KENYA URBAN ROAD AUTHORITY

ROADS10, 000 PROGRAMMES

DEVELOPMENT OF 10,000 KM OF ROADS SUPPORTING PRIMARY GROWTH SECTORS THROUGH CONTRACTOR FACILITATED FINANCING MECHANISM (PHASE 1)

REQUEST FOR PROPOSAL

FOR

CONSULTANCY SERVICES FOR SUPERVISION OF THE DEVELOPMENT OF 2,000 KM OF ROADS SUPPORTING PRIMARY GROWTH SECTORS THROUGH CONTRACTOR FACILITATED FINANCING MECHANISM (PHASE 1), LOT 18

TENDER NO.: KURA/DEV/HQ/218/2019-2020

COUNTRY: KENYA

Project:

CONSULTANCY SERVICES FOR SUPERVISION OF THE DEVELOPMENT OF 2,000 KM OF ROADS SUPPORTING PRIMARY GROWTH SECTORS THROUGH CONTRACTOR FACILITATED FINANCING MECHANISM (PHASE 1), LOT 18

Issued on: NOVEMBER 2019

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PART I – SELECTION PROCEDURES AND REQUIREMENTS

SECTION 1: INSTRUCTIONS TO CONSULTANTS

A. GENERAL PROVISIONS

1.1 Definitions

(a) "**Affiliate(s)**" means an individual or an entity that directly or indirectly controls, is controlled by, or is under common control with the Consultant as used in this definition, the expression "control" means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise).

(b) "**Applicable law**" means all laws, brought into force and effect by the Government of Kenya or the local Government including but not limited to rules, regulations and notifications made thereunder, and judgements, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement.

(c) "**Agency**" means the Kenya Urban Roads Authority (KURA).

(d) "**Bid Security**" means [●] for [KES 5,000,000].

(e) "**Client**" means the implementing agency that signs the Contract for the Services with the selected Consultant.

(f) "**Consultant**" means a legally-established professional consulting firm or an entity that may provide or provides the Services to the Client under the Contract.

(g) "**Contract**" means a legally binding written agreement signed between the Client and the Consultant. It includes all the attached documents listed in its Clause 1 (the General Conditions of Contract (GCC), the Special Conditions of Contract (SCC), and the Appendices).

(h) "**Data Sheet**" means an integral part of the Instructions to Consultants (ITC) Section 2 that is used to reflect specific country and assignment conditions to supplement, but not to over-write, the provisions of the ITC.

(i) "**Day**" means a calendar day.

(j) "**Experts**" means, collectively, Key Experts, Non-Key Experts, or any other personnel of the Consultant, Sub-consultant or Joint Venture member(s).

(k) "**Government**" means the government of the Client's country.

(l) "**Joint Venture (JV)**" means an association with or without a legal personality distinct from that of its members, of more than one Consultant where one member has the authority to conduct all business for and on behalf of any and all the members of the JV, and where the members of the JV are jointly and severally liable to the Client for the performance of the Contract.

(m) "**Key Expert(s)**" means an individual professional whose skills, qualifications, knowledge and experience are critical to the performance of the Services under the

Contract and whose CV is taken into account in the technical evaluation of the Consultant's proposal.

(n) "**ITC**" (this Section 1 of the RFP) mean the Instructions to Consultants that provide the shortlisted Consultants with all information they need to prepare their Proposals.

(o) "**LOI**" means the Letter of Invitation being sent by the Client to the shortlisted Consultants.

(p) "**Non-Key Expert(s)**" means an individual professional provided by the Consultant or its Sub-consultant and who is assigned to perform the Services or any part thereof under the Contract and whose CVs are not evaluated individually.

(q) "**Proposal**" means the Technical Proposal and the Financial Proposal of the Consultant.

(r) "**Project Agreement**" means the agreement dated 10^{th} May, 2019 and entered between the Kenya Urban Roads Authority and The Consortium of Lee Construction Ltd, Cape Consult Limited and Mota-Engil Engenharia E Construcao Africa, S. A in respect of the Finance, Design, Build, Maintain and Transfer on Annuity (FDBMT Annuity) of the LOT 18 Project Network.

(s) "**RFP**" means the Request for Proposals to be prepared by the Client for the selection of Consultants, based on the SRFP.

(t) "**SRFP**" means the Standard Request for Proposals, which may be used by the Client as the basis for the preparation of the RFP.

(u) "**Services**" means the work to be performed by the Consultant pursuant to the Contract.

(v) "**Sub-consultant**" means an entity to which the Consultant intends to subcontract any part of the Services while remaining responsible to the Client during the performance of the Contract.

(w) "**TORs**" (this Section 7 of the RFP) means the Terms of Reference that explain the objectives, scope of work, activities, and tasks to be performed, respective responsibilities of the Client and the Consultant, and expected results and deliverables of the assignment.

1.2 Introduction

1.1 Kenya Urban Roads Authority as the Client named in the **Data Sheet** intends to select a Consultant from those listed in the Letter of Invitation, in accordance with the method of selection specified in the **Data Sheet**.

1.2 The shortlisted Consultants are invited to submit a Technical Proposal and a Financial Proposal for consulting services required for the assignment named in the **Data Sheet**. The Proposal will be the basis for negotiating and ultimately signing the Contract with the selected Consultant.

1.3 The Consultants should take into account the Applicable law in preparing their Proposals. They may attend a pre-proposal conference if one is specified in the **Data Sheet**. Attending any such pre-proposal conference is optional and is at the Consultants' expense.

1.4 The Client will timely provide, at no cost to the Consultants, the inputs, relevant project data, and reports required for the preparation of the Consultant's Proposal as specified in the **Data Sheet**.

1.3 Conflict of Interest

1.5 The Consultant is required to provide professional, objective, and impartial advice, at all times holding the Client's interests paramount, strictly avoiding conflicts with other assignments or its own corporate interests, and acting without any consideration for future work.

1.6 The Consultant has an obligation to disclose to the Client any situation of actual or potential conflict of interest that impacts its capacity to serve the best interest of its Client. Failure to disclose such situations may lead to the rejection of the Consultant's Proposal or the termination of its Contract.

1.6.1 Without limitation on the generality of the foregoing, and unless stated otherwise in the **Data Sheet**, the Consultant shall not be hired under the circumstances set forth below:

a. Conflicting Activities

(i) <u>Conflict between consulting activities and procurement of goods, works or non-consulting services:</u> A firm that has been engaged by the Client to provide goods, works, or non-consulting services for a project, or any of its Affiliates, shall be disqualified from providing consulting services resulting from or directly related to those goods, works, or non-consulting services. Conversely, a firm hired to provide consulting services for the preparation or implementation of a project, or any of its Affiliates, shall be disqualified from subsequently providing goods or works or non-consulting services resulting from or directly related to the consulting services for such preparation or implementation.

b. Conflicting Assignments

(ii) <u>Conflict among consulting assignments:</u> a Consultant (including its Experts and Sub-consultants) or any of its Affiliates shall not be hired for any assignment that, by its nature, may be in conflict with another assignment of the Consultant for the same or for another Client.

c. Conflicting Relationships

(iii) <u>Relationship with the Client's staff:</u> a Consultant (including its Experts and Sub-consultants) that has a close business or family relationship with a professional staff of the Client who are directly or indirectly involved in any part of (i) the preparation of the Terms of Reference for the assignment, (ii) the selection process for the Contract, or (iii) the supervision of the Contract, may not be awarded a Contract, unless the conflict stemming from this relationship has been resolved in a manner acceptable to the Agency throughout the selection process and the execution of the Contract.

1.4 Unfair Competitive Advantage

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

1.5 Corrupt and Fraudulent Practices

1.8 The Agency requires compliance with its policy in regard to corrupt and fraudulent practices as set forth in Section 6.

1.9 In further pursuance of this policy, the Consultant shall permit and shall cause its agents, Experts, Sub-consultants, sub-contractors, services providers, or suppliers to permit the Agency to inspect all accounts, records, and other documents relating to the submission of the Proposal and contract performance (in case of an award), and to have them audited by auditors appointed by the Agency.

1.6 Eligibility

1.10 The Agency's financing may benefit to consultants (firms, including Joint Ventures and their individual members) from all countries to offer consulting services for Agency-financed projects subject to compliance with the eligibility criteria specified in Section 5.

1.11 Furthermore, it is the Consultant's responsibility to ensure that it's Experts, Joint Venture members, Sub-consultants, agents (declared or not), sub-contractors, service providers, suppliers and/or their employees meet the eligibility requirements as established by the Agency in the Section 5.

1.12 Government officials and civil servants of the Client's country are not eligible to be included as Experts in the Consultant's Proposal unless such engagement does not conflict with the Applicable law, and they

(i) are on leave of absence without pay, or have resigned or retired;

(ii) are not being hired by the same agency they were working for before going on leave of absence without pay, resigning, or retiring;

(iii) Their hiring would not create a conflict of interest.

2 B. PREPARATION OF PROPOSALS

2.1 General Considerations

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

2.2 Cost of Preparation of Proposal

8.1. The Consultant shall bear all costs associated with the preparation and submission of its Proposal, and the Client shall not be responsible or liable for those costs, regardless of the conduct or outcome of the selection process.

2.3 Language

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

2.4 Documents Comprising the Proposal

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

10.2. The Consultant shall furnish information on commissions, gratuities, and fees, if any, paid or to be paid to agents or any other party relating to this Proposal and, if awarded, Contract execution.

2.5 Only One Proposal

11.1. The Consultant shall submit only one Proposal, either in its own name or as part of a Joint Venture. If a Consultant, including any Joint Venture member, submits or participates in more than one proposal, all such proposals shall be disqualified and rejected. This does not, however, unless otherwise stated in the **Data Sheet**, preclude a Sub-consultant, or the Consultant's staff from participating as Key Experts and Non-Key Experts in more than one Proposal.

2.6 Proposal Validity

12.1. **The Data Sheet** indicates the period during which the Consultant's Proposal must remain valid after the Proposal submission deadline.

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

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

a. Extension of Validity Period

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

12.5. If the Consultant agrees to extend the validity of its Proposal, it shall be done without any change in the original Proposal and with the **confirmation of the availability of the Key Experts.**

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

b. Substitution of Key Experts in case of Extension of Validity Period

12.7. If any of the Key Experts become unavailable for the extended validity period, the Consultant shall provide a written adequate justification and evidence satisfactory to the Client together with the substitution request. In such case, a replacement of a Key Expert shall have equal or better qualifications and experience than those of the originally proposed Key Expert. The technical evaluation score, however, will remain to be based on the evaluation of the CV of the original Key Expert.

12.8. If the Consultant fails to provide a replacement of a Key Expert(s) with equal or better qualifications, or if the provided reasons for the replacement or justification are unacceptable to the Client, such Proposal will be rejected.

c. Sub-Contracting

12.9. The Consultant shall not subcontract the whole of the Services.

2.7 Clarification and Amendment of RFP

13.1. The Consultant may request a clarification of any part of the RFP during the period indicated in the **Data Sheet** before the Proposals' submission deadline. Any request for clarification must be sent in writing, or by standard electronic means, to the Client's address indicated in the **Data Sheet**. The Client will respond in writing, or by standard electronic means, and will send written copies of the response (including an explanation of the query but without identifying its source) to all shortlisted Consultants. Should the Client deem it necessary to amend the RFP as a result of a clarification, it shall do so following the procedure described below:

13.1.1. At any time before the proposal submission deadline, the Client may amend the RFP by issuing an amendment in writing or by standard electronic means. The amendment shall be sent to all shortlisted Consultants and will be binding on them. The shortlisted Consultants shall acknowledge receipt of all amendments in writing.

13.1.2. If the amendment is substantial, the Client shall extend the proposal submission deadline to give the shortlisted Consultants reasonable time to take an amendment into account in their Proposals.

13.2. The Consultant may submit a modified Proposal or a modification to any part of it at any time prior to the proposal submission deadline. No modifications to the Technical or Financial Proposal shall be accepted after the deadline.

2.8 Preparation of Proposals – Specific Considerations

14.1. While preparing the Proposal, the Consultant must give particular attention to the following:

14.1.1. If a shortlisted Consultant considers that it may enhance its expertise for the assignment by associating with other consultants in the form of a Joint Venture, it may do so with either (a) non-shortlisted Consultant(s), or (b) shortlisted Consultants if permitted in the **Data Sheet**. Association with a non-shortlisted Consultant shall be subject to approval of the Client. When associating with non-shortlisted firms in the form of a Joint Venture, the shortlisted Consultant shall be a lead member. If shortlisted Consultants associate with each other, any of them can be a lead member.

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

14.1.3. If stated in the **Data Sheet**, the Consultant shall include in its Proposal at least the same time input (in the same unit as indicated in the **Data Sheet**) of Key Experts, failure to which the Financial Proposal will be rejected.

2.9 Technical Proposal Format and Content

15.1. The Technical Proposal shall not include any financial information. A Technical Proposal containing material financial information shall be declared non-responsive.

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

15.1.2. Variations are not allowed.

15.2. The Technical Proposal shall be prepared using the Standard Forms provided in Section 3 of the RFP.

2.10 Financial Proposal

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

a. Price Adjustment

16.2. A price adjustment provision of remuneration rates applies if so stated in the **Data Sheet**.

b. Taxes

16.3. The Financial Proposal should clearly estimate, as a separate amount, the taxes, duties, fees, levies and other charges imposed in the Client's country under the Applicable law, on the Consultants, the Sub-consultants, and their Experts (other than nationals or permanent residents of the Client's country). The Consultant and its Sub-consultants and Experts are responsible for meeting all tax liabilities arising out of the Contract unless stated otherwise in the **Data Sheet**. Information on taxes in the Client's country is provided in the **Data Sheet**.

c. Currency of Proposal

16.4. The Consultant may express the price for its Services in the currency or currencies as stated in the **Data Sheet**. If indicated in the **Data Sheet**, the portion of the price representing local cost shall be stated in the national currency.

d. Currency of Payment

16.5. Payment under the Contract shall be made in the currency or currencies in which the payment is requested under Clause 41 of the Special Conditions of Contract.

3 C. SUBMISSION, OPENING AND EVALUATION

3.1 Submission, Sealing, and Marking of Proposals

17.1 The Consultant shall submit a signed and complete Proposal comprising the documents and forms in accordance with Clause 10 (Documents Comprising Proposal). The submission can be done by mail or by hand. If authorized in the **Data Sheet**, the Consultant may choose to submit its Proposals electronically.

17.2 An authorized representative of the Consultant shall sign the original submission letters in the required format for both the Technical Proposal and the Financial Proposal and shall initial all pages of both. The authorization shall be in the form of a written power of attorney attached to the Technical Proposal.

17.2.1 A Proposal submitted by a Joint Venture shall be signed by all members so as to be legally binding on all members, or by an authorized representative who has a written power of attorney signed by each member's authorized representative.

17.3 Any modifications, revisions, interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Proposal.

17.4 The signed Technical and Financial Proposal shall be marked "ORIGINAL", and its copies marked "COPY" as appropriate. The number of copies is indicated in the **Data Sheet**. All copies shall be made from the signed original. If there are discrepancies between the original and the copies, the original shall prevail.

17.5 The original and all the copies of the Technical Proposal shall be placed inside of a sealed envelope clearly marked "**TECHNICAL PROPOSAL**", "[Name of the Assignment]", reference number, name and address of the Consultant, and with a warning "**DO NOT OPEN UNTIL TECHNICAL PROPOSAL OPENING**."

17.6 Similarly, the original Financial Proposal shall be placed inside of a sealed envelope clearly marked "**FINANCIAL PROPOSAL**" followed by the name of the assignment, reference number, name and address of the Consultant, and with a warning "**DO NOT OPEN WITH THE TECHNICAL PROPOSAL**."

17.7 The sealed envelopes containing the Technical and Financial Proposals shall be placed into one outer envelope and sealed. This outer envelope shall bear the Submission Address, RFP Reference Number, the Name of the Assignment, Consultant's Name and the Address, and shall be clearly marked "**DO NOT OPEN BEFORE TECHNICAL PROPOSAL OPENING**".

17.8 If the envelopes and packages with the Proposal are not sealed and marked as required, the Client will assume no responsibility for the misplacement, loss, or premature opening of the Proposal.

17.9 The Proposal or its modifications must be sent to the address indicated in the **Data Sheet** and received by the Client no later than the deadline indicated in the **Data Sheet**, or any extension to this deadline. Any Proposal or its modification received by the Client after the deadline shall be declared late and rejected, and promptly returned unopened.

3.2 Confidentiality

18.1 From the time the Proposals are opened to the time the Contract is awarded, the Consultant should not contact the Client on any matter related to its Technical and/or Financial Proposal. Information relating to the evaluation of Proposals and award recommendations shall not be disclosed to the Consultants who submitted the Proposals or to any other party not officially concerned with the process, until the publication of the Contract award information.

18.2 Any attempt by shortlisted Consultants or anyone on behalf of the Consultant to influence improperly the Client in the evaluation of the Proposals or Contract award decisions shall result in the rejection of its Proposal.

18.3 Notwithstanding the above provisions, from the time of the Proposals' opening to the time of Contract award publication, if a Consultant wishes to contact the Client on any matter related to the selection process, it should do so only in writing.

3.3 Opening of Technical Proposals

19.1 The Client's tender opening committee shall conduct the opening of the Technical Proposals in the presence of Consultants' representatives authorized to attend (in person, or online if this option is offered in the **Data Sheet**). The opening date, time and address are stated in the **Data Sheet**. The envelopes with the Financial Proposal shall remain sealed and shall be securely stored until they are opened in accordance with Clause 23.1 of the ITC.

19.2 At the opening of the Technical Proposals the following shall be read out:

(i) The Name of the Consultant or, in case of a Joint Venture, the Name of the Joint Venture, the name of the lead member and the names of all members;

(ii) The presence or absence of a duly sealed envelope with the Financial Proposal;

(iii) Any modifications to the Proposal submitted prior to proposal submission deadline; and

(iv) Any other information deemed appropriate or as indicated in the **Data Sheet**.

3.4 Proposals Evaluation

20.1 Subject to provision of Clause 15.1 of the ITC, the evaluators of the Technical Proposals shall have no access to the Financial Proposals until the technical evaluation is concluded.

20.2 The Consultant is not permitted to alter or modify its Proposal in any way after the proposal submission deadline except as permitted under Clause 12.7 of this ITC. While evaluating the Proposals, the Client will conduct the evaluation solely on the basis of the submitted Technical and Financial Proposals.

3.5 Evaluation of Technical Proposals

21.1. The Client's evaluation committee shall evaluate the Technical Proposals on the basis of their responsiveness to the Terms of Reference and the RFP, applying the evaluation criteria, sub-criteria, and point system specified in the **Data Sheet**. Each responsive Proposal will be given a Technical score. A Proposal shall be rejected at this stage if it does not respond to important aspects of the RFP or if it fails to achieve the minimum technical score indicated in the **Data Sheet**.

3.6 Financial Proposals for QBS

22.1 Following the ranking of the Technical Proposals, when the selection is based on quality only (QBS), the top-ranked Consultant is invited to negotiate the Contract. Only the Financial Proposal of the technically top-ranked Consultants will be opened by the Client's evaluation committee. All other Financial Proposals shall be returned unopened after the Contract negotiations are successfully concluded and the Contract is signed.

3.7 Public Opening of Financial Proposals (for QCBS, FBS, and LCS methods)

23.1 After the technical evaluation is completed, the Client shall notify those Consultants whose Proposals were considered non-responsive to the RFP and TOR or did not meet the minimum qualifying technical score (and shall provide information relating to the Consultant's overall technical score) that their Financial Proposals will be returned unopened after completing the selection process and Contract signing. The Client shall simultaneously notify in writing those Consultants that have achieved the minimum overall technical score and inform them of the date, time and location for the opening of the Financial Proposals. The opening date should allow the Consultants sufficient time to make arrangements for attending the opening. The Consultant's attendance at the opening of the Financial Proposals (in person, or online if such option is indicated in the **Data Sheet**) is optional and is at the Consultant's choice.

23.2 The Financial Proposals shall be opened by the Client's evaluation committee in the presence of the representatives of those Consultants whose proposals have passed the minimum technical score. At the opening, the names of the Consultants, the overall technical scores, and the total prices shall be read aloud and recorded. Copies of the record shall be sent to all Consultants who submitted Proposals.

3.8 Correction of Errors

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

a. Time-Based Contracts

24.1.1 In the case of a Time-Based contract, the Client's evaluation committee will (a) correct any computational or arithmetical errors, and (b) adjust the prices if they fail to reflect all inputs included for the respective activities or items in the Technical Proposal.

In case of discrepancy between (i) a partial amount (sub-total) and the total amount, or (ii) between the amount derived by multiplication of unit price with quantity and the total price, or (iii) between words and figures, the former will prevail. In case of discrepancy between the Technical and Financial Proposals in indicating quantities of input, the Technical Proposal prevails and the Client's evaluation committee shall correct the quantification indicated in the Financial Proposal so as to make it consistent with the one indicated in the Technical Proposal, apply the relevant unit price included in the Financial Proposal to the corrected quantity, and correct the total Proposal cost. The above notwithstanding, in case of any discrepancies, the contract sum as quoted in words under **the SCC** shall prevail.

b. Lump-Sum Contracts

24.1.2 In the case of a Lump-Sum contract, the Consultant is deemed to have included all inputs that are necessary to perform the Services in the Financial Proposal, so neither arithmetical corrections nor price adjustments shall be made.

The total price, net of taxes understood as per Clause ITC 25 below, specified in the Financial Proposal (Form FIN-1) shall be considered as the offered price.

24.2 If the Financial Proposal is significantly lower than the Client's estimate, the Client shall require the Consultants to produce detailed price analyses for any or all items of the Financial Proposal, to demonstrate the internal consistency of those prices with the methodology, resources and schedule proposed. If it turns out that the price is abnormally low, the Financial Proposal may be declared non-compliant and rejected.

3.9 Taxes

25.1 The Client's evaluation of the Consultant's Financial Proposal shall include taxes and duties in the Client's country in accordance with the instructions in the **Data Sheet**.

3.10 Conversion to Single Currency

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

3.11 Combined Quality and Cost Evaluation

a. Quality- and Cost-Based Selection (QCBS)

27.1. In the case of QCBS, the total score is calculated by weighting the technical and financial scores and adding them as per the formula and instructions in the **Data Sheet**. The Consultant achieving the highest combined technical and financial score will be invited for negotiations.

b. Fixed-Budget Selection(FBS)

27.2. In the case of FBS, those Proposals that exceed the budget indicated in Clause14.1.4 of the **Data Sheet** shall be rejected. The Client will select the Consultant that submitted the highest-ranked Technical Proposal, and invite such Consultant to negotiate the Contract.

c. Least-Cost Selection

27.3. In the case of Least-Cost Selection (LCS), the Client will select the Consultant with the lowest evaluated total price among those consultants that achieved the minimum technical score, and invite such Consultant to negotiate the Contract.

4 D. Negotiations and Award

4.1 Negotiations

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

28.2. The Client shall prepare minutes of negotiations that are signed by the Client and the Consultant's authorized representative.

a. Availability of Key Experts

28.3. The invited Consultant shall confirm the availability of all Key Experts included in the Proposal as a pre-requisite to the negotiations, or, if applicable, a replacement in accordance with Clause 12 of the ITC. Failure to confirm the Key Experts' availability may result in the rejection of the Consultant's Proposal and the Client proceeding to negotiate the Contract with the next-ranked Consultant.

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

b. Technical negotiations

28.5. The negotiations include discussions about the Terms of Reference (TORs), the proposed methodology, the Client's inputs, the special conditions of the Contract, and finalizing the "Description of Services" as part of the Contract. These discussions shall not substantially alter the original scope of services under the TORs or the terms of the Contract and shall not modify the ranking of the Proposals.

c. Financial negotiations

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

28.7. If the selection method included cost as a factor in the evaluation, the total price stated in the Financial Proposal for a Lump-Sum contract shall not be negotiated.

28.8. In the case of a Time-Based contract, unit rates negotiations shall not take place, except when the offered Key Experts and Non-Key Experts' remuneration rates are much higher than the typically charged rates by consultants in similar contracts. In such case, the Client may ask for clarifications and, if the fees are very high, ask to change the rates.

4.2 Conclusion of Negotiations

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

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

29.3. The Client reserves the right to annul the RFP process and reject all Proposals at any time prior to contract award, without thereby incurring any liability to Consultants.

4.3 Award of Contract

30.1. After completing the negotiations the Client shall sign the Contract; if applicable, publish the award information; and promptly notify the other shortlisted Consultants.

30.2. The Consultant is expected to commence the assignment on the date and at the location specified in the **Data Sheet**.

SECTION 2. DATA SHEET

A. General	
ITC 1.1 (b) Applicable law	**Kenyan Law**
ITC 1.2(1.1)	**Name of the Client:** *Director General, Kenya Urban Road Authority (KURA)* **Method of selection**: *Quality and Cost Based Selection (QCBS)* **Type of contract:** *Time Based Contract*.
ITC 1.2(1.2)	**The name of the assignment is**: **CONSULTANCY SERVICES FOR SUPERVISION OF DEVELOPMENT OF 2,000 KM OF ROADS SUPPORTING PRIMARY GROWTH SECTORS THROUGH CONTRACTOR FACILITATED FINANCING MECHANISM (PHASE 1), LOT 18**
ITC 1.2(1.3)	A pre-proposal conference will **Not** be held:
ITC 1.2(1.4)	**The Client will provide the following inputs, Project Data, Reports if available etc. to facilitate the preparation of the Proposals**: (i) Standard specifications for Road and Bridge Construction 1986 (ii) Road Design Manual Part I – Geometric Design of Rural Roads 1979 (iii) Road Design Manual Part III – Pavement design and Materials 1987
ITC 1.3 Conflict of Interest	The following additional circumstances shall be considered as a conflict of interest: ***No Additional circumstances*** The following additional circumstances shall **not** be considered as a conflict of interest: ***No Additional Circumstances***
ITC 1.4(1.7) Unfair Competitive Advantage	**4.7** Applicable

B. Preparation of Proposals	
ITC 2.3(9.1) Language	Proposals shall be submitted in English language. All correspondence exchanges and documents shall be in English language.
ITC 2.4(10.1) Documents Comprising the Proposal	**The Proposal shall comprise the following**: **1st Inner Envelope with the Technical Proposal:** (1) Technical Proposal Submission Form (TECH 1) (2) Power of Attorney to sign the Proposal (3) Statement of Integrity (signed) (4) Description of methodology, work plan and team composition (TECH-2, TECH-3, TECH-4 and TECH-5 are provided as indicative format) AND **2nd Inner Envelope with the Financial Proposal:** (1) Financial Proposal Submission Form (FIN-1) (2) Summary of Costs (FIN-2) (3) Breakdown of Prices (FIN-3, FIN-4 and, FIN-5 provided as indicative format in case of lump-sum contract)
ITC2.5 (11.1)	**Participation of Sub-consultants, Key Experts and Non-Key Experts in more than one Proposal is permissible.**
ITC2.6(12.1) Proposal Validity	Proposals must remain valid for **120 calendar days** after the proposal submission deadline.
ITC2.7(13.1) Clarification	Clarifications may be requested **no later than 7 days** prior to the submission deadline. The contact information for requesting clarifications is: *In charge:* **DEPUTY DIRECTOR** **SUPPLY CHAIN MANAGEMENT,** **KENYA URBAN ROADS AUTHORITY** **P.O BOX 41727-00100** **NAIROBI** **E-mail: info@kura.go.ke** **A**lternate: **DIRECTOR** **URBAN ROADS DEVELOPMENT,** **KENYA URBAN ROADS AUTHORITY** **P.O BOX 41727-00100** **NAIROBI** **E-mail: info@kura.go.ke**

ITC2.8(14.1.1)	Bidding Consultants are **not** permitted to form Joint Ventures with other Consultants at this level. They shall bid for the works according to the way they were prequalified.
ITC 2.8(14.1.2) (do not use for Fixed Budget method)	**N/A**
ITC 2.8(14.1.3) for time-based contracts only	The Consultant' Proposal must include the minimum Key Experts' Time-Input. Refer to the Staff Information Provided in the T.O.R. of 189 Man-Months for Construction period and 78 for Operation and Maintenance period for DEVELOPMENT OF 2,000 KM OF ROADS SUPPORTING PRIMARY GROWTH SECTORS THROUGH CONTRACTOR FACILITATED FINANCING MECHANISM (PHASE 1) TENDER NO. KURA/PPP/237/2014-2015 (LOT 15) Project Proposals including less than the required minimum time input shall be rejected.
ITC 2.10(16.1) Reimbursable expenses	**The following items shall form the Consultant's Reimbursable Expenses** (1) a per diem allowance, including hotel, for experts for every day of absence from the home office for the purposes of the Services; (2) cost of travel by the most appropriate means of transport and the most direct practicable route; (3) Cost of Supervisory vehicles including Fuel, Insurance, Maintenance and Driver (4) cost of office accommodation, including overheads and back-stop support; (5) communications costs; (6) cost of purchase or rent or freight of any equipment required to be provided by the Consultants; (7) cost of reports production (including printing) and delivering to the Client; (8) other expenses where applicable and provisional or fixed sums (if any) *[insert relevant type of expenses, if/as applicable]*
ITC 2.10(16.2) Price Adjustment	A price adjustment provision applies to remuneration rates: **Not Applicable**
ITC 16.3 Taxes	Experts are responsible for meeting all tax liabilities arising out of the Contract**.** **No tax exemptions shall be granted**
ITC 2.10(16.4) Currency of Proposal	**The Financial Proposal shall be stated in the following currencies:**Kenya Shillings (Kshs)

	The Financial Proposal should state local costs in the Client's country currency (local currency): Yes.
ITC 3.1(17.4)	The Consultant must submit: (a) **Technical Proposal:** one (1) original and 2 paper copies + one (1) digital copy (CD)**;** (b) **Financial Proposal:** one (1) original and 2 paper copies + one (1) digital copy (CD)(one version should be in searchable PDF format and one version in MS Excel).
ITC 3.1(17.9)	**The Proposals must be submitted no later than:** **Date: 9th January, 2020** **Time: 1000 Hrs.** **The Proposal submission address is:** **4.7.1 The Director General** **KENYA URBAN ROADS AUTHORITY** **BARABARA PLAZA, BLOCK D** **AIRPORT NORTH ROAD, OPPOSITE KCAA** **P.O BOX 41727-00100** **NAIROBI.**
ITC 3.3(19.1) Opening of Technical Proposals	**An online option of the opening of the Technical Proposals is not offered**. **The opening shall take place at:** 4.7.2 **KENYA URBAN ROADS AUTHORITY** **BARABARA PLAZA, BLOCK D** **AIRPORT NORTH ROAD, OPPOSITE KCAA** **P.O BOX 41727-00100** **NAIROBI.** Date: **9th January, 2020** Time: 1000 Hrs
ITC 3.3(19.2)	**In addition, the following information will be read aloud at the opening of the Technical Proposals** a) Name of Bidder(s) (Sole Consultancy or in Joint Venture Bidding) b) The presence or absence of a duly sealed envelope with the Financial Proposal; **c)** Any modifications to the Proposal submitted prior to proposal submission deadline**.**
ITC 3.5(21.1) Evaluation of Technical Proposals	Criteria, sub-criteria, and point system for the evaluation of the Technical Proposals: Points (i) **Adequacy and quality of the proposed methodology, and work plan in responding to the Terms of Reference (TORs): 20**

	{<u>Notes to Consultant</u>: the Client will assess whether the proposed methodology is clear, responds to the TORs, work plan is realistic and implementable; overall team composition is balanced and has an appropriate skills mix; and the work plan has right input of Experts} 1. **Specific experience of the Consultant (as a firm) relevant to the Assignment:** a) Experience in supervision of roads construction and bridges including Operation and Maintenance 8 b) Experience in design of roads and bridges 4 c) Experience in carrying out environmental and Social impact studies and monitoring of Environmental and Social Mitigation Plan 4 d) Experience in similar public private partnership assignment in developing countries 4 **Total 20** **2. Adequacy and quality of the proposed methodology, and work plan in responding to the Terms of Reference (TORs):** a) Technical approach and methodology 10 b) Work plan 4 c) Organization and staffing 4 d) Understanding & comments on TOR 2 **Total 20** (ii) **Key Experts' qualifications and competence for the Assignment:** **The Key staff will be in two tier** **PROJECT KEY STAFF** Project Director Highway Engineer Pavement/Materials Engineer Contracts Engineer Structural/Bridge Engineer Project Surveyor Dispute Resolution Expert Environmentalists Material Technologist Roads Inspectors a) **Project Director**: B.Sc Eng (Civil), Professional. Eng or equivalent, 12 years' experience after graduation, completed a minimum of 3 similar projects as Project Director for an engineering and Supervising company, each with works value of at least Kshs 1000 million. Fluency in written and spoken English.

	b) **Highway Engineer:** B.Sc Eng (Civil), Professional. Eng or equivalent, 8 years' experience after graduation, completed a minimum of 2 similar projects as Highway Engineer in design and supervision, each with works value of at least Kshs. 500 million. Fluency in written and spoken English. c) **Pavement/Materials Engineer**: B.Sc Eng (Civil), Professional. Eng or equivalent, 8 years' experience after graduation, completed a minimum of 2 similar projects as Pavement/Materials Engineer, each with value of at least Kshs 500 million. Fluency in written and spoken English. d) **Contracts Engineer**: B.Sc Eng (Civil), Professional. Eng or equivalent, 8 years' experience after graduation, completed a minimum of 2 similar projects as Contract Engineer, each with works value of at least Ksh. 500 million. Fluency in written and spoken English. e) **Structural/Bridge Engineer**: B.Sc Eng (Civil or structural), Professional. Eng or equivalent, 8 years' experience after graduation, completed a minimum of 2 similar projects as Structural/Bridge Engineer, each bridge with span of not less than 20m minimum span. Fluency in written and spoken English. f**) Project Surveyor**: B.Sc (Survey & Photogrammetry) or equivalent, 8 years' experience after graduation, completed a minimum of 2 design review and construction supervision assignments as Surveyor, each with works value of at least Kshs 500 million. Fluency in written and spoken English. g) **Dispute Resolution Expert**: B.Sc Eng (Civil), B.Sc. Quantity Survey and must be a registered member of the professional body of the relevant discipline, should be a member of the Chartered Institute of Arbitrators, Kenya Chapter or equivalent, 8 years' experience post graduation in supervision of civil works, completed a minimum of 2 similar projects as Dispute Resolution Experts, each with works value of at least Ksh. 200 million. Fluency in written and spoken English. h) Environmentalist or (Sociologist/Resettlement Specialist): Bachelor's Degree in relevant discipline and 8 years' experience after graduation; registered by the National Environment Management Authority as EIA Lead Expert and has completed at least 2 similar projects as an Environmentalist i) Materials Technologist: Diploma in civil Eng. over 10 years' experience after graduation completed at least 2 similar projects as Pavement/Materials Technologist, each with value of at least Kshs 100 million. Fluency in written and spoken English. (j) Road Inspectors: Diploma in civil Eng. over 10 years' experience after graduation completed at least 2 similar projects in roads construction supervision. Fluency in written and spoken English. {Notes to Consultant: each position number corresponds to the same for the Key Experts in Form TECH-4 to be prepared by the Consultant} a) Position K-1: [Project Director] [10 points] b) Position K-2: [Highway Engineer] [8 points]

	c) Position K-3: [Pavement/Materials Engineer] [7 points] d) Position K -4:[Structural/Bridge Engineer] [7 Points] e) Position K-5: [Project Surveyor] [7 Points] f) Position K-6: [Dispute Resolution Expert] [7 Points] g) Position K-7: [Environmentalist] [5 Points] h) Position K-8: [Materials Technologist] [7 Points] i) Position K-9: [Road Inspectors] [7 Points] j) Position K-10: [Contracts Engineer] [5 Points] **Total points for criterion (ii): 70 Points** The number of points to be assigned to each of the above positions shall be determined considering the following three sub-criteria and relevant percentage weights: 1) General qualifications (general education, training, and experience): 30% 2) Adequacy for the Assignment (relevant education, training, experience in the sector/similar assignments) : 60% 3) Relevant experience in the region (working level fluency in local language(s)/knowledge of local culture or administrative system, government organization, etc.): 10% Total weight: 100% (iii) Transfer of knowledge (Training) program (relevance of approach and methodology): [5 points] (iv) Participation by nationals among proposed Key Experts [10] Sub-criteria shall be applicable provided that the ratio of the national Key Experts' time-input (in person-months) to the total number of Key Experts' time-input (in person-months) in the Consultant's Technical Proposal is equal or greater than 30% **Total points for the four criteria*:* 145** **Percentage Score =** $\frac{X*100}{145}$ **Where X = The total score obtained by the applicant** **The minimum technical score (St) required to pass is: 70**
ITC 3.7(23.1)	An online option of the opening of the Financial Proposals is **not** offered

ITC 3.9(25.1) **Taxes**	All taxes payable under the applicable law in Kenya are payable and should be included in the Unit Rate by the consultant. No tax exemptions shall be given.
ITC 3.10(26.1)	**The single currency for the conversion of all prices expressed in various currencies into a single one is**:*[Kenya Shillings]* **The official source of the selling (exchange) rate is**: Central Bank of Kenya (CBK) The date of the exchange rate is the **latest date** of the deadline for submission**.**
ITC3.11(a) (27.1)Combined Quality and Cost Evaluation **(QCBS only)**	**The lowest evaluated Financial Proposal (Fm) is given the maximum financial score (Sf) of 100.** **The formula for determining the financial scores (Sf) of all other Proposals is calculated as following:** Sf = 100 x Fm/ F, in which "Sf" is the financial score, "Fm" is the lowest price, and "F" the price of the proposal under consideration. **The weights given to the Technical (T) and Financial (F) Proposals are**: **T** = **80,** and **P** = **20** Proposals are ranked according to their combined technical (St) and financial (Sf) scores using the weights (T = the weight given to the Technical Proposal; F = the weight given to the Financial Proposal; T + F = 1) as following: S = St x T% + Sf x F%.
	D. Negotiations and Award
ITC 4.1(28.1)	**Expected date and address for contract negotiations:** **Date**: By Notice **Address: {**Insert Physical and Postal addresses of CA**}**
ITC 4.3(30.2)	**Expected date for the commencement of the Services:** **Date**: By Notice

APPENDIX TO TECHNICAL PROPOSAL SUBMISSION FORM

(Format not to be altered)

Statement of Integrity, Eligibility and Social and Environmental Responsibility

Reference name of the RFP: CONSULTANCY SERVICES FOR SUPERVISION OF THE ROAD ANNUITY PROGRAMME: DEVELOPMENT OF 2,000 KM OF ROADS SUPPORTING PRIMARY GROWTH SECTORS THROUGH CONTRACTOR FACILITATED FINANCING MECHANISM (PHASE 1), LOT 18

To: KENYA URBAN ROADS AUTHORITY

1. We recognise and accept that ***GoK (Government of Kenya)*** only finances projects of the Contracting Authority subject to its own conditions which are set out in the Financing Agreement which it has entered into with the Contracting Authority. As a matter of consequence, no legal relationship exists between GOK and our company, our joint venture or our subcontractors. The Contracting Authority retains exclusive responsibility for the preparation and implementation of the contract procurement and its subsequent performance.
2. We hereby certify that neither we nor any other member of our joint venture are in any of the following situations:

   2.1) being bankrupt, wound up or ceasing our activities, having our activities administered by the courts, having entered into receivership, reorganisation or being in any analogous situation arising from any similar procedure;

   2.2) having been convicted, within the past five years by decision of a court, which has the force of *res judicata* in the country where the project is implemented, of one of the acts mentioned in sections 6.1 to 6.4 below or of any other offense committed during the procurement or performance of a contract[1];

   2.3) being listed for financial sanctions by the United Nations for the purposes of fight-against-terrorist financing or threat to international peace and security;

   2.4) having committed serious professional misconduct within the past five years during the procurement or performance of a contract;

   2.5) not having fulfilled our obligations regarding the payment of social security contributions or taxes in accordance with the legal provisions of either the country where we are established or the Contracting Authority's country;

   2.6) having been convicted, within the past five years by a court decision, which has the force of *res judicata,* of one of the acts mentioned in sections 6.1 to 6.4 below or of any

[1] In the event of such conviction, you may attach to this Statement of Integrity supporting information showing that this conviction is not relevant in the context of this GOK -financed contract.

other offense committed during the procurement or performance of an GOK -financed contract;

2.7) having committed misrepresentation in documentation requested by the Beneficiary as part of the contract procurement procedure.

3. We hereby certify that neither we, nor any of the members of our joint venture are in any of the following situations of conflict of interest:

   3.1) being an affiliate controlled by the Contracting Authority or a shareholder controlling the Contracting Authority, unless the stemming conflict of interest has been brought to the attention of GOK and resolved to its satisfaction;

   3.2) having a business or family relationship with a Contracting Authority's staff involved in the selection procedure or the supervision of the resulting contract, unless the stemming conflict of interest has been brought to the attention of GOK and resolved to its satisfaction;

   3.3) being controlled by or controlling another bidder or being under common control with another bidder, or receiving from or granting subsidies directly or indirectly to another bidder, having the same legal representative as another bidder, maintaining direct or indirect contacts with another bidder which allows us to have or give access to information contained in the respective bids, influencing them or influencing decisions of the Contracting Authority;

   3.4) being engaged in a consultancy activity, which, by its nature, may be in conflict with the assignments that we would carry out for the Contracting Authority;

   3.5) in the case of a works or goods procurement procedure:

      i. having prepared or having been associated with a consultant who prepared specifications, drawings, calculations and other documentation that are subject of the bid;

      ii. having been recruited (or being proposed to be recruited) ourselves or any of our affiliates, to carry out works supervision or inspection for this contract;

4. If we are a government-owned entity, we certify that we have legal and financial autonomy and that we operate under commercial laws and regulations.

5. We undertake to bring to the attention of the Contracting Authority, which will inform GoK, any change in situation with regard to points 2 to 4 here above.

6. In the context of procurement and performance of the contract:

   6.1) We have not and we will not engage in any dishonest conduct (act or omission) deliberately intended to deceive others, to intentionally conceal items, to violate or vitiate someone's consent, to make them circumvent legal or regulatory requirements and/or to violate their internal rules in order to obtain illegitimate profit.

   6.2) we have not and we will not engage in any dishonest conduct (act or omission) contrary to our legal or regulatory obligations or our internal rules in order to obtain illegitimate profit.

   6.3) We have not promised, offered or given and we will not promise, offer or give, directly or indirectly to (i) any person who holds a legislative, executive, administrative or judicial mandate within the State of the Contracting Authority regardless of whether that person was nominated or elected, regardless of the permanent or temporary, paid or unpaid nature of the position and regardless of the hierarchical level the person occupies, (ii) any other person who performs a public function, including for a State institution or a State-owned company, or who provides a public service, or (iii) any other person defined as a public officer by the national laws of the Contracting Authority, an undue advantage of any kind, for himself or for another person or entity, for such public officer to act or refrain from acting in his official capacity.

6.4) We have not promised, offered or given and we will not promise, offer or give, directly or indirectly to any private person who occupies an executive position in a private sector entity or works for such an entity, regardless of the nature of his/her capacity, any undue advantage of any kind, for himself or another person or entity for such private person to perform or refrain from performing any act in breach of its legal, contractual or professional obligations.

6.5) We have not and we will not engage in any practice likely to influence the contract award process to the detriment of the Contracting Authority and, in particular, in any anti-competitive practice having for object or for effect to prevent, restrict or distort competition, namely by limiting access to the market or the free exercise of competition by other undertakings.

6.6) Neither we nor any of the members of our joint venture shall acquire or supply any equipment nor operate in any sectors under an embargo of the United Nations.

6.7) We commit ourselves to comply with and ensure that all of our subcontractors comply with international environmental and labour standards, consistent with laws and regulations applicable in the country of implementation of the contract, including the fundamental conventions of the International Labour Organisation (ILO) and international environmental treaties,. Moreover, we shall implement environmental and social risks mitigation measures such as specified in the environmental and social management plan or, if appropriate, in the environmental and social impact assessment notice provided by the Contracting Authority.

7. We, as well as members of our joint venture and our subcontractors authorise GOK to inspect accounts, records and other documents relating to the procurement and performance of the Contract and to have them audited by auditors appointed by GOK .

Name:____________________ In the capacity of _____________________

Signature:______________________________

Duly empowered to sign the proposal in the name and on behalf of[2]____________________

[2] In case of joint venture, insert the name of the joint venture. The person who will sign the proposal on behalf of the members shall attach a power of attorney from all members.

FORM TECH-1

TECHNICAL PROPOSAL SUBMISSION FORM

Dear Sirs:

We, the undersigned, offer to provide the Consultancy Services for Supervision of {insert project name and lot number} in accordance with your Request for Proposals dated ***(Insert Date)*** and our Proposal. We are hereby submitting our Proposal, which includes this Technical Proposal and a Financial Proposal sealed in a separate envelope.

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

{OR

If the Consultant's Proposal includes Sub-consultants, insert the following: We are submitting our Proposal with the following firms as Sub-consultants: {*Insert a list with full name and address of each Sub-consultant.*}

We hereby declare that:

(a) All the information and statements made in this Proposal are true and we accept that any misinterpretation or misrepresentation contained in this Proposal may lead to our disqualification by the Client and/or may be sanctioned by the Bank.

(b) Our Proposal shall be valid and remain binding upon us for the period of time specified in the Data Sheet, Clause 12.1.

(c) We have no conflict of interest in accordance with ITC 3.

(d) We meet the eligibility requirements as stated in ITC 6, and we confirm our understanding of our obligation to abide by KURA's or GoK policy in regard to Corrupt and fraudulent practices as per ITC 5.

(e) In competing for (and, if the award is made to us, in executing) the Contract, we undertake to observe the laws against fraud and corruption, including bribery, in force in the country of the Client.

(f) Except as stated in the Data Sheet, Clause 12.1, we undertake to negotiate a Contract on the basis of the proposed Key Experts. We accept that the substitution of Key Experts for reasons other than those stated in ITC Clause 12 and ITC Clause 28.4 may lead to the termination of Contract negotiations.

(g) Our Proposal is binding upon us and subject to any modifications resulting from the Contract negotiations

We undertake, if our Proposal is accepted and the Contract is signed, to initiate the Services related to the assignment no later than the date indicated in Clause 30.2 of the Data Sheet.

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

We remain,

Yours sincerely,

Authorized Signature {In full and initials}:……………………………………………..

Name and Title of Signatory:………………………………………………………...

Name of Consultant (company's name or JV's name):…………………………………

In the capacity of:

Address:

Contact information (phone and e-mail):

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

TECHNICAL PROPOSAL (FORM TECH-2)

{Below is a suggested structure of the Technical Proposal}

CONSULTANT'S ORGANIZATION AND EXPERIENCE

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

A - CONSULTANT'S ORGANIZATION

1. Provide here a brief description of the background and organization of your company, and – in case of a joint venture – of each member for this assignment.

2. Include organizational chart, a list of Board of Directors, and beneficial ownership

B - CONSULTANT'S EXPERIENCE

1. List only previous similar assignments successfully completed in the last five (5) years.

2. List only those assignments for which the Consultant was legally contracted by the Client as a company or was one of the joint venture partners. Assignments completed by the Consultant's individual experts working privately or through other consulting firms cannot be claimed as the relevant experience of the Consultant, or that of the Consultant's partners or sub-consultants, but can be claimed by the Experts themselves in their CVs. The Consultant should attach proof of assigments inform of certified completion certificates from previous clients or substantiate the claimed experience by presenting copies of relevant documents and references.

FORM TECH-3

COMMENTS AND SUGGESTIONS ON THE TERMS OF REFERENCE, STAFF, AND FACILITIES TO BE PROVIDED BY THE CLIENT

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

A - On the Terms of Reference

{Improvements to the Terms of Reference, if any}

B - On Counterpart Staff and Facilities

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

FORM TECH-4

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

Form TECH-4: a description of the approach, methodology and work plan for performing the assignment, including a detailed description of the proposed methodology and staffing for training, if the Terms of Reference specify training as a specific component of the assignment.
{Suggested structure of your Technical Proposal (in FTP format):
a) Technical Approach and Methodology
b) Work Plan
c) Organization and Staffing}

Technical Approach and Methodology.

Please explain your understanding of the Objectives of the assignment as outlined in the Terms of Reference (TORs), the Technical Approach, and the Methodology you would adopt for implementing the tasks to deliver the expected output(s), and the degree of detail of such output. Please do not repeat/copy the TORs in here.

b) **Work Plan.**

Please outline the plan for the implementation of the main Activities/tasks of the assignment, their content and duration, phasing and interrelations, milestones (including interim approvals by the Client), and tentative delivery dates of the reports. The proposed work plan should be consistent with the technical approach and methodology, showing your understanding of the TOR and ability to translate them into a feasible working plan. A list of the final documents (including reports) to be delivered as final output(s) should be included here. The work plan should be consistent with the Work Schedule Form.

Organization and Staffing.

Please describe the structure and composition of your team, including the list of the Key Experts, Non-Key Experts, and relevant technical and administrative support staff.

FORM TECH-3 (INDICATIVE FORMAT)

WORK SCHEDULE AND PLANNING FOR DELIVERABLES N°	Deliverables [1] (D-..)	Months[2] [3]											
		1	2	3	4	5	6	7	8	9	.....	n	TOTAL
D-1	{e.g., Deliverable #1: Report A												
	1) Data Collection												
	2) Drafting												
	3) Inception Report												
	4) Incorporating Comments												
	5)												
	6) delivery of final report to Client}												
D-2	{e.g., Deliverable #2 :...............}												
n													

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

FORM TECH-4 (INDICATIVE FORMAT)
TEAM COMPOSITION, ASSIGNMENT, AND KEY EXPERTS’ INPUTS

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

1 For Key Experts, the input should be indicated individually for the same positions as required under the Data Sheet ITC21.1.
2 Months are counted from the start of the assignment/mobilization. One (1) month equals twenty two (22) working (billable) days. One working (billable) day shall be not less than eight (8) working (billable) hours.
3 "Home" means work in the office in the expert's country of residence. "Field" work means work carried out in the Client's country or any other country outside the expert's country of residence.

Full time input

Part time input

FORM TECH-5 (INDICATIVE FORMAT)

CURRICULUM VITAE (CV)

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

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

____

____

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

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

Membership in Professional Associations and Publications:

____

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

____

Adequacy for the Assignment:

Detailed Tasks Assigned to Consultant's Team of Experts:	**Reference to Prior Work/Assignments that Best Illustrates Capability to Handle the Assigned Tasks**
{List all deliverables/tasks as in TECH- 3 in which the Expert will be involved)	

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

(NOTE THE CV SHALL BE SIGNED BY THE EXPERT ON OR AFTER THE DATE OF LETTER OF INVITATION. ANY CV SIGNED BEFORE THE DATE OF LETTER OF INVITATION SHALL BE DISREGADED DURING THE EVALUATION PROCESS)

Certification:

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

{day/month/year}

Name of Expert Signature Date

{day/month/year}

Name of authorized Signature Date

Representative of the Consultant

(The same who signs the Proposal)

SECTION 4. FINANCIAL PROPOSAL - STANDARD FORMS

FORM FIN – 1 (format not to be altered)

FINANCIAL PROPOSAL SUBMISSION FORM

{Location, Date}

To: **The Director General**
KENYA URBAN ROAD AUTHORITY
{Insert Physical and Postal addresses of CA}

Dear Sirs:

We, the undersigned, offer to provide the Consultancy Services for Supervision of {insert project name and lot number} in accordance with your Request for Proposal dated [Insert Date] and our Technical Proposal.

Our attached Financial Proposal is for the amount of {Indicate the corresponding to the amount(s) currency (ies)}{Insert amount(s) in words and figures}, *[Insert "including" or "excluding"] of all indirect local taxes in accordance with Clause 25.1 in the Data Sheet.* The estimated amount of local indirect taxes is {Insert currency} {Insert amount in words and figures} which shall be confirmed or adjusted, if needed, during negotiations. {Please note that all amounts shall be the same as in Form FIN-2}.

Our Financial Proposal shall be binding upon us subject to the modifications resulting from Contract negotiations, up to expiration of the validity period of the Proposal, i.e. before the date indicated in Clause 12.1 of the Data Sheet.

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

We remain,

Yours sincerely,

Authorized Signature {In full and initials}: ____________________________________

Name and Title of Signatory: ____

In the capacity of: ____

Address: ____

E-mail:__________________________

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

FORM FIN-2 SUMMARY OF COSTS

SUMMARY OF COSTS

	Cost	
	{Consultant must state the proposed Costs in accordance with Clause **16.4 of the Data Sheet**; delete columns which are not used}	
	{*Insert Foreign Currency* }	{*Insert Local Currency*}
Summary of Cost of the Financial Proposal (excluding taxes)	Do not Use	
Activity 1 (deliverable 1)	Do not Use	
Activity 2 (deliverable 2)	Do not Use	
….	Do not Use	
Activity n(deliverable n)	Do not Use	
Subtotal 1(sum of Activity 1 ….n) **……………A**	Do not Use	
Add 10% for Contingencies(10% of A)……….**B**	Do not Use	
Subtotal 2(A+B)………………………………..C	Do not Use	
VAT(16% of C)	Do not Use	

Total Cost of the Financial Proposal (excluding taxes): {Should match with the amount in Form FIN-1}	Do not Use	

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

FORM FIN-3 BREAKDOWN OF REMUNERATION (INDICATIVE FORMAT FOR LUMP-SUM CONTRACT) When used for Lump-Sum contract assignment, information to be provided in this Form shall only be used to demonstrate the basis for the calculation of the Contract's ceiling amount; to calculate applicable taxes at contract negotiations; and, if needed, to establish payments to the Consultant for possible additional services requested by the Client. This Form shall not be used as a basis for payments under Lump-Sum contracts **A. Remuneration**____

No.	**Name**	**Position (as in TECH-4)**	**Person-month Remuneration Rate (excluding Value Added Tax but including all other statutory taxes and charges)**	**Time Input in Person/Month** (from TECH-4)	{Foreign *Currency- as in FIN-2*}	{*Local Currency- as in FIN-2}*
	Key Experts					
K-1			[*Home*]			
			[*Field*]			
K-2						
	Non-Key Experts					

N-1			[*Home*]			
N-2			[*Field*]			
	Total Costs (excl. tax)					

FORM FIN-4 BREAKDOWN OF OTHER EXPENSES (INDICATIVE FORMAT FOR LUMP-SUM CONTRACT)

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

B. Other Expenses____

N°	**Type of Other Expenses (specify LS or reimbursable for each item)**	**Unit**	**Unit Cost (tax excl.))**	**Quantity**	{Foreign Currency- as in FIN-2}	{Local Currency- as in FIN-2}
	{e.g., Per diem	{Day}				
	{e.g., International flights}	{Ticket }				
	{e.g., In/out airport transportation}	{Trip}				
	{e.g., Communication costs between Insert place and Insert place}					
	{ e.g., reproduction of					
	{e.g., Office rent}					
	....					
	{Training of the Client's personnel – if required in TOR}					
			Total Costs (excl. tax)			

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

FORM FIN-5 BREAKDOWN COST OF PROVISION OF SUPERVISORY VEHICLES

S/No	Description	Unit	Qty	Rate	Amount
1	Provide with driver, fuel and maintain one (1) new 4WD fully loaded station wagon of minimum diesel engine capacity 3000cc(with unlimited mileage per month)	veh Month	36		
2	Ditto item 1, but One (1) new 4WD fully loaded double cabin pick-ups of minimum diesel engine capacity 2700cc(with unlimited mileage per month)	veh Month	36		
3	Ditto item 1 but two (2) new 4WD standard double cabin pick-ups of minimum diesel engine capacity 2700cc(with unlimited mileage per month)	veh Month	72		
4	Ditto item 1, but two (2) new 4WD Single cabin pick-up with fibre glass body of minimum diesel engine capacity 3000cc(with unlimited mileage per month)	veh Month	72		

.

SECTION 5. ELIGIBILITY CRITERIA

a. Natural or legal persons (including all members of a joint venture or any of their subcontractors) shall not be awarded an Government (GoK) financed contract if, on the date of submission of an application or of a bid or on the date of award of a contract, they:

(i) are bankrupt or being wound up or ceasing their activities, are having their activities administered by the courts, have entered into receivership, or are in any analogous situation arising from a similar procedure;

(ii) have been convicted within the past five years by court decision, which has the force of *res judicata* in the country where the project is implemented, of fraud or corruption or any other offence committed during the procurement or performance of a contract, unless they provide supporting information together with their Statement of Integrity (Form available as Appendix to Letter of Bid) which shows that this conviction is not relevant in the context of this Government (GoK) financed project;

(iii) have committed serious professional misconduct within the past five years during the procurement or performance of a contract, as evidenced by any means by the Employer;

(iv) have not fulfilled their obligations regarding the payment of social security contributions or taxes in accordance with the legal provisions of the country where they are established or the Employer's country;

(v) have been convicted within the past five years by court decision, which has the force of *res judicata* of fraud or corruption or any other offence committed in the context of an Agency-financed contract procurement or performance ;

(vi) Are subject to an exclusion decision of the World Bank, since 30 May 2012, and are listed on the website http://www.worldbank.org/debarr, unless they provide supporting information together with their Statement of Integrity (Form available as Appendix to Letter of Bid) which shows that this exclusion is not relevant in the context of this Agency-financed project

(vii) have committed misrepresentation in documentation requested by the Employer as part of the contract procurement procedure;

b. Bidders that are Government-owned enterprises or institutions may participate only if they can establish that they (i) are legally and financially autonomous (ii) operate under commercial law. To be eligible, a government-owned enterprise or institution shall establish to the Agency's satisfaction, through all relevant documents, including its Charter and other information the Agency may request, that it: (i) is a legal entity separate from their government (ii) does not currently receive substantial subsidies or budget support; (iii) operates like any commercial enterprise, and, inter alia, is not obliged to pass on its surplus to their government, can acquire rights and liabilities, borrow funds and be liable for repayment of its debts, and can be declared bankrupt.

SECTION 6. AGENCY POLICY – CORRUPT AND FRAUDULENT PRACTICES – SOCIAL AND ENVIRONMENTAL RESPONSIBILITY

1. Corrupt and Fraudulent Practices

The Employer, the Implementing Agency and the contractors, suppliers or consultants must observe the highest standard of ethics during contract procurement and performance.

The Agency reserves the right to take any action it deems appropriate to check that these ethics rules are observed and reserves, in particular, the rights to:

- reject a proposal for a contract award if it is established that during the selection process the bidder that is recommended for the award has been convicted of corruption, directly or by means of an agent, or has engaged in fraud or anti-competitive practices in view of being awarded the Contract;
- declare mis-procurement when it is established that, at any time, the Employer, the contractor, the supplier, the consultant or its representatives have engaged in acts of corruption, fraud or anti-competitive practices during the contract procurement or performance without the Employer having taken appropriate action in due time satisfactory to the Agency to remedy the situation, including by failing to inform the Agency at the time they knew of such practices.

The Agency defines, for the purposes of this provision, the terms set forth below as follows:

(a) Corruption of a public officer means:

- the act of promising, offering or giving to a public officer, directly or indirectly, an undue advantage of any kind for himself or for another person or entity, for such public officer to act or refrain from acting in his official capacity; or
- the act by which a public officer solicits or accepts, directly or indirectly, an undue advantage of any kind for himself or for another person or entity, for such public officer to act or refrain from acting in his official capacity.

(b) A *"public officer"* shall be construed as meaning:

- any person who holds a legislative, executive, administrative or judicial mandate (within the State of the Employer) regardless of whether that person was nominated or elected, regardless of the permanent or temporary, paid or unpaid nature of the position and regardless of the hierarchical level the person occupies;
- any other person who performs a public function, including for a State institution or a State-owned company, or who provides a public service;
- any other person defined as a public officer by the national laws of the Employer.

(c) Corruption of a private person means:

- the act of promising, offering or giving to any person other than a public officer, directly or indirectly, an undue advantage of any kind for himself or for another person or entity, for such person to perform or refrain from performing any act in breach of its legal, contractual or professional obligations; or

- the act by which any person other than a public officer solicits or accepts, directly or indirectly, an undue advantage of any kind for himself or for another person or entity, for such person to perform or refrain from performing any act in breach of its legal, contractual or professional obligations.

(d) Fraud means any dishonest conduct (act or omission), whether or not it constitutes a criminal offence, deliberately intended to deceive others, to intentionally conceal items, to violate or vitiate consent, to circumvent legal or regulatory requirements and/or to violate internal rules in order to obtain illegitimate profit.

(e) Anti-competitive practices means:

- any concerted or implied practices which have as their object or effect the prevention, restriction or distortion of competition within a marketplace, especially where they (i) limit access to the marketplace or free exercise of competition by other undertakings, (ii) prevent free, competition-driven price determination by artificially causing price increases or decreases, (iii) restrict or control production, markets, investments or technical progress; or (iv) divide up market shares or sources of supply.
- any abuse by one undertaking or a group of undertakings which hold a dominant position on an internal market or on a substantial part of it.
- any practice whereby prices are quoted or set unreasonably low, the object of which is to eliminate an undertaking or any of its products from a market or to prevent it from entering the market.

2. Social and Environmental Responsibility

In order to promote sustainable development, the Agency seeks to ensure that internationally recognised environmental and social standards are complied with. Candidates for Government (GoK) -financed contracts shall consequently undertake to:

i) comply with and ensure that all their subcontractors comply with international environmental and labour standards, consistent with applicable law and regulations in the country of implementation of the Project, including the fundamental conventions of the International Labour Organisation (ILO) and international environmental treaties;

ii) Adopt any environmental and social risk mitigations measures as defined in the environmental and social management plan or in the environmental and social impact notice issued by the Employer.

SECTION 7: TERMS OF REFERENCE

TERMS OF REFERENCE FOR CONSULTANCY SERVICES FOR SUPERVISION OF THE DEVELOPMENT OF 2,000 KM OF ROADS SUPPORTING PRIMARY GROWTH SECTORS THROUGH CONTRACTOR FACILITATED FINANCING MECHANISM (PHASE 1), LOT 18

General

The Government of the Republic of Kenya through the Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works represented by the Kenya Urban Roads Authority (KURA), being a state corporation established under the Kenya Roads Act, 2007 has identified the need to construct roads under LOT 18 and upgrade to bitumen standard under the Roads 10,000 programme. These roads are intended to support the primary growth sectors of Commerce, Tourism, Agriculture and Rural Production, and Extractive Industries. The Project is being implemented under Finance, Design, Build, Maintain and Transfer (FDBMT) arrangement.

The project roads with a total length of 45Km are located in various Counties in Central and Eastern regions of the country as follows:

County	Road Name	Road length (Km)
Kakamega	Kakamega - Ilesi Road	7.6 Km
	Lutonyi - Kakamega Road	3.0 Km
Vihiga	Vihiga Chavakali - Munoywa - Kiritu	6.0Km
Bungoma	Mateka – Samoia Road	6.3 Km
	Mateka- Mwanda - Siritanyi - A104 Road	7.2 Km
Busia	Busia (Jnc B1) - Alupe (Jnc C43) Bypass	5.0 Km
	TOTAL LENGTH	**35.1Km**

The Authority therefore sought to procure Consultants with the capability to fulfil the role of an Independent Expert (Engineer) as set out in the Public Finance Management (Roads Annuity Fund) Regulations, 2015. The selected Consulting firm shall have the requisite capacity for and be responsible for their obligations during the design, construction, and maintenance period of the contract. The Consulting firm shall perform its duties for a period of three (3) years after which the Contract shall be terminated, renewed or reviewed.

1 Scope

1.1 These Terms of Reference for the Independent Expert (the "**TOR**") are being specified pursuant to the Project Agreement dated 10th May, 2019 (the "**Agreement**"), which has been entered into between the Contracting Authority and The Consortium of Lee Construction Ltd, Cape Consult Limited and Mota-Engil Engenharia E Construcao Africa, S. A (the "**Service Provider**") for the roads in **LOT 18** on Finance, Design, Build, Maintain and Transfer on Annuity (FDBMT Annuity) basis[a copy which is available for review from the office of Director (Urban Roads Development).

1.2 This TOR shall apply to the Supervision for the construction, operation and maintenance of the Project Roads.

2 Definitions and interpretation

2.1 The words and expressions beginning with or in capital letters used in this TOR and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement.

2.2 References to Clauses and Schedules in this TOR shall, except where the context otherwise requires, be deemed to be references to the Clauses and Schedules of the Project Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.

2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Agreement shall apply, mutatis mutandis, to this TOR.

3 Role and functions of the Independent Expert

Objectives

3.1

The Independent Expert shall perform the following obligations pursuant to the provisions of the Project Agreement:

(i) Certification of the Drawings and Documents as set forth in Paragraph 4;

(ii) Certification, inspection and monitoring of Construction Works as set forth in Paragraph 5;

(iii) Conducting tests for purposes of certification of construction and issuing Completion/ Provisional Certificate as set forth in Paragraph 5;

(iv) Certification, inspection and monitoring of the Service Provider's O&M Obligations as set forth in Paragraph 6;

(v) Certification, inspection and monitoring of the compliance to Divestment Requirements as set forth in Paragraph 7;

(vi) Determining, as required under the Project Agreement, the costs of any works or services and/or their reasonableness;

(vii) Determining, as required under the Project Agreement, the period or any Extension thereof, for performing any duty or obligation;

(viii) Assisting the Parties in resolution of disputes as set forth in Paragraph 9;

(ix) Verifying and certifying traffic counts and surveys undertaken by the Service

(x) Provider;

(xi) Perform other project related tasks requested by either or both of the parties;

(xii) Certifying the amount of compensation due to the Service Provider under the relevant provisions of the Project Agreement, including compensation in respect of Gross Vehicle Weight

(xiii) Review all periodic reports required to be prepared and submitted by the Service Provider under the Project Agreement and submit comments to the Contracting Authority on such reports

(xiv) Perform any independent and/or random tests required for purposes of monitoring, inspecting or certifying the Service Provider's obligations under the Project Agreement;

(xv) Pursuant to the GOK Capital Contribution Escrow Account Agreement[3], issue Instruction Letters (as defined therein) authorising the release of payments from the GOK Capital Contribution Escrow Account in the manner contemplated by Clause 24.2 of the Project Agreement.

(xvi) Undertaking all other duties and functions in accordance with the Project Agreement, Schedules and other clauses in this Terms of Reference.

3.2 The Independent Expert shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

4 Drawings

4.1 The Independent Expert shall undertake a detailed review of the Drawings to be furnished by the Service Provider along with supporting data, including the detailed design, design worksheets and computations, geo-technical and hydrological investigations, characteristics of materials from borrow areas and quarry sites, topographical surveys and traffic surveys. The Independent Expert shall complete such review and send its comments/observations to the Contracting Authority and the Service Provider within 15 (fifteen) days of receipt of such Drawings. In particular, such comments shall specify

[3] CA to add definition

the conformity or otherwise of such Drawings with the standards and specifications set forth in Schedule D of the Schedule to the Project Agreement.

4.2 The Independent Expert shall review any modified Drawings or supporting Documents sent to it by the Service Provider and furnish its comments within 7 (seven) days of receiving such modified Drawings or Documents or within the time limit set out in the Project Agreement .

4.3 The Independent Expert shall review the Safety Report and furnish its comments thereon to the Contracting Authority within 7 (seven) days of receiving such report or within the time limit set out in the Project Agreement .

4.4 The Independent Expert shall review the construction methodology, quality control plan and manual and the procurement, engineering and construction time schedule sent to it by the Service Provider and furnish its comments within 15 (fifteen) days of receipt thereof or within the time limit set out in the Project Agreement .

4.5 In case that the Drawings will be such that Additional Land needs to be acquired, the Independent Expert shall review the designs and certify that Additional Land is needed to comply with the Drawings.

5 Construction Works

5.1 In respect of the Drawings, Documents and Safety Report received by the Independent Expert for its review and comments during the Construction Period, the provisions of Paragraph 4 shall apply, mutatis mutandis.

5.2 The Independent Expert shall review the monthly progress report furnished by the Service Provider and send its comments thereon to the Contracting Authority and the Service Provider within 7 (seven) days of receipt of such report. The Independent Expert shall also submit a quarterly report certifying if the milestones set forth in Schedule G have been achieved or not.

5.3 The Independent Expert shall inspect the Construction Works and the Project Roads once every month, preferably after receipt of the monthly progress report from the Service Provider, but before the 20th (twentieth) day of each month in any case, and make out a report of such inspection (the "**Inspection Report**") setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, achievement of the project milestones, and conformity of Construction Works with the Output Specifications. In a separate section of the Inspection Report, the Independent Expert shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the Project Roads. The Inspection Report shall also contain a review of the maintenance of the existing lanes in conformity with the provisions of the Agreement. The Independent Expert shall send a copy of its Inspection Report to the Contracting Authority and the Service Provider within 7 (seven) days of the inspection.

5.4 The Independent Expert may inspect the Project Roads more than once in a month if any lapses, defects or deficiencies require such inspections.

5.5 For determining that the Construction Works conform to the Output Specifications and the standards and specifications set forth in Schedule D, the Independent Expert shall require the Service Provider to carry out, or cause to be carried out, tests on a sample basis, to be specified in a Quality Control Plan included by the Service Provider in its Methods Statement in accordance with Good Industry Practice for quality control. For purposes of this paragraph 5.5, the tests specified in the Standard Specifications for Road and Bridge Works issued by MOTI and the related manuals (the "**Quality Control Manuals**") or any modification/substitution thereof shall be deemed to be tests conforming to Good Industry Practice for quality control and assurance. The Independent Expert shall certify that the tests were conducted in a fair and efficient manner, and shall review the results thereof. The Independent Expert may conduct its own independent, random, sampling tests consistent with its own Quality Assurance Plan in the process of certifying the works of the Service Provider.

5.6 The sample size of the tests, to be conducted by the Independent Expert under paragraph 5.5, shall comprise 10% (ten per cent) of the quantity or number of tests prescribed for each category or type of tests in the Quality Control/Assurance Plans/Manuals; provided that the Independent Expert may, for reasons to be recorded in writing, increase the aforesaid sample size by up to 10% (ten per cent) for certain categories or types of tests.

5.7 The timing of tests referred to in paragraph 5.6, and the criteria for acceptance/ rejection of their results shall be in accordance with the Quality Assurance Plan. The tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the tests that may be carried out by the Service Provider for its own quality control in accordance with Good Industry Practice.

5.8 In the event that the Service Provider carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Expert shall certify that the Service Provider carried out tests to determine that such remedial works have brought the Construction Works into conformity with the Standards and Specifications (Schedule D) and Output Specifications (Schedule M), and the provisions of this Paragraph 5.5 shall apply to such tests.

5.9 In the event that the Service Provider fails to achieve any of the Project Milestones, the Independent Expert shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Expert shall determine that completion of the Project Roads is not feasible within the time specified in the Agreement, it shall require the Service Provider to indicate within 15 (fifteen) days the steps proposed to be taken to expedite progress, and the period within which the Construction Completion Date shall be achieved. Upon receipt of a report from the Service Provider, the Independent Expert shall review the same and send its comments to the Contracting Authority and the Service Provider forthwith.

5.10 If at any time during the Construction Period, the Independent Expert determines that the Service Provider has not made adequate arrangements for the safety of workers and Users in the zone of construction or that any work is being carried out in a manner that threatens the safety of the workers and the Users, it shall make a recommendation to the Parties forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof. Provided that such suspension shall not entitle the Service Provider to Relief or to an extension of time for the achievement of the Project Milestones.

5.11 In the event that the Service Provider carries out any remedial measures to secure the safety of suspended works and Users, it may, by notice in writing, require the Independent Expert to inspect such works, and within 1 (one) business days of receiving such notice, the Independent Expert shall inspect the suspended works and make a report to the Parties forthwith within 2(two)business days, recommending whether or not such suspension may be revoked by the Contracting Authority.

5.12 If suspension of Construction Works is for reasons not attributable to the Service Provider, the Independent Expert shall certify the extension of dates set forth in the Construction Completion Schedule, to which the Service Provider is reasonably entitled, and shall notify the Contracting Authority and the Service Provider of the same.

5.13 Upon the Completion Date, the Independent Engineer shall carry out, or cause to be carried out, Tests similar to those specified in Schedule-I and issue a Completion Certificate or Provisional Certificate, as the case may be. For carrying out its functions under this Paragraph 5.13 and all matters incidental thereto, the Independent Expert shall act under and in accordance with the provisions of Clause 14 (Completion Certificate) of the Project Agreement and Schedule I.

5.14 Upon reference from the Service Provider or the Contracting Authority as the case may be, the Independent Expert shall make a fair and reasonable assessment of the costs of providing information, works and services as set forth in Clause 16 (Change of Scope) and certify the reasonableness of such costs for payment by the Contracting Authority to the Service Provider. The Independent Expert shall also classify if such works mentioned in Clause 16 as to whether they are either Change in Scope or Value Engineering works and to certify the reasonableness of the cost estimates. This is in line with the provisions of Clause 16 as to which party will pay for the cost of the works. In case such works are classified as Change in Scpe, the Independent Expert shall certify the resulting revisions to Schedule B.

5.15 The Independent Expert shall aid and advise the Service Provider in preparing the Maintenance Manual. Prior to the Operations Period, the Independent Expert shall review and comment on the Maintenance Plan and Manuals, and other operational procedures of the Service Provider to advise the latter if the operational procedures are capable of meeting the Output Specifications set forth in Schedule M.

5.16 In the event that the Service Provider notifies the Independent Expert of any modifications that it proposes to make to the Project Roads, the Independent Expert shall review the same and send its comments to the Contracting Authority and the Service Provider within 5 (five) business days of receiving the proposal.

6 Operation and Maintenance Works (Including Major Maintenance)

6.1 In respect of the Drawings, Documents and Safety Report received by the Independent Expert for its review and comments during the Operation and Maintenance Works, the provisions of Paragraph 4 shall apply, mutatis mutandis.

6.2 The Independent Expert shall review the annual Maintenance Programme furnished by the Service Provider and send its comments thereon to the Contracting Authority and the Service Provider within 15 (fifteen) days of receipt of the Maintenance Programme. In case on any defects or inadequacy he cannot guide the Service Provider on how to correct the inadequacy

6.3 The Independent Expert shall review the monthly self-monitoring report furnished by the Service Provider and send its comments thereon to the Contracting Authority and the Service Provider within 7 (seven) days of receipt of such report. In case on any defects or inadequacy they cannot guide the Service Provider on how to correct the inadequacy.

6.4 The Independent Expert shall inspect the Project Roads once every month, preferably after receipt of the monthly self-monitoring report from the Service Provider, but before the 20th (twentieth) day of each month in any case, and make out an O&M Inspection Report setting forth an overview of the status, quality and safety of O&M including its conformity with the Output Specifications. In a separate section of the O&M Inspection Report, the Independent Expert shall describe in reasonable detail the lapses, defects or deficiencies observed by it in O&M of the Project Roads. The Independent Expert shall send a copy of its O&M Inspection Report to the Contracting Authority and the Service Provider within 7 (seven) days of the inspection.

6.5 The Independent Expert may inspect the Project Roads more than once in a month, if any lapses, defects or deficiencies require such inspections or when required by either the Service Provider or the Contracting Authority. The Independent Expert may also conduct random sample tests consistent with its own Quality Assurance Manuals, in the process of inspecting and certifying the O&M works.

6.6 The Independent Expert shall in its O&M Inspection Report specify additional tests, if any, that the Service Provider shall carry out, or cause to be carried out, for the purpose of determining that the Project Roads is in conformity with the Output specifications. It shall monitor and review the results of such tests and the remedial measures, if any, taken by the Service Provider in this behalf. The Service Provider may basically, conduct the test as specified in its Quality Control Manuals.

6.7 In respect of any defect or deficiency referred to in [Paragraph 6.4], the Independent Expert shall, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Output Specifications and shall also specify the time limit for repair or rectification of any deviation or deterioration beyond the permissible limit.

6.8 The Independent Expert shall determine if any delay has occurred in completion of repair or remedial works in accordance with the Schedule M and the Project Agreement, and shall also certify the Damages, if any, payable by the Service Provider to the Contracting Authority for such delay.

6.9 The Independent Expert shall examine the request of the Service Provider for closure of any lane(s) of the carriageway for undertaking maintenance/repair thereof, keeping in view the need to minimise disruption in traffic and the time required for completing such maintenance/repair in accordance with Good Industry Practice. It shall grant permission with such modifications, as it may deem necessary, within 3 (three) days of receiving a request from the Service Provider. Upon expiry of the permitted period of closure, the Independent Expert shall monitor the re-opening of such lane(s), and in case of delay, determine the Damages payable by the Service Provider to the Contracting Authority under Clause 17.7. In case of lane closures included in the Maintenance Programme the Service Provider shall not require permission but only notify the Independent expert of the closure.

6.10 The Independent Expert shall monitor and review the curing of defects and deficiencies by the Service Provider as set forth in Clause 19.4 of the Project Agreement

6.11 In the event that the Service Provider notifies the Independent Expert of any modifications that it proposes to make to the Project Roads, the Independent Expert shall review the same and send its comments to the Contracting Authority and the Service Provider within 15 (fifteen) days of receiving the proposal. In addition, the Independent Expert shall certify if such modifications can be deemed as either Value Engineering works or classified as a Change in Work in accordance with Clause 16.

6.12 The Independent Expert shall undertake traffic sampling, as and when required by the Contracting Authority, under and in accordance with Schedules D and N.

6.13 As per the provisions of the Project Agreement the Independent Expert shall verify the invoices for Annuity payment submitted by the Service Provider and duly adjust the same for the reduction in Annuity in accordance with Clause 24 of the Project Agreement and Schedule M along with the necessary documentation in this regard. The Independent Expert shall after verification and certification of the amount claimed in the invoice along with adjustments, forward the invoice to Contracting Authority with necessary documentation recommending payment in full or part thereof so as to reach Contracting Authority at least 14 days prior to the relevant Annuity Payment Date.

6.14 Notwithstanding the timings for delivery of services provided sections 4,5 and 6, in case of conflict between the timings in this TOR and the Project Agreement and Schedule to the Project Agreement, the timing provided in the Project Agreement and Schedule to the Project Agreement shall take precedence.

7 Termination

7.1 At any time, not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to such Termination, the Independent Expert shall, in the presence of a representative of the Service Provider and the Contracting Authority, inspect the Project Roads for determining compliance by the Service Provider with the Divestment Requirements set forth in Clause 34.1 and, if required, cause tests to be carried out at the Service Provider's cost for determining such compliance.

8 Determination of costs and time

8.1 The Independent Expert shall certify the costs, and/or their reasonableness, that are required to be certified by it under the Project Agreement.

8.2 The Independent Expert shall certify the period, or any extension thereof, that is required to be certified by it under the Project Agreement.

9 Assistance in Dispute Resolution

9.1 When called upon by either Party in the event of any Dispute, the Independent Expert shall mediate and assist the Parties in arriving at an amicable settlement.

9.2 In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Project Agreement, the Independent Expert shall specify such meaning, scope and nature within the context of the disagreement by issuing a reasoned written statement relying on good industry practice and authentic literature.

10 Other duties and functions

The Independent Expert shall perform all other duties and functions specified in the Project Agreement.

11 Miscellaneous

11.1 The Independent Expert shall notify its programme of inspection to the Contracting Authority and to the Service Provider, who may, in their discretion, depute their respective representatives to be present during the inspection.

11.2 A copy of all communications, comments, instructions, Drawings or Documents sent by the Independent Expert to the Service Provider pursuant to this TOR, and a copy of all the test results with comments of the Independent Expert thereon shall be furnished by the Independent Expert to the Contracting Authority forthwith.

11.3 The Independent Expert shall obtain, and the Service Provider shall furnish in two copies thereof, all communications and reports required to be submitted, under this Project Agreement, by the Service Provider to the Independent Engineer, whereupon the Independent Expert shall send one of the copies to the Contracting Authority along with its comments thereon.

11.4 The Independent Expert shall retain at least one copy each of all Drawings and Documents received by it, including 'as-built' Drawings, and keep them in its safe custody.

11.5 Upon completion of its assignment hereunder, the Independent Expert shall duly classify and list all Drawings, Documents, results of tests and other relevant records, and hand them over to the Parties, and obtain written receipt thereof. Two copies of the said documents shall also be furnished in digital form or in such other medium as may be acceptable to the Contracting Authority.

11.6 The Independent Expert, upon the request by either Party, may perform other project related tasks to be paid for the requesting Party. However, the consent of the other party shall be obtained prior to undertaking the requested task.

12 DELIVERABLES

The Independent Expert shall deliver the following deliverables (the "Deliverables") during the course of this Consultancy. 5 (five) hard copies and 2 (two) soft copies in CDs of all the final reports, drawings, etc. shall be submitted to the Authority. For draft reports, only 3 (three) hard copies and 1 (one) soft copy in CD shall be submitted to the Authority. The size of drawings shall be A-3 (Unless otherwise required or instructed). Soft copy of all drawings shall be submitted in pdf as well as in digital editable format, say AutoCAD/ Civil 3D.

12.1 Inception Report

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

12.2 Monthly Report

A Monthly Report shall be submitted by the Independent Engineer to the Authority in compliance with all its obligations under the Project Agreement and this TOR. The Monthly Inspection Report shall contain all the data and particulars relevant to the provisions of the Project Agreement and shall include all reports and documents specified therein.

12.3 Completion Report

Final 'As-Built' drawings, compiled final design of the road project, design data, investigation reports etc. in respect of all structures and elements of the Project shall be compiled and submitted to the Authority for record and reference. The Drawings shall include pavement charts, bridges and culverts, road furniture etc.

13 REPORTING

The Independent Expert will work closely with the Implementing Agency. The Director General of the Implementing Agency will be responsible for the overall coordination and project development. He will play a coordinating role in dissemination of the Independent Expert's outputs, facilitating discussions, and ensuring required reactions and responses to the Independent Expert.

The Independent Expert may prepare Issue Papers highlighting issues that could become critical for the timely completion of the Project and that require attention from the Implementing Agency.

The Independent Expert will make a presentation on the Monthly Inspection Report for discussion with the Implementing Authority at monthly progress meeting. The Independent Expert is required to prepare and submit a monthly report that includes and describes, inter alia, progress to date; data and reports obtained and reviewed, conclusions to date, if any; concerns about availability of, or access to, data, analyses, reports; questions regarding the TOR or any other matters regarding work scope and related issues; and so on. The Independent Experts' work on the TOR tasks should continue while the report is under consideration and is being discussed.

Regular communication with the Director General of the Implementing Agency is required in addition to all key communications. This may take the form of telephone/ teleconferencing, emails, faxes, and management meetings.

The Reports will be submitted as per schedule provided in this RFP.

14 TIME AND PAYMENT SCHEDULE

The total duration of the Consultancy Services shall be 36 (thirty six) months. The Consultant shall deploy its Key Personnel as per the Deployment of Personnel proposed.

Time schedule for important Deliverables (the "Key Dates") of the Consultancy and the payment schedule linked to the specified Deliverables is given below:

Key Date No.	Description of Services	Payment
KD1	Monthly payment for 24 months construction period(Twenty Four Months)	Monthly Payment
KD2	Review of designs, drawings, manuals and the documents/ reports submitted by the Service Provider up to the first anniversary of Appointed Date	
KD3	Approval of Completion Report	Release of first half of 10% Retention Money
KD4	Monthly payment for 12 months Operation and Maintenance period(Twelve Months)	Monthly Payment
KD5	Approval of first Operation and Maintenance Report	Release of Second half of 10% Retention Money
	Total	100%

Note: 10% of the monthly fee during construction period shall be withheld.

15 CONSULTANCY TEAM DURING CONSTRUCTION, OPERATION AND MAINTENANCE PERIOD

The Independent Expert shall form a multi-disciplinary team (the “Consultancy Team”) for undertaking this assignment. The following Key Personnel whose experience and responsibilities are briefly described herein would be considered for evaluation of the Technical Proposal. Other expertise such as that required for financial analysis, material investigation characterization, quantity survey, Environmental and social impact assessment etc. for the Project shall be included in the Team either through the Key Personnel specified below or through other Professional Personnel, as necessary.

The Independent Expert shall establish a Project Office at a suitable location in or near the city where the Authority’s office or the Project is situated, for efficient and coordinated performance of its Services. All the Key Personnel shall be deployed at this office within 4 (four) weeks of the date of the Agreement and as specified in the Manning Schedule forming part of the Agreement. The authorized officials of the Authority may visit the Independent Expert’s Project Office any time during office hours for inspection and interaction with the Independent Expert’s Personnel. It is not expected of the Independent Expert to carry out the operations from the Head/Home Office.

The Independent Expert shall mobilize and demobilize its Professional Personnel and Support Personnel with the concurrence of the Authority and shall maintain the time sheet/ attendance sheet of the working of all Personnel in the Project Office. These time sheets/ attendance sheets shall be made available to the Authority as and when asked for and a copy of such record shall be submitted to the Authority at the end of each calendar month.

15.1 Qualifications of Personnel

15.1.1 Project Director: The Project Director shall be a civil engineer with a recognized university degree in Civil Engineering and a minimum of 12 years’ experience after graduation. The Project Director should be registered/accredited by any official body in any country such that the Engineer’s Board of Kenya will be able, upon application, to confirm the accreditation and grant correspondent local accreditation as a professional engineer. The Project Director should have served in a similar role on long term basis on at least 3 previous successfully completed road design or road construction supervision assignments where the value of the works designed or supervised was at least Kshs 1000 million for each assignment. Fluency in both written and spoken English is essential.

15.1.2 Highway Engineer: The Highway Engineer shall be a civil engineer with a recognized university degree in Civil Engineering and a minimum of 8 years professional experience after graduation. The Highway Engineer should be registered/accredited by any official body in any country such that the Engineer’s Board of Kenya will be able, upon application, to confirm the accreditation and grant correspondent local accreditation as a professional engineer. The Highway Design Engineer should have served in a similar role on long-term basis on at least 2 previous successfully completed road design or road construction supervision assignments where the value of the works designed or supervised was at least Kshs 500 million for each assignment. The Highway Engineer should be highly proficient in at least one modern highway design software package. Fluency in both written and spoken English is essential.

15.1.3 Pavement/Materials Engineer: The Pavement/Materials Engineer shall be a civil engineer with a recognized university degree in Civil Engineering and a minimum of 8 years professional experience after graduation. The Pavement/Materials Engineer should be registered/accredited by any official body in any country such that the Engineer's Board of Kenya will be able, upon application, to confirm the accreditation and grant correspondent local accreditation as a professional engineer. The Pavement/Materials Engineer should have served in a similar role on long-term basis on at least 3 previous successfully completed road design or road construction supervision assignments where the value of the works designed or supervised was at least Kshs 500 million for each assignment. The Pavement/Materials Engineer should be conversant with pavement design and control procedures, pavement investigation procedures and pavement maintenance techniques. Fluency in both written and spoken English is essential

15.1.4 Structural/Bridge Engineer: The Structural/Bridge Engineer shall be a civil engineer with a recognized university degree in Civil Engineering and a minimum of 8 years professional experience after graduation. The Structural/Bridge Engineer should be registered/accredited by any official body in any country such that the Engineer's Board of Kenya will be able, upon application, to confirm the accreditation and grant correspondent local accreditation as a professional engineer. The Structural/Bridge should have served in a similar role on long-term basis on at least 2 previous successfully completed road design or road construction supervision assignments where bridge spans of at least 20m were designed or built. Fluency in both written and spoken English is essential.

15.1.5 Project Surveyor: The Project Surveyor shall have a university degree in land surveying or equivalent and a minimum 8 years professional experience after graduation. The Project Surveyor should have served in a similar role on at least 2 previous successfully completed design review and road construction supervision assignments where the value of road works was at least Kshs 100 million for each assignment. Fluency in both written and spoken English is essential.

15.1.6 Dispute Resolution Expert (DRE): The DRE shall have B.Sc. Eng (Civil), B.Sc. Quantity Survey and must be a registered member of the professional body of the relevant discipline, should be a member of the Chartered Institute of Arbitrators, Kenya Chapter or equivalent, 8 years' experience post-graduation in supervision of civil works. Completed 2 similar projects as Dispute Resolution Experts, each with works value of at least Ksh. 200 million. Fluency in written and spoken English. Experience in arbitration is a prerequisite and should provide proof of completed dispute resolution of 2 similar projects as Dispute Resolution Engineer, each with works value of at least Ksh. 200 million. Fluency in written and spoken English. .

15.1.7 Environmentalist/Sociologist/Resettlement Specialist: The Sociologist/ Resettlement Specialist shall have a Bachelor's Degree and 8 years' experience after graduation; registered by the National Environment Management Authority as EIA lead expert and has completed at least 2 similar projects as an Environmentalist, each with resettlement costs of at least Kshs 20 million. Fluency in written and spoken Kiswahili and English is essential.

15.1.8 **Materials Technologist**: Diploma in civil Eng. over 10 years' experience after graduation completed at least 2 similar projects as Pavement/Materials Technologist, each with value of at least Kshs 100 million. Fluency in written and spoken English.

15.1.9 Road Inspectors: Diploma in civil Eng. over 10 years' experience after graduation completed at least 2 similar projects in roads construction supervision. Fluency in written and spoken English.

15.2 Supervision During Construction

The following key staff should, as a **MANDATORY** requirement, be present on site during the 24 months when road construction will be taking place and this requirement is expected to be reflected in the Technical and Financial proposal.

- Project Director
- Highway Engineer
- Pavement/Materials Engineer
- Contracts Engineer
- Structural/Bridge Engineer
- Engineering Surveyor
- Dispute Resolution Expert
- Environmentalist
- Materials Technologist
- Roads Inspectors

It is anticipated that **staff – months** of key professional staff during construction is as stated below.

No.	Staff Description	Staff Required	Staff Input (Months)
1	Project Director	1	5(5days per month)
2	Highway Engineer	1	10
3	Pavement/Materials Engineer	1	24
4	Contracts Engineer	1	10
5	Structural/Bridge Engineer	1	10
6	Engineering Surveyor	1	10
7	Dispute Resolution Expert	1	12(working 15 days a month)

8	Environmentalist	1	12(working 15 days a month)
9	Materials Technologist	1	24
10	Roads Inspectors	2	72
Total Man moths during Construction Period			**189**

15.2 Supervision During Operation and Maintenance

The following staff requirements and man-months are the **MINIMUM ACCEPTABLE** supervision inputs in respect of support staff for Part 2(Operation and Maintenance) services and must be provided for in the Technical and Financial proposals as appropriate.

Ref	Description	Staff Required	Staff Input (Months)
1	Project Director	1	6
2	Pavement/Materials Engineer	1	6
	Highway Engineer		12
3	Contracts Engineer	1	6
4	Structural Engineer	1	6
5	Dispute Resolution Expert	1	6
6	Materials Technologist	1	12
7	Roads Inspectors	2	24
Total Man moths during Operation and Maintenance Period			**78**

The consultant shall be responsible for paying all emoluments, allowances, housing and overtime for both the Senior and support staff. Appropriate financial provisions must be made under the financial proposals.

15.3 SUPERVISORY VEHICLES FOR PERFORMING THE ASSIGNMENT

The Consultant shall provide and maintain in good working condition:

(i) One new diesel propelled turbo charged 4WD fully loaded station wagon of minimum engine capacity of 3000cc.

(ii) One new diesel propelled turbo charged 4WD fully loaded double cabin pick-up of minimum engine capacity of 2700cc.

(iii) Two new diesel propelled turbo charged 4WD standard double cabin pick-ups of minimum engine capacity 2700cc.

(iv) One new diesel propelled turbo charged 4WD standard single cabin pick-up with fibre glass body and cushioned benches of minimum engine capacity 2700cc.

The Consultant shall insure comprehensively the vehicles for any licensed drivers.

Payment for the vehicles shall be by vehicle months with no limit to the mileage. These payments shall be inclusive of all fuels, lubricants, servicing, insurance, maintenance, drivers and repairs. The rate shall include any overtime the drivers might be due or any other allowances in addition to the normal working hours.

The vehicles shall revert to the Consultant at the end of the contract.

Appropriate financial provisions must be made under the financial proposals.

The vehicles shall be deployed and used as directed by the Contracting Authority.

16.0 ASSISTANCE FROM THE CLIENT

a) General

The Client shall provide all reports, relevant data on the design and maintenance, and give all possible assistance as shall be reasonably requested of him for carrying out the services by the consultant.

It will however, be the responsibility of the Consultant to supervise provision of the above stated facilities and equipment by the contractor in accordance with the contract documents. Any equipment purchased by the consultant and paid for by the Client shall become the property of the Client upon completion of the services, or whenever it is no longer required for carrying out services, whichever occurs earlier.

PART II – CONDITIONS OF CONTRACT AND CONTRACT FORMS

Section 8. Conditions of Contract and Contract Forms

CONTRACT FOR CONSULTANT'S SERVICES

Project Name____________________________

Contract No.____________________________

between

____

[Name of the Client]

and

____

*[**Name of the Consultant**]*

Dated: ______________________

CONTENTS

FORM OF CONTRACT

This CONTRACT (hereinafter called the "Contract") is made the *[number]* day of the month of *[month]*, *[year]*, between, on the one hand, *[name of Client]* (hereinafter called the "Client") and, on the other hand, *[name of Consultant]* (hereinafter called the "Consultant").

[If the Consultant consist of more than one entity, the above should be partially amended to read as follows: "…(hereinafter called the "Client") and, on the other hand, a Joint Venture (name of the JV) consisting of the following entities, each member of which will be jointly and severally liable to the Client for all the Consultant's obligations under this Contract, namely, *[name of member]* and *[name of member]* (hereinafter called the "Consultant").]

WHEREAS

(a) the Client has requested the Consultant to provide certain consulting services as defined in this Contract (hereinafter called the "Services");

(b) the Consultant, having represented to the Client that it has the required professional skills, expertise and technical resources, has agreed to provide the Services on the terms and conditions set forth in this Contract;

(c) the Client has received [*or* has applied for] funds from the (GoK) KENYA URBAN ROAD AUTHORITY(the "Agency") toward the cost of the Services and intends to apply a portion of these funds to eligible payments under this Contract, it being understood that (i) payments by the Agency will be made only at the request of the Client and upon approval by the Agency; (ii) such payments will be subject, in all respects, to the terms and conditions of the agreement between the Client and the Agency providing for the funds, and (iii) no party other than the Client shall derive any rights from the agreement or have any claim to the funds proceeds;

NOW THEREFORE the parties hereto hereby agree as follows:

1. The following documents attached hereto shall be deemed to form an integral part of this Contract:

    (a) The General Conditions of Contract (including Attachment 1 "Agency Policy – Corrupt and Fraudulent Practices – Social and Environmental Responsibility);

    (b) The Special Conditions of Contract;

    (c) Appendices:

    Appendix A: Terms of Reference

    Appendix B: Consultant's Technical Proposal (including methodology and Experts)

    Appendix C: Contract Price(s)

    Appendix D: Form of Advance Payment Guarantee

    In the event of any inconsistency between the documents, the following priority order shall prevail: the Special Conditions of Contract; the General Conditions of Contract, including Attachment 1; Appendix A; Appendix B; Appendix C and Appendix D. Any reference to this Contract shall include, where the context permits, a reference to its Appendices.

2. The mutual rights and obligations of the Client and the Consultant shall be as set forth in the Contract, in particular:

   (a) the Consultant shall carry out the Services in accordance with the provisions of the Contract; and

(b) the Client shall make payments to the Consultant in accordance with the provisions of the Contract.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be signed in their respective names as of the day and year first above written.

For and on behalf of *[Name of Client]*

____

[Authorized Representative of the Client – name, title and signature]

For and on behalf of *[Name of Consultant or Name of a Joint Venture]*

____

[Authorized Representative of the Consultant – name and signature]

*[**Note**: For a joint venture, either all members shall sign or only the lead member, in which case the power of attorney to sign on behalf of all members shall be attached.]*

For and on behalf of each of the members of the Consultant [insert the name of the Joint Venture]

[Name of the lead member]

____

[Authorized Representative on behalf of a Joint Venture]

[add signature blocks for each member if all are signing]

I. GENERAL CONDITIONS OF CONTRACT

A. GENERAL PROVISIONS

1. Definitions

1.1. Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:

(a) "**Applicable law**" means all laws, brought into force and effect by the Government of Kenya or the local Government including but not limited to rules, regulations and notifications made thereunder, and judgements, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement.

(b) "**Agency**" means the Gok/Kenya Urban Road Authority (KURA).

(c) "**Client**" means the Kenya Urban Road Authority (Contracting Authority) and The Consortium of Lee Construction Ltd, Cape Consult Limited and Mota-Engil Engenharia E Construcao Africa, S. A (Service Provider) that shall sign the Contract for the Services with the Selected Consultant.

(d) "**Consultant**" or "**Independent Expert**" means a legally-established professional consulting firm or entity selected by the Client to provide the Services under the signed Contract.

(e) "**Contract**" means the legally binding written agreement signed between the Client and the Consultant and which includes all the attached documents listed in its paragraph 1 of the Form of Contract (the General Conditions (GCC), the Special Conditions (SCC), and the Appendices).

(f) "**Day**" means a calendar day unless indicated otherwise.

(g) "**Effective Date**" means the date on which this Contract comes into force and effect pursuant to Clause GCC 11.

(h) "**Experts**" means, collectively, Key Experts, Non-Key Experts, or any other personnel of the Consultant, Sub-consultant or JV member(s) assigned by the Consultant to perform the Services or any part thereof under the Contract.

(i) "**Foreign Currency**" means any currency other than the currency of the Client's country.

(j) "**GCC**" means these General Conditions of Contract.

(k) "**Government**" means the Government of Kenya.

(l) "**Joint Venture (JV)**" means an association with or without a legal personality distinct from that of its members, of more than one entity where one member has the authority to conduct all businesses for and on behalf of any and all the members of the JV, and where the members of the JV are jointly and severally liable to the Client for the performance of the Contract.

(m) "**Key Expert(s)**" means an individual professional whose skills, qualifications, knowledge and experience are critical to the performance of the Services under the Contract and whose Curricula Vitae (CV) was taken into account in the technical evaluation of the Consultant's proposal.

(n) "**Local Currency**" means the currency of the Kenya Shillings (Ksh or KES).

(o) "**Non-Key Expert(s)**" means an individual professional provided by the Consultant or its Sub-consultant to perform the Services or any part thereof under the Contract.

(p) "**Party**" means the Client or the Consultant, as the case may be, and "**Parties**" means both of them.

(q) "**Project Agreement**" means the agreement entered between the Agency and the Service Provider in respect of the Finance, Design, Build, Maintain and Transfer of the LOT 18 Project Network.

(r) "**Project Network**" means the roads comprising LOT 18 as further set out in the Project Agreement.

(s) "**SCC**" means the Special Conditions of Contract by which the GCC may be amended or supplemented but not over-written.

(t) "Service Provider" means The Consortium of Lee Construction Ltd, Cape Consult Limited and Mota-Engil Engenharia E Construcao Africa, S. A.

(u) "**Services**" means the work to be performed by the Consultant pursuant to this Contract, as described in Appendix A hereto.

(v) "**Sub-consultants**" means an entity to whom/which the Consultant subcontracts any part of the Services while remaining solely liable for the execution of the Contract.

2. Relationship between the Parties	2.1. Nothing contained herein shall be construed as establishing a relationship of master and servant or of principal and agent as between the Client and the Consultant. The Consultant, subject to this Contract, has the complete charge of the Experts and Sub-consultants, if any, performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder. The Consultant shall, in the provision of the Services and performance of the obligations under this Contract, have a duty of care to both the Kenya Urban Roads Authority and the The Consortium of Lee Construction Ltd, Cape Consult Limited and Mota-Engil Engenharia E Construcao Africa, S. A who jointly constitute the Client in this Contract.
3. Law Governing Contract	3.1. This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable law.
4. Language	4.1. This Contract has been executed in the language specified in the **SCC**, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.
5. Headings	5.1. The headings shall not limit, alter or affect the meaning of this Contract.
6. Communications	6.1. Any communication required or permitted to be given or made pursuant to this Contract shall be made in writing in the language specified in Clause GCC 4. Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent to such Party at the address specified in the **SCC**. 6.2. A Party may change its address for notice hereunder by giving the other Party any communication of such change to the address specified in the **SCC**.
7. Location	7.1. The Services shall be performed at such locations as are specified in **Appendix A** hereto and, where the location of a particular task is not so specified, at such locations, whether in the Government's country or elsewhere, as the Client may approve.
8. Authority of Member in Charge	8.1. In case the Consultant is a Joint Venture, the members hereby authorize the lead member specified in the **SCC** to act on their behalf in exercising all the Consultant's rights and obligations towards the Client under this Contract, including without limitation the receiving of instructions and payments from the Client.
9. Authorized Representatives	9.1. Any action required or permitted to be taken, and any document required or permitted to be executed under this Contract by the Client or the Consultant may be taken or executed by the officials specified in the **SCC.**

10. Corrupt and Fraudulent Practices, and Social and Environmental Responsibility

10.1. The Agency requires compliance with its policy in regard to corrupt and fraudulent practices, social and environmental responsibility as set forth in **Attachment 1** to the GCC.

B. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT

11. Effectiveness of Contract

11.1. This Contract shall come into force and effect on the date (the "Effective Date") of the Client's notice to the Consultant instructing the Consultant to begin carrying out the Services. This notice shall confirm that the effectiveness conditions, if any, listed in the **SCC** have been met.

12. Termination of Contract for Failure to Become Effective

12.1. If this Contract has not become effective within such time period after the date of Contract signature as specified in the **SCC**, either Party may, by not less than twenty two (22) days written notice to the other Party, declare this Contract to be null and void, and in the event of such a declaration by either Party, neither Party shall have any claim against the other Party with respect hereto.

13. Commencement of Services

13.1. The Consultant shall confirm availability of Key Experts and begin carrying out the Services not later than the number of days after the Effective Date specified in the **SCC**.

14. Expiration of Contract

14.1. Unless terminated earlier pursuant to Clause GCC 19 hereof, this Contract shall expire at the end of such time period after the Effective Date as specified in the **SCC**.

15. Entire Agreement

15.1. This Contract contains all covenants, stipulations and provisions agreed by the Parties. No agent or representative of either Party has authority to make, and the Parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein.

16. Modifications or Variations

16.1. Any modification or variation of the terms and conditions of this Contract, including any modification or variation of the scope of the Services, may only be made by written agreement between the Parties. However, each Party shall give due consideration to any proposals for modification or variation made by the other Party and shall not unreasonably refuse to vary this Contract.

16.2. In cases of substantial modifications or variations, the prior written consent of the Agency is required.

17. Force Majeure

a. Definition

17.1. For the purposes of this Contract, "Force Majeure" means an event which is beyond the reasonable control of a Party, is not foreseeable, is unavoidable, and makes a Party's performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible under the circumstances, and subject to those requirements. It includes, but is not limited to:

17.1.1. act of God, epidemic, extremely adverse weather conditions, earthquake, landslide, cyclone, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Project Site);

17.1.2. nationalisation or expropriation of the Project Network by the GOK (or any Governmental Instrumentality) or any compulsory acquisition in the national interest or expropriation of all or substantially all of the Project Assets;

17.1.3. unlawful or unauthorised or unjustified revocation of, or refusal to renew or grant without valid cause, any permit required by the Service Provider to perform its obligations under the Project Agreement; provided that such delay, modification, denial, refusal or revocation did not result from the Service Provider's (or any Contractor's inability) or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;

17.1.4. riots and blockades except where arising as a result of or are attributable to any action or inaction of the Service Provider or its Sub-Contractors

17.1.5. a declared act of war, invasion, armed conflict or act of foreign enemy, or military action or sabotage

177.2. Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or such Party's Experts, Sub-consultants or agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected to both take into account at the time of the conclusion of this Contract, and avoid or overcome in the carrying out of its obligations hereunder.

177.3. Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

b. Non Breach of Contract

177.4. The failure of a Party to fulfill any of its obligations hereunder shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Contract.

c. Measures to be Taken

177.5. A Party affected by an event of Force Majeure shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall take all reasonable measures to minimize the consequences of any event of Force Majeure.

177.6. A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any case not later than fourteen (14) calendar days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give written notice of the restoration of normal conditions as soon as possible.

177.7. Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

177.8. During the period of their inability to perform the Services as a result of an event of Force Majeure, the Consultant, upon instructions by the Client, shall either:

(a) cease its activities and demobilize, in which case the Consultant shall be reimbursed for additional costs they reasonably and necessarily incurred, and, if required by the Client, the costs related to the reactivation of the Services; or

(b) continue with the Services to the extent reasonably possible, in which case the Consultant shall continue to be paid under the terms of this Contract and be reimbursed for additional costs reasonably and necessarily incurred.

177.9. In the case of disagreement between the Parties as to the existence or extent of Force Majeure, the matter shall be settled according to Clauses GCC 48 & 49.

18. Suspension

18.1. The Client may, by written notice of suspension to the Consultant, suspend all payments to the Consultant hereunder if the Consultant fails to perform any of its obligations under this Contract, including the carrying out of the Services, provided that such notice of suspension (i) shall specify the nature of the failure, and (ii) shall request the Consultant to remedy such failure within a period not exceeding thirty (30) days after receipt by the Consultant of such notice of suspension.

19. Termination

19. 1 This Contract may be terminated by either Party as per provisions set up below:

a. By the Client

19.1.1 The Client may terminate this Contract in case of the occurrence of any of the events specified in paragraphs (a) through (f) of this Clause. In such an occurrence the Client shall give at least thirty (30) days' written notice of termination to the Consultant in case of the events referred to in (a) through (d); at least sixty (60) days' written notice in case of the event referred to in (e); and at least five (5) days' written notice in case of the event referred to in (f):

(a) If the Consultant fails to remedy a failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to Clause GCC 18;

(b) If the Consultant becomes (or, if the Consultant consists of a Joint Venture, if any of its members becomes) insolvent or bankrupt or enter into any agreements with their creditors for relief of debt or take advantage of any law for the benefit of debtors or go into liquidation or receivership whether compulsory or voluntary;

(c) If the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause GCC 49.1;

(d) If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days;

(e) If the Client, in its sole discretion and for any reason whatsoever, decides to terminate this Contract;

(f) If the Consultant fails to confirm availability of Key Experts.

19.1.2 Furthermore, if the Client determines that the Consultant has engaged in corrupt or fraudulent practices, in competing for or in executing the Contract, then the Client is entitled, after giving fourteen (14) days written notice to the Consultant, to terminate the Consultant's employment under the Contract.

b. By the Consultant

19.1.3 The Consultant may terminate this Contract, by not less than thirty (30) days' written notice to the Client, in case of the occurrence of any of the events specified in paragraphs (a) through (d) of this Clause.

(a) If the Client fails to pay any money due to the Consultant pursuant to this Contract and not subject to dispute pursuant to Clauses GCC 49.1 within forty-five (45) days after receiving written notice from the Consultant that such payment is overdue.

(b) If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days.

(c) If the Client fails to comply with any final decision reached as a result of arbitration pursuant to Clause GCC 49.1.

(d) If the Client is in material breach of its obligations pursuant to this Contract and has not remedied the same within forty-five (45) days (or such longer period as the Consultant may have subsequently approved in writing) following the receipt by the Client of the Consultant's notice specifying such breach.

c. Cessation of Rights and Obligations

19.1.4 Upon termination of this Contract pursuant to Clauses GCC 12 or GCC 19 hereof, or upon expiration of this Contract pursuant to Clause GCC 14, all rights and obligations of the Parties hereunder shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, (ii) the obligation of confidentiality set forth in Clause GCC 22, (iii) the Consultant's obligation to permit inspection, copying and auditing of their accounts and records set forth in Clause GCC 25, and (iv) any right which a Party may have under the Applicable law.

d. Cessation of Services

19.1.5 Upon termination of this Contract by notice of either Party to the other pursuant to Clauses GCC 19a or GCC 19b, the Consultant shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to the documents prepared by the Consultant and equipment and materials furnished by the Client, the Consultant shall proceed as provided, respectively, by Clauses GCC 27 or GCC 28.

e. Payment upon Termination

19.1.6 Upon termination of this Contract, the Client shall make the following payments to the Consultant:

(a) remuneration for Services satisfactorily performed prior to the effective date of termination, other expenses incurred and, for unit prices (time-based),reimbursable expenditures for expenditures actually incurred prior to the effective date of termination; and pursuant to Clause 42;

(b) in the case of termination pursuant to paragraphs (d) and (e) of Clause GCC 19.1.1, reimbursement of any reasonable cost incidental to the prompt and orderly termination of this Contract, including the cost of the return travel of the Experts.

C. Obligations of the Consultant

20. General

a. Standard of Performance

20.1 The Consultant shall perform the Services and carry out the Services with all due diligence, efficiency and economy, in accordance with generally accepted professional standards and practices, and shall observe sound management practices, and employ appropriate technology and safe and effective equipment, machinery, materials and methods. The Consultant shall always act, in respect of any matter relating to this Contract or to the Services, as a faithful adviser to the Client, and shall at all times support and safeguard the Client's legitimate interests in any dealings with third parties.

20.2 The Consultant shall employ and provide such qualified and experienced Experts and Sub-consultants as are required to carry out the Services.

20.3 The Consultant may subcontract part of the Services to an extent and with such Key Experts and Sub-consultants as may be approved in advance by the Client. Notwithstanding such approval, the Consultant shall retain full responsibility for the Services. The Consultant shall not subcontract the whole of the Services.

b. Law Applicable to Services

20.4 The Consultant shall perform the Services in accordance with the Contract and the Applicable law and shall take all practicable steps to ensure that any of its Experts and Sub-consultants, comply with the Applicable law.

20.5 Throughout the execution of the Contract, the Consultant shall comply with the import of goods and services prohibitions in the Client's country when as a matter of law or official regulations, the Client's country prohibits commercial relations with that country.

20.6 The Client shall notify the Consultant in writing of relevant local customs, and the Consultant shall, after such notification, respect such customs.

21. Conflict of Interests

21.1 The Consultant shall hold the Client's interests paramount and shall strictly avoid conflict with other assignments, their own corporate interests or any action, agreement or arrangement that would have an adverse effect on the Client's interests or prevent the Consultant from fulfilling its obligations hereunder.

a. Consultant Not to Benefit from Commissions, Discounts, etc.

21.1.1 The payment of the Consultant pursuant to GCC F (Clauses GCC 41 through 46) shall constitute the Consultant's only payment in connection with this Contract and, subject to Clause GCC 21.1.3, the Consultant shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or in the discharge of its obligations hereunder, and the Consultant shall use its best efforts to ensure that any Sub-consultants, as well as Experts and agents of either of them, similarly shall not receive any such additional payment.

21.1.2 Furthermore, if the Consultant, as part of the Services, has the responsibility of advising the Client on the procurement of goods, works or services, the Consultant shall comply with the Client's applicable regulations, and shall at all times exercise such responsibility in the best interest of the Client. Any discounts or commissions obtained by the Consultant in the exercise of such procurement responsibility shall be for the account of the Client.

b. Consultant and Affiliates Not to Engage in Certain Activities

21.1.3 The Consultant agrees that, during the term of this Contract and after its termination, the Consultant and any entity affiliated with the Consultant, as well as any Sub-consultants and any entity affiliated with such Sub-consultants, shall be disqualified from providing goods, works or non-consulting services resulting from or directly related to the Consultant's Services for the preparation or implementation of the project, unless otherwise indicated in the **SCC**.

c. Prohibition of Conflicting Activities

21.1.4 The Consultant shall not engage, and shall cause its Experts as well as its Sub-consultants not to engage, either directly or indirectly, in any business or professional activities that would conflict with the activities assigned to them under this Contract.

d. Strict Duty to Disclose Conflicting Activities

21.1.5 The Consultant has an obligation and shall ensure that its Experts and Sub-consultants shall have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of their Client, or that may reasonably be perceived as having this effect. Failure to disclose such situations may lead to the termination of its Contract.

22. Confidentiality

22.1 Except with the prior written approval of the Client, the Consultant and the Experts shall not at any time communicate to any person or entity any confidential information acquired in the course of the Services, nor shall the Consultant and the Experts make public the recommendations formulated in the course of, or as a result of, the Services.

23. Liability of the Consultant

23.1 Subject to additional provisions, if any, set forth in the **SCC**, the Consultant's liability under this Contract shall be as determined under the Applicable law.

24. Insurance to be Taken out by the Consultant

24.1 The Consultant (i) shall take out and maintain, and shall cause any Sub-consultants to take out and maintain, at its (or the Sub-consultants', as the case may be) own cost but on terms and conditions approved by the Client, insurance against the risks, and for the coverage specified in the **SCC,** and (ii) at the Client's request, shall provide evidence to the Client showing that such insurance has been taken out and maintained and that the current premiums therefore have been paid. The Consultant shall ensure that such insurance is in place prior to commencing the Services as stated in Clause GCC 13.

25. Accounting, Inspection and Auditing

25.1 The Consultant shall keep, and shall make all reasonable efforts to cause its Sub-consultants to keep, accurate and systematic accounts and records in respect of the Services in such form and detail as will clearly identify relevant time changes and costs.

25.2. The Consultant shall permit and shall cause its Sub-consultants to permit, the Agency and/or persons appointed by the Agency to inspect the Site and/or all accounts and records relating to the performance of the Contract and the submission of the Proposal to provide the Services, and to have such accounts and records audited by auditors appointed by the Agency if requested by the Agency. The Consultant's attention is drawn to Clause GCC 10 which provides, inter alia, that acts intended to materially impede the exercise of the Agency's inspection and audit rights provided for under this Clause GCC25.2 constitute a prohibited practice subject to contract termination.

26. Reporting Obligations

26.1 The Consultant shall submit to the Client the reports and documents specified in **Appendix A**, in the form, in the numbers and within the time periods set forth in the said Appendix.

27. Proprietary Rights of the Client in Reports and Records

27.1 Unless otherwise indicated in the **SCC**, all reports and relevant data and information such as maps, diagrams, plans, databases, other documents and software, supporting records or material compiled or prepared by the Consultant for the Client in the course of the Services shall be confidential and become and remain the absolute property of the Client. The Consultant shall, not later than upon termination or expiration of this Contract, deliver all such documents to the Client, together with a detailed inventory thereof. The Consultant may retain a copy of such documents, data and/or software but shall not use the same for purposes unrelated to this Contract without prior written approval of the Client.

27.2 If license agreements are necessary or appropriate between the Consultant and third parties for purposes of development of the plans, drawings, specifications, designs, databases, other documents and software, the Consultant shall obtain the Client's prior written approval to such agreements, and the Client shall be entitled at its discretion to require recovering the expenses related to the development of the program(s) concerned. Other restrictions about the future use of these documents and software, if any, shall be specified in the **SCC**.

28. Equipment, Vehicles and Materials

28.1 Equipment, vehicles and materials made available to the Consultant by the Client, or purchased by the Consultant wholly or partly with funds provided by the Client, shall be the property of the Client and shall be marked accordingly. Upon termination or expiration of this Contract, the Consultant shall make available to the Client an inventory of such equipment, vehicles and materials and shall dispose of such equipment, vehicles and materials in accordance with the Client's instructions. While in possession of such equipment, vehicles and materials, the Consultant, unless otherwise instructed by the Client in writing, shall insure them at the expense of the Client in an amount equal to their full replacement value.

28.2 Any equipment or materials brought by the Consultant or its Experts into the Client's country for the use either for the project or personal use shall remain the property of the Consultant or the Experts concerned, as applicable.

D. Consultant's Experts and Sub-Consultants

29. Description of Key Experts

29.1 The title, agreed job description, minimum qualification and time-input estimates to carry out the Services of each of the Consultant's Key Experts are described in **Appendix B.**

29.2 In case of unit prices (time-based) and if required to comply with the provisions of Clause GCC 20a, adjustments with respect to the estimated time-input of Key Experts set forth in **Appendix B** may be made by the Consultant by a written notice to the Client, provided (i) that such adjustments shall not alter the original time-input estimates for any individual by more than 10% or one week, whichever is larger; and (ii) that the aggregate of such adjustments shall not cause payments under this Contract to exceed the ceilings set forth in Clause GCC 41.1.

29.3 In case of unit prices (time-based) and if additional work is required beyond the scope of the Services specified in **Appendix A**, the estimated time-input for the Key Experts may be increased by written agreement between the Client and the Consultant. In case where payments under this Contract exceed the ceilings set forth in Clause GCC 41.1, the Parties shall sign a Contract amendment.

30. Replacement of Key Experts

30.1 Except as the Client may otherwise agree in writing, no changes shall be made in the Key Experts.

30.2 Notwithstanding the above, the substitution of Key Experts during Contract execution may be considered only based on the Consultant's written request and due to circumstances outside the reasonable control of the Consultant, including but not limited to death or medical incapacity. In such case, the Consultant shall forthwith provide as a replacement, a person of equivalent or better qualifications and experience, and at the same rate of remuneration.

31. Approval of Additional Key Experts

31.1 If during execution of the Contract, additional Key Experts are required to carry out the Services, the Consultant shall submit to the Client a copy of their Curricula Vitae (CVs) for review and approval. The client shall approve the engagement of such additional Key Experts within 22 days of receiving such an application. At no time shall the additional Key Experts be engaged before the prior approval of the Client in writing.

31.2 In case of unit price (time-based) contract, the rate of remuneration payable to such new additional Key Experts shall be based on the rates for other Key Experts position which require similar qualifications and experience.

32. Removal of Experts or Sub-consultants

32.1 If the Client finds that any of the Experts or Sub-consultant has committed serious misconduct or has been charged with having committed a criminal ation, or if the Client determines that one of the Consultant's Experts or Sub-consultants have engaged in corrupt or fraudulent practice while performing the Services, the Consultant shall, at the Client's written request, provide a replacement.

32.2 In the event that any of the Key Experts, Non-Key Experts or Sub-consultants is found by the Client to be incompetent or incapable in discharging assigned duties, the Client, specifying the grounds therefore, may request the Consultant to provide a replacement.

32.3 Any replacement of the removed Experts or Sub-consultants shall possess better qualifications and experience and shall be acceptable to the Client.

33. Replacement/ Removal of Experts – Impact on Payments

33.1 In case of unit price (time-based) Contract, except as the Client may otherwise agree, (i) the Consultant shall bear all additional travel and other costs arising out of or incidental to any removal and/or replacement, and (ii) the remuneration to be paid for any of the Experts provided as a replacement shall not exceed the remuneration which would have been payable to the Experts replaced or removed.

33.2In case of lump-sum Contract, the Consultant shall bear all costs arising out or incidental to any removal and/or replacement of such Experts.

34. Working Hours, Overtime, Leave, etc. (time-based contract only)

34.1 Working hours and holidays for Experts are set forth in **Appendix A**. To account for travel time to/from the Client's country, Experts carrying out Services inside the Client's country shall be deemed to have commenced or finished work in respect of the Services such number of days specified in **Appendix A** before their arrival in, or after their departure from, the Client's country.

34.2 The Experts shall neither be entitled to be paid for overtime nor to take paid sick leave or vacation leave except as specified in **Appendix A**, and the Consultant's remuneration shall be deemed to cover these items.

34.3 Any taking of leave by the Experts shall be subject to the prior approval of the Consultant who shall ensure that absence for leave purposes will not delay the progress and or impact an adequate supervision of the Services.

E. OBLIGATIONS OF THE CLIENT

35. Assistance and Exemptions

35.1 Unless otherwise specified in the **SCC**, the Client shall use its best efforts to:

(a) Assist the Consultant with obtaining work permits and such other documents as shall be necessary to enable the Consultant to perform the Services.

(b) Assist the Consultant with promptly obtaining, for the Experts and, all necessary entry and exit visas, residence permits, exchange permits and any other documents required for their stay in the Client's country while carrying out the Services under the Contract.

(c) Facilitate prompt clearance through customs of any property required for the Services and of the personal effects of the Experts and their eligible dependents.

(d) Issue to officials, agents and representatives of the Government all such instructions and information as may be necessary or appropriate for the prompt and effective implementation of the Services.

(e) Assist the Consultant and the Experts and any Sub-consultants employed by the Consultant for the Services with obtaining exemption from any requirement to register or obtain any permit to practice their profession or to establish themselves either individually or as a corporate entity in the Client's country according to the Applicable law in the Client's country.

(f) Assist the Consultant, any Sub-consultants and the Experts of either of them with obtaining the privilege, pursuant to the Applicable law in the Client's country, of bringing into the Client's country reasonable amounts of foreign currency for the purposes of the Services or for the personal use of the Experts and of withdrawing any such amounts as may be earned therein by the Experts in the execution of the Services.

(g) Provide to the Consultant any such other assistance as may be specified in the **SCC**.

36. Access to Project Site

36.1 The Client warrants that the Consultant shall have, free of charge, unimpeded access to the project site in respect of which access is required for the performance of the Services. The Client will be responsible for any damage to the project site or any property thereon resulting from such access and will indemnify the Consultant and each of the experts in respect of liability for any such damage, unless such damage is caused by the willful default or negligence of the Consultant or any Sub-consultants or the Experts of either of them.

37. Change in the Applicable Law Related to Taxes and Duties

37.1 If, after the date of this Contract, there is any change in the Applicable law in the Client's country with respect to taxes and duties which increases or decreases the cost incurred by the Consultant in performing the Services, then the remuneration and other expenses otherwise payable to the Consultant under this Contract shall be increased or decreased accordingly by agreement between the Parties hereto, and corresponding adjustments shall be made to the ceiling amounts specified in Clause GCC 41.1

38. Services, Facilities and Property of the Client

38.1 The Client shall make available to the Consultant and the Experts, for the purposes of the Services and free of any charge, the services, facilities and property described in the Terms of Reference (**Appendix A)** at the times and in the manner specified in the above mentioned **Appendix A.**

38.2 In case that such services, facilities and property shall not be made available to the Consultant as and when specified in **Appendix A**, the Parties shall agree on (i) any time extension that it may be appropriate to grant to the Consultant for the performance of the Services, (ii) the manner in which the Consultant shall procure any such services, facilities and property from other sources, and (iii) the additional payments, if any, to be made to the Consultant as a result thereof pursuant to Clause GCC 41.

39. Counterpart Personnel

39.1 The Client shall make available to the Consultant free of charge such professional and support counterpart personnel, to be nominated by the Client with the Consultant's advice, if specified in **Appendix A**.

39.2 If counterpart personnel are not provided by the Client to the Consultant as and when specified in **Appendix A**, the Client and the Consultant shall agree on (i) how the affected part of the Services shall be carried out, and (ii) the additional payments, if any, to be made by the Client to the Consultant as a result thereof pursuant to Clause GCC 41.

39.3 Professional and support counterpart personnel, excluding Client's liaison personnel, shall work under the exclusive direction of the Consultant. If any member of the counterpart personnel fails to perform adequately any work assigned to such member by the Consultant that is consistent with the position occupied by such member, the Consultant may request the replacement of such member, and the Client shall not unreasonably refuse to act upon such request.

40. Payment Obligation

40.1 In consideration of the Services performed by the Consultant under this Contract, the Client shall make such payments to the Consultant and in such manner as provided by GCC F below.

F. PAYMENTS TO THE CONSULTANT

41. Ceiling Amount (time-based) or Contract Price (lump-sum)

41.1 In case of unit price (time-based) Contract, an estimate of the cost of the Services is set forth in **Appendix C** (Contract Price(s)). Payments under this Contract shall not exceed the ceilings in foreign currency and in local currency specified in the **SCC**. For any payments in excess of the ceilings, an amendment to the Contract shall be signed by the Parties referring to the provision of this Contract that evokes such amendment.

41.2 In case of a lump-sum Contract, the Contract price is fixed and is set forth in the **SCC**. The Contract price breakdown is provided in **Appendix C**. Any change to the Contract price can be made only if the Parties have agreed to the revised scope of Services pursuant to Clause GCC 16 and have amended in writing the Terms of Reference in **Appendix A**.

42. Remuneration and Reimbursable Expenses (unit price –time-based only)

42.1 The Client shall pay to the Consultant (i) remuneration that shall be determined on the basis of the time actually spent by each Expert in the performance of the Services after the commencement date of the Services or after any other date as the Parties shall agree in writing; and (ii) other expenses including reimbursable expenses that are actually and reasonably incurred by the Consultant in the performance of the Services.

42.2 All payments shall be at the rates set forth in **Appendix C**.

42.3 Unless the **SCC** provides for the price adjustment of the remuneration rates, said remuneration shall be fixed for the duration of the Contract.

42.4 The remuneration rates shall cover: (i) such salaries and allowances as the Consultant shall have agreed to pay to the Experts as well as factors for social charges and overheads (bonuses or other means of profit-sharing shall not be allowed as an element of overheads), (ii) the cost of backstopping by home office staff not included in the Experts' list in **Appendix B**, (iii) the Consultant's profit, and (iv) any other cost unless otherwise specified in the **SCC**.

43. Taxes and Duties

43.1 The Consultant, Sub-consultants and Experts are responsible for meeting any and all tax liabilities arising out of the Contract unless it is stated otherwise in the **SCC**.

43.2 As an exception to the above and as stated in the **SCC**, all local identifiable indirect taxes (itemized and finalized at Contract negotiations) are reimbursed to the Consultant or are paid by the Client on behalf of the Consultant.

44. Currency of Payment

44.1 Any payment under this Contract shall be made in the currency (ies) of the Contract.

45. Mode of Billing and Payment

45.1 Billings and payments in respect of the Services shall be made as follows:

(a) *The Itemized Invoices (unit price – time-based).* As soon as practicable and not later than fifteen (15) days after the end of each calendar month during the period of the Services, or after the end of each time interval otherwise indicated in the **SCC**, the Consultant shall submit to the Client, in quadruplicate, itemized invoices, accompanied by the receipts or other appropriate supporting documents, of the amounts payable pursuant to Clauses GCC 44 and GCC 45 for such interval, or for any other period indicated in the **SCC**. Separate invoices shall be submitted for expenses incurred in foreign currency and in local currency. Each invoice shall show remuneration and other expenses (including reimbursable expenses) separately. The Client shall pay the Consultant's invoices within Ninety (90) days from the receipt by the Client of such itemized invoices and of the supporting documents. Only the portion of an invoice that is not satisfactorily supported may be withheld from payment. Should any discrepancy be found to exist between actual payment and costs authorized, the Client may add or subtract the difference from any subsequent payments.

(b) *The Final Payment* .The final payment under this Clause shall be made only after the final report and a final invoice, identified as such, shall have been submitted by the Consultant and approved as satisfactory by the Client. The Services shall be deemed completed and finally accepted by the Client and the final report and final invoice shall be deemed approved by the Client as satisfactory ninety (90) calendar days after receipt of the final report and final invoice by the Client unless the Client, within such ninety (90) calendar day period, gives written notice to the Consultant specifying in detail deficiencies in the Services, the final report or final invoice. The Consultant shall thereupon promptly make any necessary corrections, and thereafter the foregoing process shall be repeated. Any amount that the Client has paid or has caused to be paid in accordance with this Clause in excess of the amounts payable in accordance with the provisions of this Contract shall be reimbursed by the Consultant to the Client within thirty (30) days after receipt by the Consultant of notice thereof. Such claim for reimbursement shall be made by the Client within twelve (12) calendar months after receipt by the Client of the final report and the final invoice that the Client has approved in accordance with the above.

(c) All payments under this Contract shall be made to the accounts of the Consultant specified in the **SCC**.

(d) With the exception of the final payment under (b) above, payments neither constitute acceptance of the Services nor relieve the Consultant of any obligations hereunder.

46. Interest on Delayed Payments and Damages

46.1 Interest on delayed payments: If the Client had delayed payments beyond Ninety (90) days after the due date stated in Clause GCC 45.1 (a) or (b), interest shall be paid to the Consultant on any amount due by, not paid on, such due date for each day of delay at the annual rate stated in the **SCC.**

46.2 Damages: If the Consultant fails to comply with the Contract requirements, the Client shall be entitled to apply damages as stated in the **SCC**. The total amount of the damages shall not exceed 10% of the Contract amount.

G. FAIRNESS AND GOOD FAITH

47. Good Faith

47.1 The Parties undertake to act in good faith with respect to each other's rights under this Contract and to adopt all reasonable measures to ensure the realization of the objectives of this Contract.

H. SETTLEMENT OF DISPUTES

48. Amicable Settlement

48.1 The Parties shall seek to resolve any dispute amicably by mutual consultation.

48.2 If either Party objects to any action or inaction of the other Party, the objecting Party may file a written Notice of Dispute to the other Party providing in detail the basis of the dispute. The Party receiving the Notice of Dispute will consider it and respond in writing within Twenty Eight (28) from receipt. If that Party fails to respond within Twenty eight days (28) days, or the dispute cannot be amicably settled within Twenty eight (28) days from the response of that Party, Clause GCC 49.1 shall apply.

49. Dispute Resolution

49.1 Any dispute between the Parties arising under or related to this Contract that cannot be settled amicably may be referred to by either Party to the adjudication/arbitration in accordance with the provisions specified in the **SCC**.

II. SPECIAL CONDITIONS OF CONTRACT

[Notes in brackets are for guidance purposes only and should be deleted in the final text of the signed contract]

Number of GC Clause	**Amendments of, and Supplements to, Clauses in the General Conditions of Contract**
1.1(a) and 3.1 Applicable law	**The Contract shall be construed in accordance with the law of Kenya**
4.1 Language	**The language is: English**.
6.1 and 6.2 Communications	**The addresses are:** Client : ***Eng. Silas M. Kinoti*** ***M/s Saadia H. AdanKhalif*** ***Director General*** ***Deputy Director (SCM)*** ***KENYA URBAN ROAD AUTHORITY or KURA*** ***P.O Box 41727-00100 Nairobi*** ***P.O Box 41727-00100 Nairobi*** Consultant : ____________________ ____________________ Attention : ____________________ Facsimile : ____________________ E-mail (where permitted) :____________________
8.1 Authority of Member in Charge	*[Note: If the Consultant consists only of one entity, state "N/A";* *OR* *If the Consultant is a Joint Venture consisting of more than one entity, the name of the JV member whose address is specified in Clause SCC 6.1 should be inserted here.]* **The Lead Member on behalf of the JV is** ____________ ________________________________ *[insert name of the member]*
9.1 Authorized Representatives	**The Authorized Representatives are:** **For the Client:** ***{Eng. (Dr.) Onesmus Kemoi*** ***Deputy Director (Special Projects)*** ***KURA*** ***P.O Box 41727-00100*** ***Nairobi*** **For the Consultant:** *[name, title]*________________________________
11.1 Effectiveness of Contract	The Contract shall come into force at the date of Contract signature. There is no effectiveness condition.

12.1 Termination for failure to become Effective	**Not applicable**
13.1 Commencement of Services	**Commencement of Services: the Services shall start on** *7 days from Notification of Commencement Letter*
14.1 Expiration of Contract	**The time period shall be 36 Months**.(Construction Period 24 months and Operation and Maintenance Period 12 months)
20.5 Law Applicable to Services	The Consultant shall not provide services or goods originating from a country subject to an embargo from the United Nations or Kenya**.**
23.1 Liability of the Consultant	**No additional provisions.** *[OR:* The following limitation of the Consultant's Liability towards the Client can be subject to the Contract's negotiations: **Limitation of the Consultant's Liability towards the Client:** **(a) Except in the case of gross negligence or willful misconduct on the part of the Consultant or on the part of any person or a firm acting on behalf of the Consultant in carrying out the Services, the Consultant, with respect to damage caused by the Consultant to the Client's property, shall not be liable to the Client:** **(i) for any indirect or consequential loss or damage; and** **(ii) for any direct loss or damage that exceeds [insert a multiplier, e.g.: one, two, three] times the total value of the Contract;** **(b) This limitation of liability shall not** **(i) affect the Consultant's liability, if any, for damage to Third Parties caused by the Consultant or any person or firm acting on behalf of the Consultant in carrying out the Services;** **(ii) be construed as providing the Consultant with any limitation or exclusion from liability which is prohibited by the Applicable law**.
24.1 Insurance to be Taken out by the Consultant	**The insurance coverage against the risks shall be as follows:** *[Note: Delete what is not applicable except (a)]*. **(a) Professional liability insurance, with a minimum coverage of** [the total amount of the Contract]*[insert amount and currency which should be not less than the total ceiling amount of the Contract]*; (b) Third Party motor vehicle liability insurance in respect of motor vehicles operated in Kenya by the Consultant or its Experts or Sub-consultants, with a minimum coverage of *["in accordance with the Applicable law"]*; (c) Third Party liability insurance, with a minimum coverage of *["in accordance with the Applicable law"]*;

	(d) Employer's liability and workers' compensation insurance for the Consultant's Experts and Sub-consultants in accordance with the relevant provisions of the Applicable law in Kenya, as well as, with respect to such Experts, any such life, health, accident, travel or other insurance as may be appropriate; and (e) Insurance against loss of or damage to (i) equipment purchased in whole or in part with funds provided under this Contract, (ii) the Consultant's property used in the performance of the Services, and (iii) any documents prepared by the Consultant in the performance of the Services.
27.1 Proprietary Rights in Reports and Records	*[If applicable, insert any exceptions to proprietary rights provision____________________________________]*
27.2	*[If there is to be no restriction on the future use of these documents by either Party, this Clause SCC 27.2 should be deleted. If the Parties wish to restrict such use, any of the following options, or any other option agreed to by the Parties, could be used:* **The Consultant shall not use these *documents and software* for purposes unrelated to this Contract without the prior written approval of the Client**. *OR*[**The Client shall not use these *documents and software* for purposes unrelated to this Contract without the prior written approval of the Consultant**. *OR* **Neither Party shall use these *documents and software* for purposes unrelated to this Contract without the prior written approval of the other Party**.
35.1 (a) through (f) Assistance and Exemptions	*N/A*
35.1(g)	*N/A*
41Ceiling Amount or Contract Price	**The contract is: [a unit price (time-based) contract]** *[If the Contract is divided into phases, it may be possible to specify a different type of contract for each phase]* *[In time-based contracts the Consultant provides services on a timed basis according to quality specifications, and Consultant's remuneration is determined on the basis of the time actually spent by the Consultant in carrying out the Services and is based on (i) agreed upon unit rates for the Consultant's Experts multiplied by the actual time spent by the Experts in executing the assignment, and (ii) reimbursable expenses using actual expenses and/or agreed*

	unit prices. This type of contract requires the Client to closely supervise the Consultant and to be involved in the daily execution of the assignment. *In lump-sum contracts, payments are linked to outputs (deliverables) such as reports, drawings, bill of quantities, bidding documents, or software programs. Lump-sum contracts are easier to administer because they operate on the principle of a fixed price for a fixed scope, and payments are due on clearly specified outputs and milestones. Nevertheless, quality control of the Consultant's outputs by the Client is paramount.]* **The Contract price (lump-sum) or the ceiling (time-based) is:** ____________________ *[insert amount and currency for each currency] [indicate:* **inclusive of local indirect taxes.** **The amount of such taxes is ____________________** *[insert the amount as finalized at the Contract's negotiations on the basis of the estimates provided by the Consultant in Form FIN-2 of the Consultant's Financial Proposal.]*
42.1Remuneration and Reimbursable Expenses (not applicable to lump-sum contract)	*[If relevant, insert:* Time actually spent per month shall be calculated as the number of days actually worked by the expert divided by twenty-two (22) working days. One working day (billable) shall not be less than eight (8) working (billable) hours.*].* *[For reimbursable expenses, specify, if applicable, allowance and conditions for payment eligibility with regards to (list as per clause 16.1of the Data Sheet):* *Per diem, transportation cost (number of air ticket, passenger class, baggage allowance, local transportation…), communication costs, printing costs…]*
42.3	**Price adjustment on the remuneration, lumpsums or reimbursables does not apply**
43.1 and 43.2 Taxes and Duties	**The Consultant, the Sub-consultants and the Experts shall not have any Tax exemptions.**
45.1(a) Mode of Billing and Payment	***No Advance Payment shall be paid***
45.1(b) (time-based)	*Consultant shall submit monthly statements for billing purposes for services offered*
45.1 (c) (lump-sum)	**The payment schedule: Not Applicable** **[***Payment of installments shall be linked to the deliverables specified in the Terms of Reference in Appendix A. The advance payment and repayment should not appear in the payment schedule. It is addressed in SCC 45.1 (a) above* **]** **1st payment:** *[insert the amount of the installment, percentage of the total Contract price, and the currency]*

	2nd payment: ________________ **3rd payment: ________________** **nth payment: ……………………** **Final payment: ______________** *[Total sum of all installments should amount to the Contract price set up in SCC 41.]*
45.1(e)	**The accounts are:** For local currency: *[insert account]*.
46.1 Interest on Delayed Payments	**The interest rate is**: *[2.5% above CBK lending rate]*.
46.2 Damages	*Ksh. 20,000* per Day for late delivery of each expected Deliverable shall be due from the Consultant as **Delay Damages.** The damages shall be shared equally between the Contracting Authority and the Service Provider *[insert other Damages if appropriate]*
49. Dispute Resolution	**Disputes shall be settled by arbitration in accordance with the following provisions:** 1. Selection of Arbitrators. Each dispute submitted by a Party to arbitration shall be heard by a sole arbitrator or an arbitration panel composed of three (3) arbitrators, in accordance with the following provisions: (a) shall be finally settled by arbitration in accordance with the UNCITRAL Arbitration Rules (the "**Rules**") which Rules are deemed to be incorporated by reference. there shall be three (3) arbitrators and the language of the arbitration shall be English (b) the seat of the arbitration shall be London, England. The venue of the arbitration shall be Nairobi, Kenya. (c) The award rendered shall apportion the costs of the arbitration. The award shall be in writing and shall set forth in reasonable detail the facts of the Dispute and the reasons for the tribunal's decision. The award shall bear interest at a rate to be determined by the arbitral tribunal from the date of the award until the date of the payment. The arbitral tribunal is not authorized to award punitive, double, treble, multiple or consequential damages. The arbitral tribunal shall not be empowered to decide any dispute *ex aequo et bono* or *amiable compositeur*. The award in such arbitration shall be final and binding upon the parties to this Contract and judgment thereon may be entered in any court having jurisdiction for its enforcement

	2. Substitute Arbitrators. If for any reason an arbitrator is unable to perform his/her function, a substitute shall be appointed in the same manner as the original arbitrator.

III. APPENDICES

5 APPENDIX A – TERMS OF REFERENCE

[This Appendix shall include the final Terms of Reference (TORs) (on the basis of Section 7 of the RFP) worked out by the Client and the Consultant during the negotiations; dates for completion of various tasks; location of performance for different tasks; detailed reporting requirements; Client's input, including counterpart personnel assigned by the Client to work on the Consultant's team; specific tasks that require prior approval by the Client.

For time-based contracts, specify: the hours of work for Key Experts; travel time to/ from the Client's country; entitlement, if any, to leave pay; public holidays in the Client's country that may affect Consultant's work; etc.]

6 APPENDIX B –CONSULTANT'S TECHNICAL PROPOSAL INCLUDING METHODOLOGY AND KEY EXPERTS

[Insert the Consultant's Technical Proposal and finalized during the Contract's negotiations. Attach the CVs (updated and signed by the respective Key Experts) demonstrating the qualifications of Key Experts.]

7 APPENDIX C – CONTRACT PRICE(S)

[Insert the tables with the Contract Price(s). The tables shall be based on Forms FIN-2, FIN-3 and FIN-4 of the Consultant's Financial Proposal and shall reflect any changes agreed at the Contract negotiations, if any.

For time-based contract, all reimbursable expenses shall be reimbursed at actual cost, unless otherwise explicitly provided in this Appendix, and in no event shall reimbursement be made in excess of the Contract amount. Conditions and allowance for reimbursable expenses to be eligible for payment may be specified here consistently with SCC 42.1]

8 APPENDIX D - FORM OF ADVANCE PAYMENT GUARANTEE

[See Clause GCC 45.1 (a) and SCC 45.1(a)]

Bank Guarantee for Advance Payment

____________________________ *[Bank's Name, and Address of Issuing Branch or Office]*

Beneficiary: _________________ *[Name and Address of Client]*

Date: ________________

ADVANCE PAYMENT GUARANTEE No.: _________________

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

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

At the request of the Consultant, we _______________ *[name of bank]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of ___________ *[amount in figures]* () *[amount in words]*[1] upon receipt by us of your first demand in writing accompanied by a written statement stating that the Consultant are in breach of their obligation under the Contract because the Consultant have used the advance payment for purposes other than toward providing the Services under the Contract.

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

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Consultant as indicated in copies of certified monthly statements which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of the monthly payment certificate indicating that the Consultant has made full repayment of the amount of the advance payment, or on the __ day of ___________, 2___,[2]whichever is earlier.

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

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

Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.
Any dispute over the interpretation of the conditions of this letter of Guarantee shall be subject to the Laws of the Republic of Kenya.

____

[Signature]

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