share information, conduct joint inspections and testing where appropriate, maintain agreed meeting and reporting interfaces, escalate issues through the Project Liaison Committee, and afford each other site access and access to records, in accordance with Section 6.4 of the RFP, under "Coordination with the CA Site Representative Team". The Contracting Authority's site representative team shall not interfere with the independent judgement of the Independent Expert and shall not replace, vary or supersede any certificate, opinion or determination issued by the Independent Expert. The CA Site Representative Team shall, at a minimum, be constituted as follows:

N	Position	Role Summary	Relationship to the IE
o.			
1	CA Site Representative (Team Lead)	Principal on-site representative of the Contracting Authority; overall leadership of the CA Site Representative Team; authorised to receive project	Primary counterpart to the IE Team Leader; receives copies all IE reports, certificates, notices and Evaluation Reports simultaneously with the

		communications on behalf of the Contracting Authority and to escalate matters within the Contracting Authority.	Project Company (Section 8.5).
2	Section-Level Site Officers (one per Section, A8 North and A8 South)	Day-to-day CA presence on each Section; monitors physical progress, land access status and community liaison; provides regular situation reports to the CA Site Representative.	Daily operational coordination with the IE's Site Inspection Engineers (Section 5, Position 11); joint site patrols where agreed.
3	Project Contract Coordination Officer	& Tracks overall implementation schedule and Construction Programme compliance from the Contracting Authority's perspective; manages CA-side contractual correspondence and record-keeping.	Receives the IE's Monthly Construction Progress Reports; provides programme and contractual data to the IE for verification.
4	Financial Expert	Tracks the overall implementation and conformance with the Financial Model and compliance with all the Financial parameters of the Project such as Performance Securities.	Weekly operational coordination with the IE's Financial Team (Full Section); joint inspections and verification of revenue data where agreed.
5	Legal Expert	Tracks and provides support on land acquisition/encroachment, axle load violations and other legal aspects of the Project and tracks compliance with the overall provisions of the Project Agreement.	Weekly operational coordination with the IE's Legal Team (Full Section); coordination of joint representation in Legal matters affecting the Project including land acquisition, encroachment, axle load, revenue leakages and toll violations matters, amendments to the PA where necessary and compliance with the provisions of the Project Agreement.
6	Environmental & Social Officer	Monitors SQE environmental and social compliance from the Contracting Authority's perspective; liaises with NEMA, the Kenya Wildlife Service and county	Shares environmental and social field-monitoring records with the IE's Environmental & Social Safeguards Specialist (Section 5, Position 8);

		governments; supports land acquisition and resettlement monitoring.	supports the IE's SQE Documentation review under Section 3.2.4.
7	Survey Quantity Officer	/ Provides CA-side measurement verification and quantity records; supports Early Works cost assessment and Compensation Event quantification review at the Contracting Authority's request.	Provides factual records to the IE's PPP Contracts & Financial Specialist (Section 5, Position 9) to support the IE's determinations under Section 3.5.
6	Community Liaison Stakeholder Officer	/ Manages engagement with communities, county governments and utility and service providers along the corridor; administers the Contracting Authority's grievance-handling process.	Informs the IE of community-related matters that may affect construction progress or give rise to a Relief Event or Compensation Event under Section 3.5.

14. Sub-Consultants

- 14.1.** If any determination which is required to be made by the Independent Expert under the Project Agreement involves the evaluation or assessment of any matter outside the Independent Expert's field of expertise, the Independent Expert shall appoint a consultant subject to the prior approval of the Counterparties. The Independent Expert shall be responsible for payment of such consultant. No appointment of any such consultant shall relieve the Independent Expert of its liabilities and responsibility under this Agreement and the Independent Expert shall remain fully responsible for all Services as if they had been performed by the Independent Expert.

15. Independent Expert's Personnel

- 15.1.** The Independent Expert shall forthwith appoint [■] to direct and control the overall performance by the Independent Expert of the Services and act as the primary contact and liaison with the Counterparties. Such person or any replacement approved by the Counterparties from time to time shall have full authority to act on behalf of the Independent Expert for all purposes in connection with this Agreement.
- 15.2.** The Independent Expert shall not replace its representative under Clause 15.1 above nor any Key Personnel member approved by the Counterparties without the prior approval of the Counterparties as to the fact and identity of such replacement and if such approval is given the identity of the replacement must be previously approved in writing by the Counterparties. Such approval shall not relieve the Independent Expert of any of its obligations under this Agreement.
- 15.3.** If requested by the Counterparties to replace any agent, employee or authorised representative, the Independent Expert shall immediately arrange for replacement of the relevant person with a person of similar suitability and competence as approved by the Counterparties.
- 15.4.** The cost of the replacement of any of the Independent Expert's personnel pursuant to this Clause 15 (Independent Expert's Personnel) shall be borne by the Independent Expert.

16. Liability

- 16.1.** Subject to Clause 17 (Maximum Liability and Indemnity), the Independent Expert shall indemnify the Counterparties and each of their respective agents, servants, consultants, Contractors, subcontractors and employees against proven loss, liability, reasonable costs and expenses to the extent directly caused by a wrongful act, omission, default or breach of this Agreement by the Independent Expert or its agents, servants, consultants, Contractors, subcontractors or employees

in performing its obligations under this Agreement. Compensation shall exclude costs that would have been incurred in any event and shall be reduced to the extent that an act or omission of the claimant, the Project Company or its Contractors caused or contributed to the loss. A claimant shall take reasonable steps to mitigate its loss, and there shall be no double recovery. No compensation shall be payable to the extent that the loss results from a Force Majeure Event in accordance with Clause 23.

16.2. Especially the Independent Expert acknowledges and agrees that:

- a) If the Independent Expert fails to deliver any review, observations, recommendation, certificate or determination within the applicable period prescribed in the Project Agreement or this Agreement, it shall, subject to Clauses 16.1 and 17, compensate the Project Company and/or its Contractors only for proven reasonable additional costs directly caused by that failure, including demonstrable additional equipment and personnel standby costs and financing costs. The Independent Expert's design role is limited to review, comments and recommendations and does not include design approval or design certification.
- b) If rescheduling of the Tests is directly attributable to an act or omission of the Independent Expert and does not result from a Force Majeure Event or an act or omission of either Counterparty or their contractors, the Tests, when successfully passed, shall be deemed completed on the date initially proposed by the Project Company to the extent provided in the Project Agreement. Subject to Clauses 16.1 and 17, the Independent Expert's liability for rescheduling of the Tests shall be limited to the reasonable and proven direct costs incurred by the Project Company that are demonstrably caused by that rescheduling. Costs that would have been incurred irrespective of the rescheduling shall be deducted, and compensation shall be reduced to reflect any conduct by the Project Company, its Contractors or subcontractors that contributed to the rescheduling. No compensation for rescheduling shall be payable where the rescheduling results from a Force Majeure Event or an act or omission of either Counterparty or their contractors.
- c) If issuance of a Sectional Provisional Completion Certificate, Sectional Completion Certificate or Final Completion Certificate is delayed by an act or omission of the Independent Expert, other than as a result of a Force Majeure Event, the Independent Expert shall, subject to Clauses 16.1 and 17, compensate the Project Company by payment of Default Interest accruing from the applicable Deemed Certification Date, to the extent directly attributable to that act or omission. No amount shall be recoverable twice under this Clause 16.
- d) If issuance of a Sectional Provisional Completion Certificate, Sectional Completion Certificate or Final Completion Certificate is delayed as a result of a Force Majeure Event, the Independent Expert shall not be liable for compensation, Default Interest, damages or penalties to the extent of that Force Majeure delay, subject to the notice, mitigation and other requirements of Clause 23 (Force Majeure). Liability for delay caused independently by the Independent Expert's own breach is not excused.

16.3. This indemnity shall survive the termination of this Agreement.

17. Maximum Liability and Indemnity

- 17.1.** Save as provided in Clause 17.2, the maximum aggregate liability of the Independent Expert under or in connection with this Agreement, including liability under Clause 16, to the Counterparties collectively and to persons claiming through them shall not exceed the Indemnity Limit calculated under Clause 1 on the date the relevant claim arises. The limit is a single aggregate limit and not a separate limit for each Counterparty, claimant, claim or event. Clause 17.2 continues to govern the liabilities excluded from that limit.
- 17.2.** The limitation prescribed in Clause 17.1 above shall not apply with respect to loss, liability or damage suffered as a result of:

- 17.2.1. fraud, fraudulent misrepresentation, willful default, willful misconduct, willful concealment, gross negligence or corrupt conduct of the Independent Expert, its agents, servants, consultants, subcontractors or employees;
- 17.2.2. death or personal injury;
- 17.2.3. damage to property;
- 17.2.4. liability of any kind in relation to environmental matters; or
- 17.2.5. failure of the Independent Expert to comply with its obligations under Clause 18 (Insurance).

18. Insurance

- 18.1. The Independent Expert shall effect, no later than thirty (30) calendar days after the date of the Letter of Award and in any event before commencement of the Services, and shall thereafter maintain throughout the duration of this Agreement, a professional indemnity insurance policy:
 - 18.1.1. with reputable insurers of good standing approved by the Counterparties; and
 - 18.1.2. on terms and conditions which are market standard for suitably qualified and competent professional providing services on the international market similar to the Services, to satisfy any liability the Independent Expert may have to the Counterparties, the Contractors and/or the Lenders, resulting from breach of duty, negligent act, error or omission of the Independent Expert, its employees, agents, Contractors or subcontractors in respect of the performance of the Services and any Additional Services.
- 18.2. The professional indemnity insurance referred to in Clause 18.1 shall provide cover of not less than the Indemnity Limit calculated under Clause 1, for any one claim and in the aggregate for each annual policy period, and shall include additional provision sufficient to cover legal fees and costs for which the Independent Expert is liable to a claimant or to its own legal advisers. On placement, renewal and before any extension takes effect, the Independent Expert shall assess the required cover by calculating the Indemnity Limit that would apply if a claim arose on that date, using the total Fees paid and payable, the Annual Fee and the Central Bank of Kenya mean exchange rate applicable on that date. The Independent Expert shall maintain and, where necessary, adjust the cover to comply with Clause 1. This prospective calculation for insurance purposes does not alter the calculation of the Indemnity Limit on the date a relevant claim actually arises. The obligation to insure does not increase the liability cap or remove any exception to it under Clause 17.2.
- 18.3. The Independent Expert shall provide to the Counterparties:
 - 18.3.1. on request, copies of the professional indemnity insurance and/or certificates relating to the professional indemnity insurance (together with any other information requested by the Counterparties relating to such insurance policies) and the Counterparties shall be entitled to inspect them during ordinary business hours; and
 - 18.3.2. evidence that the premiums payable relating to the professional indemnity insurance have been paid punctually and the professional indemnity insurance is in full force and effect in accordance with this Clause 18 (Insurance).
- 18.4. The Independent Expert shall effect and maintain insurances to cover its liabilities as employer and/or for compensation to its personnel as required by any Applicable Law or Relevant Authority.
- 18.5. If the Independent Expert is in breach of Clause 18.1, either Counterparty may pay any premiums required to keep the professional indemnity insurance in force or itself procure such professional indemnity insurance and in either case, the Counterparty shall be entitled to recover such amounts from the Independent Expert on written demand or by way of a deduction from the Fees.
- 18.6. The Independent Expert shall immediately inform the Counterparties if its professional indemnity insurance ceases to be available or is otherwise not renewed or maintained or for any reason becomes void or unenforceable.
- 18.7. The Independent Expert shall not compromise, settle or waive any claim which it may have under

such insurance in respect of any professional liability which it may incur under this Agreement without the prior written consent of the Counterparties

- 18.8.** The professional indemnity insurance to be effected in terms of this Agreement shall be reviewed annually by the Parties and, if necessary, adjusted in order to ensure that terms and sums are commensurate with the related risks.

19. Fees

- 19.1.** The Fee includes all Early Works verification and certification Services required by this Agreement and the Terms of Reference, whether performed before or after the Effective Date of the Project Agreement. Except for the specific Early Works certification cost allocation in Clause 19.2, all costs and expenses relating to the appointment and Services of the Independent Expert shall be paid by the Private Party in accordance with Clause 13.6 of the Project Agreement and section 73(3) of the Public Private Partnerships Act, 2021, and shall form part of the Project Costs. Before novation, those payment obligations shall be discharged by the Sponsors in accordance with Clause 2; after novation they shall be discharged by the Project Company.
- 19.2.** Achievement of the Effective Date of the Project Agreement does not dispense with verification or certification of Early Works Costs. The Independent Expert shall complete any outstanding retrospective or contemporaneous Early Works verification and certification required by the Terms of Reference; no duplicate certification or additional Fee shall arise solely because the Effective Date has occurred. For Services performed specifically for certification of Early Works Costs before the Effective Date of the Project Agreement, the certification cost shall be borne equally by the Contracting Authority and the Private Party only to the extent expressly required by Clause 15.8 of the Project Agreement. That specific allocation shall not extend to general Construction Stage Services after the Effective Date; any application of it to outstanding certification performed after that date shall likewise be limited to what Clause 15.8 expressly requires. Schedule 3 and the relevant invoices shall identify those certification Services and costs separately.
- 19.3.** The Fee and any approved reimbursable expenses shall be as set out in Schedule 3 (Remuneration and Payment). Except for items expressly identified as reimbursable, the Fee shall be inclusive of all costs, overheads, profit, taxes and disbursements required for performance of the Services.
- 19.4.** The Independent Expert shall submit invoices at the intervals stated in Schedule 3, together with the relevant reports, deliverables and supporting information, simultaneously to the Contracting Authority and the Project Company through the Project Liaison Committee.
- 19.5.** All payment invoices raised by the Independent Expert shall be approved by both the Contracting Authority and the Project Company prior to disbursement. In accordance with Clause 13.6 of the Project Agreement, the Contracting Authority shall approve the invoice or provide written comments within fourteen (14) days of receipt.
- 19.6.** Where any part of an invoice is disputed, the undisputed portion may be approved and processed separately. The Project Liaison Committee shall provide the Independent Expert with written reasons for any amount not approved.
- 19.7.** The Private Party shall pay approved invoices within the payment period stated in Schedule 3, with the Sponsors responsible before novation and the Project Company responsible thereafter in accordance with Clause 2. The Contracting Authority shall pay only its expressly allocated share of specific Early Works certification costs under Clause 19.2. Nothing in this Agreement requires the Contracting Authority to reimburse the Private Party for the general cost of the Independent Expert Services.
- 19.8.** No retention shall be deducted from the Independent Expert Fee unless expressly provided in Schedule 3. If the duration or extent of the Services is materially increased through no fault of the Independent Expert, the resulting additional services and fee consequences shall be dealt with in accordance with Clause 21 (Additional Services) and Clause 22 (Delays).
- 19.9.** Any dispute concerning the amount or approval of an invoice shall be dealt with in accordance with Clause 40 (Disputes), without delaying payment of any undisputed amount.

20. Adjustment of Remuneration

- 20.1.** Any adjustment of remuneration shall require written agreement in accordance with Clause 30 and shall be subject to Clause 3 (Duration). No escalation shall arise solely by reason of an extension, and the total monthly Fee payable during an extension shall not exceed the cap in Clause 3.

21. Additional Services

- 21.1.** The Independent Expert shall carry out and complete any Additional Services if so instructed by the Counterparties. The Independent Expert shall notify the Counterparties in writing if, in addition to the Services, there are services which the Independent Expert considers should be performed by the Independent Expert under the Project Agreement and the Project Documents.
- 21.2.** Within ten (10) Business Days of receiving or issuing a notification under Clause 21.1 and at no additional cost to the Counterparties, the Independent Expert shall provide the Counterparties with a general description of the Additional Services to be provided, the timetable for the performance of such Additional Services and the time and the manner in which any Additional Fee is to be paid ("Additional Services Agreement").
- 21.3.** Following receipt of the Additional Services Agreement from the Independent Expert in accordance with Clause 21.2, the Counterparties shall endeavour, within twenty (20) Business Days, to review and may vary such proposed Additional Services on such terms that they consider appropriate and thereafter the Independent Expert shall perform the Services so varied in accordance with the terms of this Agreement.
- 21.4.** The Counterparties shall pay the Additional Fee for any Additional Services as agreed in this Agreement. The Additional Fee shall be paid on the basis of the same hourly rates as the Fee or otherwise as agreed between the parties in the Additional Services Agreement.

22. Delays

- 22.1.** If the performance of the Services is materially impeded or delayed by any act of prevention or default of the Counterparties or their Contractors or agents as a result of which the extent of the Services or the time that is required for their performance is materially increased:
- 22.1.1.** the Independent Expert shall give written notice to the Counterparties of the relevant circumstance and probable effects within twenty (20) Business Days of the commencement of such circumstance;
 - 22.1.2.** any increase in the extent of the Services shall be regarded as Additional Services only if such notice has been given in strict accordance with Clause 22.1.1 and the Independent Expert submits its proposed adjustment to the fee being a fair and reasonable amount for such Additional Services together with all necessary supporting information no later than twenty (20) Business Days after the cessation of the relevant circumstance;
 - 22.1.3.** the time for completion of the Services shall be extended on a fair and reasonable basis by the Counterparties; and
 - 22.1.4.** unless otherwise agreed by the Counterparties, the Party which impeded or delayed the Services, or the Party to which any Contractor which delayed or impeded the Services is contracted, shall be liable for cost of such Additional Services.
 - 22.1.5.** Any services provided by the Independent Expert in support of arbitration or adjudication processes shall be deemed Additional Services and shall be compensated separately, in accordance with the terms set forth in the Financial Proposal and the Independent Expert Services Agreement.

23. Force Majeure

- 23.1.** The Independent Expert shall only be entitled to notify the occurrence of a Force Majeure Event to the extent such event has a material adverse affect on the ability of the Independent Expert to perform its obligations under this Agreement, provided that the Independent Expert shall not be entitled to treat an event as a Force Majeure Event to the extent that:

- 23.1.1. it would not have occurred but for the breach of the Independent Expert of this Agreement;
 - 23.1.2. it could have been prevented through the exercise of proper foresight and diligence; or
 - 23.1.3. its occurrence could reasonably have been anticipated and/or appropriate anticipatory mitigation measures undertaken.
- 23.2. The Independent Expert shall promptly notify the Counterparties of the occurrence of a perceived Force Majeure Event (including details of the Force Majeure Event, evidence of its effect on the obligations of the Independent Expert, and any action proposed to mitigate its effect) and when such an event has ceased. The Parties shall agree whether the perceived Force Majeure Event is to be considered a Force Majeure Event for the purpose of this Clause.
- 23.3. Subject to Clause 23.4 the Independent Expert shall be excused from performance of its obligations under this Agreement to the extent that it is unable to perform those obligations as a result of the Force Majeure Event and no Counterparty shall be entitled to claim damages, penalties or other compensation as a result of such failure to perform, unless otherwise provided for in this Agreement.
- 23.4. The Independent Expert shall, to the maximum extent possible, continue to perform the obligations under this Agreement during the occurrence of any Force Majeure Event and shall notify the Counterparties of any proposals, including alternative means of performance, but shall not implement such proposals without the consent of the Counterparties.
- 23.5. If it is agreed under Clause 23.2 that a Force Majeure Event has occurred, the Parties shall consult with each other in good faith and use reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Agreement.
- 23.6. If the Parties fail to agree such terms within six (6) months of the date of commencement of the Force Majeure Event and such Force Majeure Event is continuing or its consequence remains such that the Independent Expert is unable to comply with the whole or a significant part of its obligations under this Agreement, then the Counterparties, may at their own discretion terminate this Agreement upon twenty (20) Business Days prior written notice to the Independent Expert.
- 23.7. The foregoing provisions shall not excuse or release the Independent Expert from obligations due or performable, or compliance required, under this Agreement prior to the above mentioned failures or delays, in performance not due to the occurrence of the Force Majeure Event or obligations not affected by the Force Majeure Event. The Independent Expert shall continue its performance under this Agreement when the effects of the Force Majeure Event are removed.
- 23.8. There shall be no additional cost to the Counterparties as a result of a Force Majeure Event and during continuation of the Force Majeure Event and the Fee specified in Schedule 3 (Remuneration and Payment) shall be reduced to reflect the reduction in Services being performed by the Independent Expert.

24. Suspension or Termination

24.1. By Notice of the Counterparties

- 24.1.1. The Counterparties may suspend all or part of the Services by written notice of at least twenty (20) Business Days to the Independent Expert who shall immediately proceed in an orderly manner to take such steps as are necessary to bring to an end, in the shortest time possible its duties under this Agreement as economically as possible to the Counterparties.
- 24.1.2. Where the Services of the Independent Expert have been suspended pursuant to this Clause 24.1.1, the Counterparties shall pay any instalments of the payment due to the Independent Expert commensurate with the Services performed by the Independent Expert up to the date of suspension less the amount of any payments previously made by the Counterparties to the Independent Expert under this Agreement and the Counterparties shall not be liable to the Independent Expert for any loss of profit, loss of contract or other loss and expense arising out of or in connection with such suspension save as expressly provided in this Agreement.

24.1.3. The Independent Expert shall summarise the performance of suspended Services if instructed by the Project Liaison Committee. Payment made in accordance with this Clause 24 in the event of any suspension shall rank as payment on account towards payment to which the Independent Expert is entitled under this Agreement upon resumption of the Services.

24.1.4. If:

- a) the Services are suspended for a period of six (6) consecutive months;
- b) the Independent Expert is in breach of any of its obligations under this Agreement (including, without limitation the obligation to provide adequate resources or competent staff to carry out its obligations) and:
 - i) in the case of a breach capable of remedy, fails to remedy the breach within ten (10) Business Days after receipt of a written notice (or within such longer period as may be specified in such notice) from the Counterparties (or either of them) giving particulars of the breach and requiring its remedy; or
 - ii) if the breach is not capable of being remedied, fails to comply with any reasonable requirements of the Counterparties within such period as may be prescribed by the Counterparties in a written notice to the Independent Expert; or
 - iii) the Independent Expert is being or has been wound-up or becomes insolvent or enters into liquidation, receivership, judicial management or other composition with creditors or some other analogous event,

then the Counterparties may, at any time thereafter and without prejudice to any other rights or remedies, forthwith terminate this Agreement by written notice.

24.1.5. The Counterparties may, at any time by written notice to the Independent Expert of not less than twenty (20) Business Days terminate the Independent Expert's appointment and this Agreement without prejudice to any other rights or remedies.

25. By Notice of the Independent Expert

25.1. If:

25.1.1. the Project Company fails, without reasonable cause to make payment in accordance with Clause 19 (Fees) within thirty (30) calendar days after the due date for payment of an invoice; or

25.1.2. the performance of the Services has been suspended pursuant to Clause 24.1.1 for a period of six (6) consecutive months,

the Independent Expert may by twenty (20) Business Days' notice in writing to the Counterparties terminate this Agreement. Provided that where the Project Company is in default under Clause 25.1.1 above, the Contracting Authority shall be entitled to make payment to the Independent Expert of any amount then due and to recover the same from the Project Company in default as debt or as may otherwise be provided under the Project Agreement.

26. Termination of the Project Agreement

26.1. Without prejudice to Clause 19 (Fees) and Clause 27 (Consequences of termination), in the event that the Project Agreement is terminated for any reason, the Contracting Authority may forthwith terminate this Agreement by notice in writing.

26.2. If this Agreement is terminated under Clause 26.1 before the Effective Date of the Project Agreement, the Independent Expert shall be paid for Services performed before termination in accordance with Clause 19 (Fees) and Schedule 3 (Remuneration and Payment). Only the specific

Early Works certification costs expressly allocated under Clause 19.2 shall be shared equally by the Contracting Authority and the Private Party; all other Fees shall remain payable by the Private Party. Any payment shall take account of amounts already paid and preserve accrued rights under Clause 27.

27. Consequences of termination

- 27.1.** Termination of this Agreement shall not prejudice or affect the accrued rights or obligations of any of the Parties.
- 27.2.** Upon any notice of termination of the Independent Expert's engagement served under Clauses 23 to 26 above, the Independent Expert shall take such steps as are necessary or reasonably desirable such that by the end of the notice period the Services have been brought to an end in an orderly manner but with all reasonable speed and economy and that there has been delivered to the Counterparties or any person nominated by them copies of all reports, minutes of meetings and other documents prepared or in the course of preparation by the Independent Expert in connection with the Project and (in the event that a replacement Independent Expert has been appointed to complete the performance of the Services) shall co-operate fully with such replacement to the extent that it is reasonable to do so.
- 27.3.** Following termination of the Independent Expert's appointment and subject to any set off or deductions of any amount the Counterparties may be entitled to make as a result of any breach of this Agreement by the Independent Expert (which amounts, if any, may be set-off or deducted from any amount otherwise due to the Independent Expert, whether liquidated or not), the Counterparties shall pay to the Independent Expert in full and final settlement of any claim which the Independent Expert may have in consequence thereof any installments of the payment due to the Independent Expert commensurate with the Services performed by the Independent Expert up to the date of termination less the amount of any payments previously made to the Independent Expert under this Agreement and the Counterparties shall not be liable to the Independent Expert for any loss of profit, loss of contract or other loss and expense arising out of or in connection with such termination except as expressly provided in this Agreement.
- 27.4.** The provisions of this Agreement shall continue to bind each Party in so far as and for as long as may be necessary to give effect to their respective rights and obligations under this Agreement.

28. Confidentiality

- 28.1.** The Independent Expert shall not, at any time during the term of this Agreement (save in the proper course of its duties or as may be required by law or any regulatory authority) and at any time after its expiry or termination for any reason, disclose to any person nor otherwise make use of any confidential information (including, but without limitation, the provisions of the Project Agreement and/or any other document relating to the Project, information relating to methods and techniques of construction for the Project and financial information relating to the Project) of which it has or may in the course of its engagement hereunder become aware relating to the Project, any of the Counterparties or otherwise, nor shall it disclose to any person whatsoever (save as aforesaid or to its insurance or professional advisers) anything contained in this Agreement, without the prior written consent of the Counterparties.
- 28.2.** This Clause 28 (Confidentiality) does not restrict the Independent Expert's use of information which is in the public domain (otherwise than due to a breach of this Clause 28 by the Independent Expert) or which came to the Independent Expert otherwise than in relation to its appointment as Independent Expert for the Project and is not the subject of a duty of confidentiality.

29. Assignment and Sub-contracting

- 29.1.** The Independent Expert shall not assign or transfer any of its rights, interests or obligations under this Agreement to any person without the prior written consent of the Counterparties and only then on terms expressly approved by the Counterparties and subject to the Independent Expert's obligations under this Agreement remaining in full force and effect.

- 29.2. The Independent Expert shall not, without the prior written consent of the Counterparties, sub-contract to any person the performance of any of the Services, other than in accordance with the sub-contracting arrangements outlined in Schedule
- 29.3. Where the Counterparties give consent to the Independent Expert subcontracting any of its duties pursuant to this Clause 29 (Assignment and Sub-Contracting):
- 29.4. the Independent Expert shall be responsible for the breaches, acts, omissions, negligence or other default of any sub-consultant (and its agents or employees) appointed by the Independent Expert as fully as if they were the breaches, acts, omissions, negligence or other defaults of the Independent Expert and such sub-contracting shall not affect the liabilities and/or obligations of the Independent Expert under this Agreement and/or at law or otherwise; and
- 29.5. no sub-contracting by the Independent Expert shall affect the Fee.
- 29.6. Each of the Counterparties may at any time assign, charge or transfer its respective interests, benefits and obligations in this Agreement and all its rights arising hereunder (whether or not accrued) to any person upon notice to the Independent Expert.
- 29.7. **The Independent Expert shall not at any time assert that any permitted assignee, in terms of this Agreement, is precluded from recovering any loss resulting from any breach of this Agreement on the part of the Independent Expert for reason that such assignee, is not an original party to this Agreement or that no loss has been suffered by the assignor, or a different loss has been suffered by such assignee, than that suffered by the assignor.**

30. Variation, Waiver and Entire Agreement

- 30.1. All additions, amendments and variations to this Agreement shall be binding only if in writing and signed by the duly authorised representative of each Party.
- 30.2. No waiver by any Party of any default or defaults by any other Party in the performance of any of the provisions of this Agreement shall operate or be construed as a waiver of any other or further default or defaults whether of a like or different character.
- 30.3. This Agreement supersedes any previous agreement or arrangement made with the Independent Expert by either or both of the Counterparties in respect of the Services (whether oral or written) and (but without prejudice to or derogation from the respective rights, responsibilities, remedies, recourse and obligations of the Counterparties to each other pursuant to the Project Agreement) represents the entire understanding between the Counterparties and the Independent Expert in relation thereto. For the avoidance of doubt as between the Counterparties, in the event of any ambiguity or discrepancy between the provisions of this Agreement and the provisions of the Project Agreement, the provisions of the Project Agreement shall prevail.
- 30.4. This Agreement is for the sole benefit of the Parties. Without prejudice to the rights of the Lender(s) and the Contractors under this Agreement, and save where expressly provided for in this Agreement, no provision of this Agreement is intended to or does confer upon any third party any benefit or right enforceable at the option of that third party against any Party to this Agreement.

31. Copyright

- 31.1. Copyright in the reports and all other intellectual property and design rights in all works and documents produced or to be provided as part of the Services ("Documents") shall remain vested in the Independent Expert.
- 31.2. The Independent Expert hereby grants to each Counterparty an irrevocable, non exclusive, royalty free licence (for the avoidance of doubt such licence to remain in full force and effect notwithstanding termination of the Independent Expert's appointment for whatever reason or any dispute under this Agreement) to copy and use the Documents for all purposes related to the Project. Such licence shall carry the right of each Counterparty to grant sub-licences on terms equivalent to the provision of this Clause 31.2 and the Counterparty's licence and such sub-licence shall be transferable to other persons without charge provided always that the Independent Expert shall not be liable for the consequences of any use of the Documents by the Counterparties or such other persons for any purpose other than that for which they were prepared and provided by the Independent Expert.

31.4. The Independent Expert warrants and undertakes to the Counterparties that the use of the Documents in connection with the Project will not infringe the rights of any third party. The Independent Expert shall be liable for all and any claims made or brought by any person on account of infringement of any intellectual property rights in which the Counterparties have been granted a licence by the Independent Expert.

32.1. Any rights and remedies provided for in this Agreement whether in favour of the Counterparties or the Independent Expert are cumulative and in addition to any further rights or remedies which may otherwise be available to the Parties.

32.3. The Counterparties covenant with each other that they will not waive any rights, remedies or entitlements or take any other action under this Agreement that would or might reasonably be expected to adversely affect the rights, remedies or entitlements of the other Counterparty without the other Counterparty's prior written consent, such consent not to be unreasonably withheld or delayed.

33.1. If any provision of this Agreement shall be declared invalid, unenforceable or illegal, such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability or legality of the remaining provisions of this Agreement. The Parties shall meet as soon as possible and negotiate in good faith a replacement provision that is legally valid and that achieves as nearly as possible the objective of this Agreement and produces an equivalent economic effect.

34.1. Unless otherwise agreed in writing by the Counterparties, the Independent Expert and its personnel shall have no interest in nor receive remuneration in connection with the Project except as provided for in this Agreement. The Independent Expert shall not engage in any activity which might conflict with the interests of the Counterparties in relation to the Project.

35.1. Unless otherwise approved by the Contracting Authority in writing, the Independent Expert, either alone or jointly with others, shall not from the date of this Agreement publish material relating to the Project and the Services.

36.1. Any and all written communication delivered under or in connection with this Agreement by a Party to the other Parties shall be delivered in the following manner:

- 36.2.** Written communication shall be delivered to the Parties at the following addresses:

- Address: [**]

E-mail: [**]

Attn: Director General - Kenya National Highways Authority

(b) If to the Independent Expert:

Address: [**]

E-mail: [**]

Attn: [**]

(c) If to the Private Party before novation, notices shall be delivered to both Sponsors at the addresses below. Following novation, notices shall be delivered to the Project Company at the address specified in its deed of accession and novation:

CRBC address: [**]

NSSF address: [**]

CRBC e-mail: [**]

NSSF e-mail: [**]

CRBC attention: [**]

NSSF attention: [**]

36.3. Any written communication shall be deemed delivered:

- a) if delivered personally, upon hand-over of the written communication to the addressee's representative or when the addressee's representative refused to accept the same, with the exception of refusal to accept due to such communication being damaged;
- b) If delivered by e-mail, when the e-mail is sent to the e-mail address of the other Party, and if the e-mail was not sent on a Business Day or was sent after 4:00 p.m. on a Business Day, the e-mail shall be deemed delivered at 10:00 a.m. on the following Business Day, unless it is proven that the e-mail was not delivered to the other Party; and
- c) if delivered by post or courier service, when the representative of the other Party accepted the delivery or when the addressee's representative refused to accept the delivery, with the exception of refusal to accept due to such delivery being damaged.

37. Change of Details

37.1. Any Party may change its nominated address, email address by prior notice to the other Parties. In such a case the other Parties shall be obliged to deliver to the newly notified address or email from the first Business Day following the day when the change was notified to them.

38. Governing Law and Language

38.1. This Agreement is executed in the English language and the governing language is the English language. All notices, communications, opinions and other documents contemplated herein or arising hereunder shall be in English.

38.2. This Agreement shall be construed and interpreted in accordance with and governed by the laws of Kenya.

39. Waiver of immunity

39.1. Each Party unconditionally and irrevocably:

- 39.1.1.** agrees that the execution, delivery and performance by it of this Agreement constitutes commercial acts done and performed for commercial purpose;
- 39.1.2.** agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction

contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;

39.1.3. subject to the extent permitted by the Laws of Kenya, waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and

39.1.4. consents generally in respect of the enforcement of any judgment or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgment that may be made or given in connection therewith).

40. Dispute Resolution

40.1. Dispute Resolution

40.1.1. Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by a Party to the other Parties (the Dispute) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 41.

40.1.2. The Parties agree to use all reasonable endeavours for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

41. Conciliation

41.1. In the event of a Dispute, any Party may refer it for amicable settlement to the Director General of the Contracting Authority, a duly authorised senior representative of each Sponsor before novation or the Chairman of the Board of Directors of the Project Company after novation, and the Chairman of the Board of Directors of the Independent Expert. Those persons shall endeavour to meet no later than seven (7) days from the date of referral to discuss and attempt to resolve the Dispute. If the meeting does not take place within that period, or the Dispute is not settled within fifteen (15) days after the meeting, or written terms of settlement have not been signed within thirty (30) days after the written notice under Clause 40.1.1 (or such longer period as the Parties agree in writing), any Party may refer the Dispute to arbitration under Clause 42.

42. Arbitration

42.1. Any Dispute which is not resolved amicably by conciliation, as provided in Clause 41 (Conciliation), shall be referred to and finally resolved solely by arbitration in accordance with the ICC Arbitration Rules (the ICC Rules) in force as at the date of this Agreement, which ICC Rules are deemed to be incorporated by reference into this Agreement. This Clause applies to any dispute arising out of or in relation to this Agreement, including as to its validity, invalidity, breach and termination. The seat of the arbitration shall be London, United Kingdom. The location of the arbitration shall be London, United Kingdom or such other place as shall be mutually agreed.

42.2. Any arbitration under this Clause shall take place before a panel of three (3) arbitrators (the Arbitral Tribunal). Of the three (3) arbitrators, one (1) shall be appointed by the Independent Expert, one (1) by the Counterparties acting jointly, and the third, who shall preside, shall be appointed by agreement between them. If they are unable to agree upon the identity of the third arbitrator within ten (10) days from the date of referral of the dispute to arbitration, the third arbitrator shall be appointed by the two (2) arbitrators already appointed. In the event of disagreement between those two (2) arbitrators as to the nomination of the third arbitrator, the appointment shall be made by the ICC in accordance with the ICC Rules.

42.3. The proceedings shall be conducted in the English language, or if in another language, be accompanied by a certified English translation.

- 42.4. Where the ICC Rules do not make provision for the manner in which the proceedings will be conducted, the arbitrators shall make rules of procedure to govern the proceedings.
- 42.5. The arbitrators shall make a reasoned award (the Award). Any Award made in any arbitration held pursuant to this Clause 42 (Arbitration) shall be final and binding on the Parties as from the date it is made, and the Parties agree and undertake to carry out such Award without delay.
- 42.6. The Counterparties and the Independent Expert agree that an Award may be enforced against the Counterparties and/or the Independent Expert, as the case may be, and their respective assets wherever situated.
- 42.7. This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.
- 42.8. **In the event of a Dispute arising under or in connection with this Agreement which in the opinion of either Counterparty relates to a dispute or potential dispute arising under or in connection with any other agreement between the Project Company, and/or the Contracting Authority, and a third party ("Related Dispute") and where the Related Dispute has been referred to arbitration for determination under an arbitration procedure which in all material respects is equivalent to the arbitration procedure referred to in Clause 42 (Arbitration) hereof, either Counterparty may at its absolute discretion request the arbitrator(s) appointed for the Related Dispute to consolidate or determine concurrently with the Related Dispute the Dispute or difference arising under or in connection with this Agreement.**
- 42.9. In the event that a Dispute under this Agreement has already been referred to arbitration pursuant to the procedure referred to in Clause 42 (Arbitration) hereof either Counterparty may at its absolute discretion request of the said arbitrator(s) that a Related Dispute be consolidated with or heard concurrently with the said dispute or difference under this Agreement.

43. Costs and expenses

- 43.1. Unless provided for otherwise in this Agreement, each Party shall bear all costs incurred by it in connection with the execution and perfection of this Agreement and amendments to it.
- 43.2. If there is any conflict between the provisions of the Project Agreement and this Agreement in relation to the Services, the provisions of the Project Agreement shall prevail. The Independent Expert acknowledges and agrees that the provisions of the Project Agreement take precedence over and supersede the provisions of this Agreement.

IN WITNESS WHEREOF this Agreement has been executed as a deed on the date first above written.

The Contracting Authority

Signed, sealed and delivered by	)
[**]	)
duly authorised for and on behalf of The	)
Kenya National Highways Authority	)

In the presence of: [******]

The Private Party — CRBC

Signed, sealed and delivered by	)
[**]	)
duly authorised for and on behalf of	)
China Road and Bridge Corporation	)

In the presence of: [******]

The Private Party — NSSF

Signed, sealed and delivered by [******] duly authorised for and on behalf of National Social Security Fund

In the presence of: [******]

The Independent Expert	)
Signed, sealed and delivered by [**]	)
duly authorised for and on behalf of	)
Independent Expert	)

In the presence of: [******]

Schedule 1 - Services

Scope of Services - Independent Expert

The Services shall be the construction-stage Terms of Reference set out in Section 6 of the RFP, as finalised at contract signature and attached to this Agreement. The Services include Early Works verification and cost certification, construction-stage inspection/testing, Programme and progress monitoring, completion certification, construction-related contractual opinions / determinations, dispute-prevention functions and construction close-out. The Services are as set out in the Terms of Reference.

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 execution of the Agreement.] The Schedule shall identify: (i) the total Fee for the initial twenty-four (24)-month term, inclusive of the required Early Works Services, with a separate breakdown for each twelve (12)-month year; the Fee for the first twelve (12) months shall be used as the Annual Fee for calculation of the Indemnity Limit until a twelve (12)-month period has been completed; (ii) the portion attributable to specific Early Works certification and its allocation under Clause 19.2; (iii) approved reimbursables and Additional Services separately, identifying the CPD / on-site training Provisional Sum of KES 8,000,000 under Annex 5D, Item 1.03, and amounts payable against it in accordance with that Annex and Clause 19; and (iv) the calculation basis for the Indemnity Limit under Clause 1. When a relevant claim arises, the Schedule shall record the total Fees paid and payable at that time, the Annual Fee for the most recent completed twelve (12)-month period (or the initial twelve-month Fee where applicable), the Central Bank of Kenya mean USD/KES exchange rate on the date the claim arises, and the resulting Indemnity Limit. The Fee for an extension shall comply with Clause 3.

Schedule 4 - Sub-Contracting Arrangements