KENYA NATIONAL HIGHWAYS AUTHORITY

ROADS 10,000 PROGRAMME

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

TENDER NO. KeNHA/1291/2016.

SCHEDULES TO THE PROJECT AGREEMENT

MAY, 2017

<table>
<thead>
<tr>
<th>Head PPP</th>
<th>Director General</th>
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</thead>
<tbody>
<tr>
<td>Kenya National Highways Authority,</td>
<td>Kenya National Highways Authority,</td>
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<td>S Substitution Agreement</td>
<td>35.3</td>
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<td>16.5</td>
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</tbody>
</table>
PREAMBLE

Interpretation

A. All meanings of words and phrases as defined in the Project Agreement are retained in the Schedules, save where specifically stated otherwise

B. Reference to Clauses in the Schedules are to clauses in the Project Agreement. References to Paragraphs are to paragraphs in the schedules
SCHEDULE-A
(See Clause 10.1)

SITE OF THE PROJECT NETWORK

1 THE SITE

1.1 Site of the Project Network shall include the land, buildings, structures and road works as described in Annex-I of this Schedule-A.

1.2 An inventory of the Site including the land, buildings, structures (“Existing Structures”), road works, trees and any other immovable property on or attached to the Site shall be prepared jointly by the Contracting Authority Representative and the Service Provider.
Site for Project Network

The sources of the technical terms used throughout this schedule are as shown here below:

- Road Design Manual, Part I; “Geometric Design of Rural Roads”, January 1979
- Proposed Manual for Traffic Signs in Kenya,
  ✓ Part I, “Road Markings” and,
- Standard Specifications for Road and Bridge Construction, 1986

1 Site

The Project Network is situated along the existing roads in Lot 6. The land, carriageway and structures comprising the site are described below:

<table>
<thead>
<tr>
<th>Kilgoris - Lolgorian</th>
<th>B3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Turbo -Sikhendu - Endebess</td>
<td></td>
</tr>
<tr>
<td>Turbo - Sikhendu (C622) -36km</td>
<td></td>
</tr>
<tr>
<td>Endebes– Sikhendu (C619) – 28km</td>
<td>C622/C619</td>
</tr>
<tr>
<td>Kakamega (Sichirai) – Ingotse –Namukoye - Nzoia River –Musikoma( Khalaba) Road</td>
<td>C777</td>
</tr>
<tr>
<td>Ruambwa – Port Victoria (Mabinju)</td>
<td>C672</td>
</tr>
<tr>
<td>Kehancha - Lolgorian</td>
<td>B1</td>
</tr>
<tr>
<td>Kimaeti – Malakisi - Lwakhakha</td>
<td>C807</td>
</tr>
</tbody>
</table>

a) Kilgoris – Lolgorian

The project road length is approximately 30 km long and traverses Trans Mara sub county of Narok County. The project starts at Kilgoris and takes a southerly direction to the junction of B1 at Lolgorian.

b) Turbo -Sikhendu - Endebess

The project roads are approximately 64km long and are situated in Bungoma and Trans Nzoia counties. The first portion of the road (Turbo – Sikhendu) starts at Turbo on the main Eldoret – Malaba road (A8), through Pan Paper market, Naitiri market, Wabukhonyi and ends at Sikhendu on the Webuye – Kitale road (A1) a distance of about 36km.

The second section starts at Sikhendu (Papaton) on the main Webuye – Kitale road (A1), through Mukuyuni market, Lukhome, Sabot Intex, Kisawai, Landi, and ends at Endebess, on the Kitale – Suam Boarder road a distance of about 28km.

c) Kakamega (Sichirai) – Ingotse –Namukoye - Nzoia River –Musikoma( Khalaba) Road
The project road starts at the Junction with A1 road at Lurambi located some 500m Northeast of Kakamega Town. It proceeds to Ingotse, Nambacha, Namukhoye and Kharanda centres in Kakamega County. It further proceeds to Nzoia river (Dorofu), Mwibali and Sang’alo centres of Bungoma County to meet the Yala – Mumias – Bungoma road 500m south of Bungoma Town.

d) Ruambwa – Port Victoria (Mabinju)

The project road length is approximately 17.5 km long and traverses Busia County. The road starts at the Ruambwa Shopping centre and proceeds in a westerly direction through Magombe, Makunda, through Sigiri Bridge to Port Victoria.

e) Kehancha - Lolgorian

The project road length is approximately 25 km long and traverses Migori and Narok Counties. The road starts at the Migori River bridge some 2km to the north east of Kehancha town and proceeds in a easterly direction to Lolgorian centre where B3 road meets B1 road.

f) Kimaeti – Malakisi - Lwakhakha

The road starts at Sango trading Center about 600m from Malakisi town. It runs in a Northerly direction through Konyala, Chemasil5, Kakemer, Korosiendet and ends at Lwakhakha town at the border of Kenya and Uganda. The road is in Bungoma and Busia Counties in western Kenya. It is approximately 25km.

2 Land

Details of Existing ROW along project Roads is given below:

The project roads have a minimum road reserve width of 40m for the greatest length except along commercial centres where the restricted width of the reserve is 25m.
3 Carriageway

The present carriageway of the Project Network is gravel/earth carriageway as indicated below.

<table>
<thead>
<tr>
<th>S/No</th>
<th>Section Name</th>
<th>Section Length</th>
<th>Surface Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Kilgoris - Lolgorian</td>
<td>30.2</td>
<td>Gravel/Earth</td>
</tr>
<tr>
<td>2</td>
<td>Turbo -Sikhendu - Endebeess</td>
<td>64.0</td>
<td>Gravel/Earth</td>
</tr>
<tr>
<td>3</td>
<td>Kakamega (Sichirai) – Ingotse – Namukoye - Nzoia River – Musikoma (Khalaba) Road</td>
<td>43.4</td>
<td>Gravel/Earth</td>
</tr>
<tr>
<td>4</td>
<td>Ruambwa – Port Victoria (Mabinju)</td>
<td>17.5</td>
<td>Gravel/Earth</td>
</tr>
<tr>
<td>5</td>
<td>Kehancha - Lolgorian</td>
<td>25.2</td>
<td>Gravel/Earth</td>
</tr>
<tr>
<td>6</td>
<td>Kimaeti – Malakisi - Lwakhakha</td>
<td>25.0</td>
<td>Gravel/Earth</td>
</tr>
</tbody>
</table>

4 Major Bridges

The project road has a number of Major Bridges:

a) Kilgoris - Lolgorian Road

<table>
<thead>
<tr>
<th>S/No</th>
<th>Name of Structure</th>
<th>Existing Chainage</th>
<th>No. of span</th>
<th>Carriageway Width (m)</th>
<th>Type of structure (Super structure)</th>
<th>Sub Structure</th>
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</thead>
<tbody>
<tr>
<td></td>
<td></td>
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<td>To be updated</td>
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</tbody>
</table>

b) Turbo -Sikhendu – Endebeess

<table>
<thead>
<tr>
<th>S/No</th>
<th>Name of Structure</th>
<th>Existing Chainage</th>
<th>No. of span</th>
<th>Carriageway Width (m)</th>
<th>Type of structure (Super structure)</th>
<th>Sub Structure</th>
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<td>To be updated</td>
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</table>

c) Kakamega (Sichirai) – Ingotse – Namukoye - Nzoia River – Musikoma (Khalaba) Road

<table>
<thead>
<tr>
<th>S/No</th>
<th>Name of Structure</th>
<th>Existing Chainage</th>
<th>No. of span</th>
<th>Carriageway Width (m)</th>
<th>Type of structure (Super structure)</th>
<th>Sub Structure</th>
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<td>To be updated</td>
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</table>

d) Ruambwa – Port Victoria (Mabinju)
<table>
<thead>
<tr>
<th>S/No.</th>
<th>Name of Structure</th>
<th>Existing Chainage</th>
<th>No. of span</th>
<th>Carriageway Width (m)</th>
<th>Type of structure (Super structure)</th>
<th>Sub Structure</th>
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<tr>
<td>e)</td>
<td>Kehancha - Lolgorian</td>
<td>To be updated</td>
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</table>

<table>
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<tr>
<th>S/No.</th>
<th>Name of Structure</th>
<th>Existing Chainage</th>
<th>No. of span</th>
<th>Carriageway Width (m)</th>
<th>Type of structure (Super structure)</th>
<th>Sub Structure</th>
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<tbody>
<tr>
<td>f)</td>
<td>Kimaeti – Malakisi - Lwakhakha</td>
<td>To be updated</td>
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</tbody>
</table>

*Note: Major Bridges- Total span >20m*

5 Railway Over Bridge (ROB)

The Site does not have any ROB:

There are no railway crossings along the project roads

6 (i) Grade Separators/Flyovers

The Site includes the following Flyovers:

<table>
<thead>
<tr>
<th>S/No.</th>
<th>Name of Structure</th>
<th>Existing Chainage</th>
<th>No. of span</th>
<th>Carriageway Width (m)</th>
<th>Type of structure (Super structure)</th>
<th>Sub Structure</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td></td>
<td></td>
<td>NIL</td>
</tr>
</tbody>
</table>

*The project site(s) do not have any flyovers*
(ii) Underpasses

The Site includes the following Underpasses:

<table>
<thead>
<tr>
<th>S/No.</th>
<th>Chainage bridge</th>
<th>Crossing</th>
<th>No. of span</th>
<th>Structure Type</th>
<th>Carriageway Width (m)</th>
<th>Footpath Width (m)</th>
<th>length (m)</th>
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<tr>
<td><strong>NIL</strong></td>
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</tr>
</tbody>
</table>

*The project site(s) do not have any underpasses*

7 Minor bridges

The Site includes the following Minor bridges:

a) Kilgoris - Lolgorian Road

<table>
<thead>
<tr>
<th>S/ No.</th>
<th>Chainage bridge</th>
<th>Crossing</th>
<th>No. of span</th>
<th>Structure Type</th>
<th>Carriageway Width (m)</th>
<th>Footpath Width (m)</th>
<th>Bridge length (m)</th>
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</thead>
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<tr>
<td><strong>NO MINOR BRIDGES ACROSS THE NUMEROUS CROSSINGS – NEED TO BE ASCERTAINED UPON DETAILED DESIGN</strong></td>
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</tr>
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</table>

b) Turbo -Sikhendu – Endebess

<table>
<thead>
<tr>
<th>S/ No.</th>
<th>Chainage bridge</th>
<th>Crossing</th>
<th>No. of span</th>
<th>Structure Type</th>
<th>Carriageway Width (m)</th>
<th>Footpath Width (m)</th>
<th>Bridge length (m)</th>
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<tr>
<td><strong>NO MINOR BRIDGES ACROSS THE NUMEROUS CROSSINGS – NEED TO BE ASCERTAINED UPON DETAILED DESIGN</strong></td>
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</table>

c) Kakamega (Sichirai) – Ingotse –Namukoye - Nzoia River –Musikoma( Khalaba) Road

<table>
<thead>
<tr>
<th>S/ No.</th>
<th>Chainage bridge</th>
<th>Crossing</th>
<th>No. of span</th>
<th>Structure Type</th>
<th>Carriageway Width (m)</th>
<th>Footpath Width (m)</th>
<th>Bridge length (m)</th>
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<tr>
<td><strong>NO MINOR BRIDGES ACROSS THE NUMEROUS CROSSINGS – NEED TO BE ASCERTAINED UPON DETAILED DESIGN</strong></td>
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</table>

d) Ruambwa – Port Victoria (Mabinju)
<table>
<thead>
<tr>
<th>S/ No.</th>
<th>Chainage Bridge</th>
<th>Crossing</th>
<th>No. of span</th>
<th>Structure Type</th>
<th>Carriageway Width (m)</th>
<th>Footpath Width (m)</th>
<th>Bridge Length (m)</th>
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</tbody>
</table>

NO MINOR BRIDGES ACROSS THE NUMEROUS CROSSINGS – NEED TO BE ASCERTAINED UPON DETAILED DESIGN

e) Kehancha - Lolgorian

<table>
<thead>
<tr>
<th>S/ No.</th>
<th>Chainage Bridge</th>
<th>Crossing</th>
<th>No. of span</th>
<th>Structure Type</th>
<th>Carriageway Width (m)</th>
<th>Footpath Width (m)</th>
<th>Bridge Length (m)</th>
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</thead>
<tbody>
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</tr>
</tbody>
</table>

NO MINOR BRIDGES ACROSS THE NUMEROUS CROSSINGS – NEED TO BE ASCERTAINED UPON DETAILED DESIGN

f) Kimaeti – Malakisi - Lwakhakha

<table>
<thead>
<tr>
<th>S/ No.</th>
<th>Chainage Bridge</th>
<th>Crossing</th>
<th>No. of span</th>
<th>Structure Type</th>
<th>Carriageway Width (m)</th>
<th>Footpath Width (m)</th>
<th>Bridge Length (m)</th>
</tr>
</thead>
<tbody>
<tr>
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</tr>
</tbody>
</table>

NO MINOR BRIDGES ACROSS THE NUMEROUS CROSSINGS – NEED TO BE ASCERTAINED UPON DETAILED DESIGN

8 Total number of Existing Structures on the Site

The total number of structures on the Site is noted below:

<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td>Total No. of major bridges</td>
<td>Total No. of</td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>


### 9 Bus bays and Truck Lay byes

The total number of bus bays and truck lay byes on the Project Network is noted below:

(a) No. of Bus bays on LHS  
(b) No. of Bus bays on RHS  
(c) No. of Truck lay-byes on LHS  
(d) No. of Truck lay-byes on RHS

### 10. Design chainage corresponding to existing chainage:

Kilometre markers do not exist in the entire length of the Project Network. Any existing kilometre markers are known as the "Existing chainage". During topography survey with Total Station, the observations made are referred to as "Design chainage". The relationship between the "Existing chainage” and the “Design chainage" as per field surveys of the location of any existing kilometre markers using the Total Station for the “Project Network” are given as below:
The location of Road edge markers shall be given after detailed design.

<table>
<thead>
<tr>
<th>S/No</th>
<th>From</th>
<th>To</th>
<th>From</th>
<th>To</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td>KILOMETRE MARKER POSTS TO BE ESTABLISHED DURING DESIGN</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
SCHEDULE - B  
(See Clause 2.1)  

DEVELOPMENT OF THE PROJECT NETWORK  

1. DEVELOPMENT OF THE PROJECT NETWORK  

Development of the Project Network shall include construction of the Project Network as described in this Schedule-B and in Schedule-C.  

2. Project Network  

2.1 Project Network shall include upgrading of the Project Network as described in Annex-I of this Schedule-B and Annex-I of Schedule-C.  

2.2 Project Network shall be undertaken and completed by the Service Provider in conformity with the Specifications and Standards set forth in Annex-I of Schedule-D.
Annex - I

(Schedule-B)

Description of Project Network

1. **Width of Carriageway**

   The minimum width of the paved carriageway shall be as specified in metres including the shoulders. The carriageway width shall be 6.5m and 1.5m shoulders on either side of the carriageway for the project road sections.

1.2 **Drainage Measures**

   Covered drains shall not be provided on both sides of the building edge in built-up sections, and wherever service roads and accesses are provided during the construction period. Storm water will be directed to strategically identified water pan sites and ground water re-charge soak away pits along the project road.

<table>
<thead>
<tr>
<th>S/No.</th>
<th>Name of Town</th>
<th>Length of Drain (m)</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>NOT APPLICABLE</td>
<td></td>
</tr>
</tbody>
</table>

2. **Project Facilities**

   Project facilities shall be constructed in conformity with Annex-I of Schedule-C.

3. **Specifications and Standards**

   The Project Network shall be constructed in conformity with the Specifications and Standards specified in Annex-I of Schedule – D.

4. **Other Features of Project Network**

   4.1 **Cross Sections**

   The Project Roads shall include a paved carriageway and shoulder. Typical cross-sections proposed for the different segments of the Project Network are indicated in Appendix B-I.

   4.2 **Alignment Plan and Longitudinal Section**

   An alignment plan and vertical profile of Project Network will be established during detailed design stage. The plan and profile drawings provided for the roads under this project will be used to derive the conceptual design. The minimum FRL given in enclosed drawing shall be reviewed by the Service Provider and final centre line of the road and the road levels fixed in consultation with Independent Expert and the Contracting Authority duly considering all the relevant factors covering structural soundness, safety and functional requirements.

4.3 **ByPasses - NOT APPLICABLE**
The details of bypass to be provided are given at Appendix B-III.

4.4 Service Road - NOT APPLICABLE

Service Roads shall be provided in lengths indicated in Appendix B-IV.

4.5 Proposed Right of Way

The details of the Proposed ROW are given in Appendix B-V.

4.6. At Grade Intersection

At grade intersections shall be provided at locations specified in Appendix B-VII for major intersections and in Appendix B-VIII for minor intersections.

4.7 Grade Separated Intersections - NOT APPLICABLE

The grade separated intersections shall be provided at locations given at Appendix B-VIII.

4.8 Underpasses - NOT APPLICABLE

Vehicular underpass shall be provided at location given at Appendix B-IX

4.9 Major bridges

Major bridges as listed in Appendix B-X shall be provided, widened, reconstructed, or extended.

4.10 Minor bridges

Minor bridges as listed in Appendix B-XI shall be provided, widened, reconstructed, or extended.

4.11 Culverts

Culverts shall be provided, widened, reconstructed, or extended as listed in Appendix B-XII.

4.12 Railway Over Bridges (ROB) / Railway Under Bridges (RUB) – NOT APPLICABLE

ROB/RUB shall be provided consistent with Appendix B-XIII

4.13 Slope protection

The side slope shall be protected by using suitable slope protection measures wherever required along the present roads.

4.14 Utilities

Provision for utilities shall be made both over as well as underground wherever required.
Appendix B-I

1. Typical Cross Sections

The Project Network shall be paved carriageway and shoulder without Service Roads.

Different type of cross section for different segments of Project Network including structures shall be developed as per Typical Cross Sections adopted for this project. The Typical Cross Sections are as shown in Road Design Manual, Part I; Geometric Design of Rural Roads, January 1979.

Proposed typical cross section for the Project Network is as presented here-below:

Pavement Structure:
- Double seal surface dressing wearing course on carriageway
- Single seal surface dressing shoulders
- 150mm cement improved base layer
- 100-175mm lime improved sub-base layer (S6-S4 by sub-grade strength)
- 300mm top subgrade
- Min 400mm bottom sub-grade, final depth to be determined

Appendix B-II

Alignment plans as presented in previous designs undertaken by (GOK) appointed consultants are presented herein-see book of drawings issued with RFP. Final centre line of the road and the road levels shall be fixed in consultation with Independent Expert and the Contracting Authority duly considering all the relevant factors covering structural soundness, safety and functional requirements.

Appendix B-III

Details of Bypasses - NOT APPLICABLE

<table>
<thead>
<tr>
<th>Name of Bypass</th>
<th>Existing chainage</th>
<th>Design chainage</th>
<th>Length (Km)</th>
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<tbody>
<tr>
<td>NO BY-PASSES CONSIDERED AS PART OF THE CURRENT SCOPE</td>
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</table>

Appendix B-IV
### Details of service road - NOT APPLICABLE

<table>
<thead>
<tr>
<th>NO SERVICE ROADS CONSIDERED AS PART OF THE CURRENT SCOPE</th>
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The Total length of Service Road is N/A

### Appendix B-V

#### Details of proposed Right of Way (ROW)

<table>
<thead>
<tr>
<th>Kilgoris - Lolgorian</th>
</tr>
</thead>
<tbody>
<tr>
<td>Turbo - Sikhendu - Endebess</td>
</tr>
<tr>
<td>Endebes– Sikhendu (C619) – 28km</td>
</tr>
<tr>
<td>Kakamega (Sichirai) – Ingotse – Namukoye – Nzoia River – Musikoma( Khalaba) Road</td>
</tr>
<tr>
<td>Ruambwa – Port Victoria (Mabinju)</td>
</tr>
<tr>
<td>Kehancha - Lolgorian</td>
</tr>
<tr>
<td>Kimaeti – Malakisi - Lwakhakha</td>
</tr>
</tbody>
</table>

1. **Kilgoris - Lolgorian**

<table>
<thead>
<tr>
<th>S/No.</th>
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<td>Centre to be determined</td>
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<td>To Chainage</td>
</tr>
<tr>
<td>C</td>
<td>Centre to be determined</td>
<td>From Chainage</td>
<td>To Chainage</td>
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*Exact chainages and ROW to be ascertained during detailed design.*

2. **Turbo - Sikhendu - Endebess**

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<tr>
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<td>Centre to be determined</td>
<td>From Chainage</td>
<td>To Chainage</td>
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</tbody>
</table>

3. Kakamega (Sichirai) – Ingotse – Namukoye - Nzoia River – Musikoma (Khalaba) Road

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4. Ruambwa – Port Victoria (Mabinju)

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<td>To Chainage</td>
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5. Kehancha - Lolgorian

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6. Kimaeti – Malakisi - Lwakhakha

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Appendix B-VI

Details of Proposed flyover intersections - NOT APPLICABLE
### Appendix B-VII

**Major Intersections**

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<th>S. No.</th>
<th>Existing Chainage</th>
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<th>Type of Junction</th>
<th>Remarks</th>
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<td>Name of Junction TBD</td>
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</table>

*Note:* All major intersection should be designed based on RDM Part I and as per Standard Drawings recommended by the Contracting Authority.

### Appendix B-VIII

**Minor junctions**

<table>
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<tr>
<th>S/No.</th>
<th>Existing Chainage</th>
<th>Design Chainage</th>
<th>Side (Left I Right)</th>
<th>Carriageway Width</th>
<th>Category</th>
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*Note:* All minor junctions shall be identified during detailed design stage and shall be designed based on RDM Part I and as per standard Drawings recommended by the Contracting Authority.
Appendix B-IX

Details of Proposed Vehicular Underpasses - NOT APPLICABLE

<table>
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<tr>
<th>S/No.</th>
<th>Existing chainage</th>
<th>Design chainage</th>
<th>Name of Intersecting Roads</th>
<th>Proposed structural configuration</th>
<th>Proposed Structure type</th>
<th>Proposed span arrangement</th>
<th>Total width of the structure</th>
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NO VEHICULAR UNDERPASSES CONSIDERED AS PART OF THE CURRENT SCOPE

Appendix B-X

Details of new Major bridges

All project roads

A. Construction of new Major bridges -

<table>
<thead>
<tr>
<th>S/No.</th>
<th>Name of Bridge</th>
<th>Bridge No.</th>
<th>Existing Chainage (km)</th>
<th>Design Chainage (km)</th>
<th>Type of crossing</th>
<th>Proposed structural configuration</th>
<th>Proposed Structure type</th>
<th>Proposed span arrangement (m)</th>
<th>Total width of the structure</th>
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</thead>
</table>

To be determined at design stage

B. Rehabilitation/Repair/widening of existing Major bridges -

<table>
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<th>S/No.</th>
<th>Name of Bridge</th>
<th>Bridge No.</th>
<th>Existing Chainage (km)</th>
<th>Design Chainage (km)</th>
<th>Width (m)</th>
<th>Span Arrangement</th>
<th>Type of structure</th>
<th>Details of Rehabilitation</th>
</tr>
</thead>
</table>

To be determined at design stage

Note: Major Bridges – Total Span > 20m
Details of new Minor Bridges and Rehabilitation/Repair /widening Scheme for Existing Minor bridges

All project roads

a) **Construction of New Minor bridges/Box Culvert**

<table>
<thead>
<tr>
<th>S/No.</th>
<th>Bridge No.</th>
<th>Existing Chainage (km)</th>
<th>Design Chainage (km)</th>
<th>Type of crossing</th>
<th>Proposed structural configuration</th>
<th>Proposed Structure type</th>
<th>Proposed span arrangement (m)</th>
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</table>

*Note: Minor bridges- Total span ≤20m*

b) Rehabilitation/Repair/widening of existing Minor bridges

<table>
<thead>
<tr>
<th>S/No.</th>
<th>Name of Bridge</th>
<th>Bridge No.</th>
<th>Existing / Chainage (km)</th>
<th>Design Chainage (km)</th>
<th>Width (m)</th>
<th>Span Arrangement</th>
<th>Type of structure</th>
<th>Details of Rehabilitation</th>
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To be determined at design stage
## Appendix B-XII - Scheme for Culverts (*Chainages not established*)

### Project Roads

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<th>Existing Chainage</th>
<th>Design Chainage</th>
<th>Type of Structure</th>
<th>Recommendation</th>
<th>Span Arrangement</th>
<th>Proposed total width (m)</th>
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</tbody>
</table>
Appendix B-XIII

Lane Details of Proposed Railway Over Bridge (ROB) / Rail Under Bridges (RUB) - NOT APPLICABLE

<table>
<thead>
<tr>
<th>S/No.</th>
<th>Location</th>
<th>Existing / Design chainage</th>
<th>Name of crossing</th>
<th>Existing structure</th>
<th>Proposed structural configuration</th>
<th>Proposed Structure type</th>
<th>Proposed span arrangement</th>
<th>Total width of the structure</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td></td>
<td></td>
<td></td>
<td>NOT APPLICABLE</td>
</tr>
</tbody>
</table>
SCHEDULE – C
(See Clause 2.1)

PROJECT FACILITIES

1. **Project Facilities**
The Service Provider shall construct the Project Facilities in accordance with the provisions of this Agreement. Such Project Facilities shall include but shall not be limited to:

   a. Roadside furniture;
   
   b. Street lighting (NOT APPLICABLE)
   
   c. Pedestrian facilities;
   
   d. Landscaping and tree plantation;
   
   e. Rest areas (NOT APPLICABLE)
   
   f. Truck laybys
   
   g. Bus-bays and bus shelters
   
   h. Under passes / Overpass (NOT APPLICABLE)

2. **Project Facilities**
Project Facilities forming part of the Project and to be completed on or before the Project Completion Date have been described in Annex-I of this Schedule-C.
Annex - I  
(Schedule-C)

Project Facilities

The Service Provider shall construct the Project Facilities described in this Annex-I to form part of the Project Network. The Project Facilities shall include:

1. Roadside furniture;
2. Street lighting (NOT APPLICABLE);
3. Pedestrian facilities;
4. Landscaping and tree plantation;
5. Rest areas (NOT APPLICABLE);
6. Truck laybys;
7. Bus-bays and bus shelters;
8. Under passes / Overpass (NOT APPLICABLE);

Description of Project Facilities

Each of the Project Facilities is briefly described below:

(a) Road side Furniture

Road side furniture shall be provided in accordance with the Manual of Specifications and Standards as referred in schedule “D”.

The road furniture necessary for the project roads include the following:
   i. Standard warning signs, standard informative signs, standard prohibitory and mandatory signs;
   ii. Road marking;
   iii. Edge marker posts;
   iv. Guard rails etc.

(b) Street Lighting:

Street lighting as provided in accordance with the Manual of Specifications and Standards as referred in schedule “D”, will not be provided under the proposed project scope.

(c) Pedestrian Facilities

Pedestrian Facilities shall be provided in accordance with the Manual of Specifications and Standards as referred in schedule “D”.
(d) **Landscaping and Tree Plantation:**

Landscaping and tree plantation shall be provided in accordance with the Manual of specifications and Standards as referred in schedule “D”.

(e) **Rest areas:**

Rest areas will not be provided along the project road. Commercial rest facilities located within the town centres will be utilized.

(f) **Truck Lay-bys**

Truck laybys are proposed to be constructed on either side of road along the Project Network. The location shall be decided in consultation with the Contracting Authority. It shall be constructed in accordance with the Manual of Specifications and Standards as referred in schedule “D”.

(g) **Bus-bays and Bus Shelter,**

Bus-bays and Bus Shelter shall be provided at locations to be agreed at design stage and in accordance with the Manual of Specifications and Standards as referred in schedule “D”:

<table>
<thead>
<tr>
<th>S/No.</th>
<th>Name of town or village</th>
<th>Chainage (Km)</th>
<th>Side</th>
<th>Type of facility</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
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<td>TO BE PROVIDED AS ABOVE</td>
</tr>
</tbody>
</table>

(h) **Underpasses/overpasses – NOT APPLICABLE**

As per Schedule B
SPECIFICATIONS AND STANDARDS

1 Project Network
The Service Provider shall comply with the Specifications and Standards set forth for the design and construction of the roads.

Annex - I
(Schedule-D)

Specifications and Standards for Project Network

1 Manual of Specifications and Standards to apply
Subject to the provisions of Paragraph 2 of this Annex-I, the design and construction of the Project Network shall be undertaken in accordance with the latest standards and design guidance issued by the Ministry responsible for Roads in Kenya as may be revised from time to time and including but not limited to the following:

- Road Design Manual, Part I; “Geometric Design of Rural Roads”, January 1979
- Proposed Manual for Traffic Signs in Kenya,
  ✓ Part I, “Road Markings” and,
- Standard Specifications for Road and Bridge Construction, 1986
- Traffic surveys shall generally be carried out following the guidelines and recommendations of the Transport Research Laboratory (TRL) Overseas Road Note 40: A guide to axle load surveys and traffic counts for determining traffic loading on pavements, TRL Ltd, Crowthorne, Berkshire, UK 2004.
Vehicle classification shall be as follows:

<table>
<thead>
<tr>
<th>S/No.</th>
<th>Item</th>
<th>Clause</th>
</tr>
</thead>
<tbody>
<tr>
<td>i.</td>
<td>Motorcycles</td>
<td>motorcycles with or without side-cars e.g. motor tricycles</td>
</tr>
<tr>
<td>ii.</td>
<td>Saloon car</td>
<td>&lt;= 5 seats</td>
</tr>
<tr>
<td>iii.</td>
<td>Large car 4WD</td>
<td>&lt;= 9 seats</td>
</tr>
<tr>
<td>iv.</td>
<td>Minibus/Matatu</td>
<td>&lt;= 23 passengers</td>
</tr>
<tr>
<td>v.</td>
<td>Pick-up/Van/LGV</td>
<td>&lt;1.5t unladen</td>
</tr>
<tr>
<td>vi.</td>
<td>Light truck</td>
<td>2 axles (single rear wheels) 3-6t payload</td>
</tr>
<tr>
<td>vii.</td>
<td>Medium truck/MGV</td>
<td>2 axles (double rear wheels) 7-10t payload</td>
</tr>
<tr>
<td>viii.</td>
<td>Heavy truck/HGV</td>
<td>3-4 axles rigid</td>
</tr>
<tr>
<td>ix.</td>
<td>Articulated trucks</td>
<td>&gt;= 5 axles</td>
</tr>
<tr>
<td>x.</td>
<td>Small bus</td>
<td>24-40 passengers</td>
</tr>
<tr>
<td>xi.</td>
<td>Large bus</td>
<td>&gt; 40 passengers</td>
</tr>
<tr>
<td>xii.</td>
<td>Non-Motorised Traffic</td>
<td>Bicycle, cart and pedestrian</td>
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</table>

The Environmental Impact Assessment (EIA) study will be in accordance with the Environmental Management and Co-ordination Act (EMCA), 1999 and the Environmental (Impact Assessment and Audit) Regulations, 2003.

The safety audit shall be carried out in accordance with the Road Safety Audit Manual/guidelines of the Government of Kenya and any other internationally accepted standards and as agreed with the Contracting Authority.

2 Deviations from the Manual

Notwithstanding anything to the contrary contained in the aforesaid Manual, the following Specifications and Standards shall apply to the Project Network, and for purposes of this Agreement, the aforesaid Manual shall be deemed to be amended to the extent set forth below:

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<th>S/No.</th>
<th>Item</th>
<th>Clause</th>
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<tbody>
<tr>
<td>1</td>
<td>Entry and Exit point</td>
<td>N/A</td>
</tr>
<tr>
<td>2</td>
<td>Vehicular / pedestrian underpass</td>
<td>N/A</td>
</tr>
<tr>
<td>3</td>
<td>Lateral clearance of underpass</td>
<td>N/A</td>
</tr>
<tr>
<td>4</td>
<td>Typical Cross sections</td>
<td>N/A</td>
</tr>
</tbody>
</table>

Entry and exit ramps between the Project Network and the service road may not be provided in order to minimize property impact.

The vehicular/pedestrian/cattle underpasses provided are as per the details given in schedule ‘B’ of Volume III of bid documents.

The lateral clearance of proposed underpass is to be provided as per details given in Schedule B. The proposed cross sections to be adopted are given in Schedule B.
1. Applicable Permits

1.1 The Service Provider shall obtain, as required under the Applicable Laws, the following Applicable Permits on or before the Appointed Date, save and except to the extent of a waiver granted by the Contracting Authority in accordance with Clause 4.1.3 of the Agreement:

(a) Project license from National Environment Management Authority (NEMA)

(b) Project license from the National Construction Authority (NCA)

(c) Permission of the Government for extraction of boulders from quarry;

(d) Permission of the County Government and National Environmental Management authority (NEMA) for installation of crushers;

(e) License for use of explosives;

(f) Permission of Kenya Government for drawing water from river/reservoir;

(g) License from National Environmental Management authority (NEMA) or other competent authority for setting up Batching Plant;

(h) Clearance of National Environmental Management authority (NEMA) for setting up Batching Plant;

(i) Clearance of the County Government and National Environmental Management authority (NEMA) for setting up an Asphalt Plant;

(j) Permission of County Government and National Environmental Management authority (NEMA) for borrow earth;

(k) Permission of State Government, or other competent Authority for cutting of trees; and

(l) Any other permits or clearances required under Applicable Laws.
PERFORMANCE SECURITY

The Director General,
Kenya National Highways Authority,
Nairobi.

WHEREAS:

.......................... Ltd (the “Service Provider”) and Kenya National Highways Authority (the “Contracting Authority”) have entered into a Project Agreement dated *** (the “Agreement”) whereby the Contracting Authority has agreed to the Service Provider undertaking the development of the roads in Lot 6 on Finance, Design, Build, Maintain and Transfer on Annuity (“FDBMT Annuity”) basis, subject to and in accordance with the provisions of the Agreement.

(B) The Agreement requires the Service Provider to furnish a Performance Security to the Contracting Authority in a sum of 5% of the Total Project Cost (the “Guarantee Amount”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Construction Period (as defined in the Agreement).

(C) We, ***** being a bank incorporated and licensed in Kenya and through our Branch at ***** (the “Bank”) have agreed to furnish this Bank Guarantee by way of Performance Security.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Service Provider’s obligations during the Construction Period, under and in accordance with the Project Agreement, and agrees and undertakes to pay to the Contracting Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Service Provider, such sum or sums up to an aggregate sum of the Guarantee Amount as the Contracting Authority shall claim, without the Contracting Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Contracting Authority, under the hand of the Director General (or similar designation), that the Service Provider has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Contracting Authority shall be the sole judge as to whether the Service Provider is in default in due and faithful performance of its obligations during the Construction Period under the Project Agreement and its decision that the Service Provider is in default shall be final, and binding on the Bank, notwithstanding any differences between the Contracting Authority and the Service Provider, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Service Provider for any reason whatsoever.

3. In order to give effect to this Guarantee, the Contracting Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Service Provider and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.

4. It shall not be necessary, and the Bank hereby waives any necessity, for the Contracting Authority to proceed against the Service Provider before presenting to the Bank its demand under this Guarantee.

5. The Contracting Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfillment and/or performance of all or any of the obligations of the Service Provider contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Contracting Authority against the Service Provider, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Contracting Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Contracting Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Service Provider or any other forbearance, indulgence, act or omission on the part of the Contracting Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.

6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Contracting Authority in respect of or relating to the Agreement or for the fulfillment, compliance and/or performance of all or any of the obligations of the Service Provider under the Agreement.

7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Contracting Authority on the Bank under this Guarantee, not later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Contracting Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Performance Security shall cease to be in force and effect when the Service Provider shall have expended on Project construction an aggregate sum not less than 20% (twenty per cent) of the Total Project Cost which is deemed to be Ksh. (…..) for the purposes of this Guarantee, and provided the Service Provider is not in breach of the Project Agreement. Upon request made by the Service Provider for release of the Performance Security along with the particulars required hereunder, duly certified by a statutory auditor of the Service Provider, the Contracting Authority shall release the Performance Security forthwith.

9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Contracting Authority in writing, and declares that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.

10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Contracting Authority that the envelope was so posted shall be conclusive.

11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of 3(three) or until it is released earlier by the Contracting Authority pursuant to the provisions of the Agreement.

Signed and sealed this ** day of ***, 20** at ***.

SIGNED, SEALED AND DELIVERED
For and on behalf of the BANK by:

(Signature)
(Name)
(Designation)
(Address)
SCHEDULE – G
(See Clause 12.2)

PROJECT COMPLETION SCHEDULE

1. Project Completion Schedule

During Construction Period, the Service Provider shall comply with the requirements set forth in this Schedule-G for each of the Project Milestones and the Scheduled Date (the “Project Completion Schedule”). Within 15 (fifteen) days of the date of each Project Milestone, the Service Provider shall notify the Contracting Authority of such compliance along with necessary particulars thereof.

2. Project Milestone-I

2.1 Project Milestone-I shall occur on the date falling on the Effective date (“Project Milestone-I”).

2.2 Prior to the occurrence of the Project Milestone-I, the Service Provider shall have satisfied in full the Conditions Precedent and expended not less than 1% (one per cent) of the Total Project Cost.

1. Project Milestone-II

3.1 Project Milestone-II shall occur on the date falling on the 90th (Ninetieth) day from the Effective Date (“Project Milestone-II”).

3.2 Prior to the occurrence of Project Milestone-II, the Service Provider shall have commenced mobilization of design and construction teams and initiated design of and expended not less than 5% (five per cent) of the Total Project Cost set forth in the Financial Package.

2. Project Milestone-III

4.1 Project Milestone-III shall occur on the date falling on the 180th (one hundred and eightieth) day from the Effective Date (“Project Milestone-III”).

4.1.1 Prior to the occurrence of Project Milestone-III, the Service Provider shall have completed 40% of the design, completed mobilization and commenced earthworks of the Project Network and expended not less than 10% (ten per cent) of the Total Project Cost set forth in the Financial Package.

3. Project Milestone-IV

5.1 Project Milestone-IV shall occur on the date falling on the 270th (Two hundred and seventieth) day from the Effective Date (the “Project Milestone-IV”).

5.2 Prior to the occurrence of Project Milestone-IV, the Service Provider shall have commenced construction of concrete structures (pipe culverts, box culverts and bridges) and expended not less than 30% (Thirty per cent) of the Total Project Cost set forth in the Financial Package.
6  Project Milestone-V

6.1  Project Milestone-V shall occur on the date falling on the 360th (Three hundred and sixtieth) day from the Effective Date (the “Project Milestone-V”).

6.2  Prior to the occurrence of Project Milestone-V, the Service Provider shall have commenced construction of sub-base and base pavement layers of the Project Network and expended not less than 50% (Fifty per cent) of the Total Project Cost set forth in the Financial Package.

7  Project Milestone VI

7.1  Project Milestone VI shall occur on the date falling on the 450th (Four hundred and fiftieth) day from the Effective Date (the “Project Milestone-VI”).

7.2  Prior to the occurrence of Project Milestone-VI, the Service Provider shall have completed 70% (Seventy percent) of the Project Network to double surface dressing standards and expended not less than 70% (Seventy per cent) of the Total Project Cost set forth in the Financial Package.

8  Project Milestone VII

8.1  Project Milestone-VII shall occur on the date falling on the 540th (Five hundred and fortieth) day from the Effective Date (the “Project Milestone-VII”).

8.2  Prior to the occurrence of Project Milestone-VII, the Service Provider shall have completed 80% of the Project Network to double surface dressed standards and expended not less than 80% (Eighty per cent) of the Total Project Cost set forth in the Financial Package.

9  Project Milestone VIII

9.1  Project Milestone-VIII shall occur on the date falling on the 630th (Six hundred and thirtieth) day from the Effective Date (the “Project Milestone-VIII”).

9.2  Prior to the occurrence of Project Milestone-VIII, the Service Provider shall have completed 90% of the Project Network to double surfaced dressed standards and the partial completion certificate has been issued of for this section of the works and having expended 90% (Ninety per cent) of the Total Project Cost set forth in the Financial Package.

10  Project Milestone IX

10.1  Project Milestone-IX shall occur on the date falling on the 730th (Seven hundred and thirtieth) day from the Effective Date (the “Project Milestone-IX”).

10.2  Prior to the occurrence of Project Milestone-IX, the Service Provider shall have completed 100% of road furniture installations and 100% of the Project Network to double surfaced dressed standards and expended 100% (One hundred per cent) of the Total Project Cost set forth in the Financial Package.
11 Scheduled Completion Date

11.1 The Scheduled Date shall occur within the Project Period for each Lot.

11.2 On or before the Scheduled Date, the Service Provider shall have completed the project in accordance with this Agreement, provided that completion before the Scheduled Date shall not entitle the Service Provider to receive payment of the Annuity prior to the timelines set out in Schedule M (the Payment Mechanism).

12 Extension of period

Upon extension of any or all of the aforesaid Project Milestones or the Scheduled Date, as the case may be, under and in accordance with the provisions of this Agreement, the Project Completion Schedule shall be deemed to have been amended accordingly.
SCHEDULE –H
(See Clause 12.4)

DRAWINGS

1 Drawings

In compliance of the obligations set forth in Clause 12.4 of this Agreement, the Service Provider shall furnish to the Independent Expert, free of cost, all Drawings listed in Annex-I of this Schedule-H.

2 Additional drawings

If the Independent Expert determines that for discharging its duties and functions under this Agreement, it requires any drawings other than those listed in Annex-I, it may by notice require the Service Provider to prepare and furnish such drawings forthwith. Upon receiving a requisition to this effect, the Service Provider shall promptly prepare and furnish such drawings to the Independent Engineer, as if such drawings formed part of Annex-I of this Schedule-H.
1. All the Drawings that the Service Provider is required to furnish under Clause 12.4 Specific Drawings for the roads are as follows:

- Horizontal and Vertical Alignment with details of reference survey of Kenya control points, Horizontal Intersection Points, Vertical Intersection Points, elements of curves, and sight distances.
- Cross-section at 20m interval along the alignment within ROW
- 7/5- point setting out data along the alignment at intervals of 20m
- Typical cross-section with details of pavement structures
- Detailed drawings of individual Bridges and Structures
- Detailed drawings for individual culverts
- Detailed layout drawings for intersections
- Drawings for Road signs, Markings
- Detailed drawings for Bus bays, Bus Shelters, Parking areas, truck lay-bys
- Landscaping & Tree plantation
- Traffic management drawings for safety in construction zones
- Detailed drawings of road side furniture and safety structures
- Any other drawings for completion of work and safety of fast & slow vehicles and pedestrians and cattle.
SCHEDULE –I
(See Clause 14.1.2)

TESTS

1 Schedule for Tests
1.1 The Service Provider shall, not later than 30 (thirty) days prior to the likely completion of the Project Network notify the Independent Expert and the Contracting Authority of its intent to subject the Project Network to Tests, and not later than 7 (seven) days prior to the actual date of Tests, furnish to the Independent Expert and the Contracting Authority detailed inventory and particulars of all works and equipment forming part of the project.

1.2 The Service Provider shall notify the Independent Expert of its readiness to subject the Project Network to Tests at any time after 7 (seven) days from the date of such notice, and upon receipt of such notice, the Independent Expert shall, in consultation with the Service Provider, determine the date and time for each Test and notify the same to the Contracting Authority who may designate its representative to witness the Tests. The Independent Expert shall thereupon conduct the Tests itself or cause any of the Tests to be conducted in accordance with Clause 14 and this Schedule-I.

2 Tests
2.1 Visual and physical Test: The Independent Expert shall conduct or cause to be conducted a visual and physical check of project roads to determine that all works and equipment forming part thereof conform to the provisions of this Agreement.

2.2 Riding quality Test:
Riding quality of each lane of the carriageway shall be checked with the help of a calibrated bump integrator and the maximum permissible roughness for purposes of this Test shall be 1,800 (one thousand eight hundred) mm for each kilometre.

2.3 Pavement Composition Test:
The thickness and composition of the pavement structure shall be checked on a sample basis by digging pits to determine conformity of such pavement structure with Specifications and Standards. The sample shall consist of one pit in each direction of travel to be chosen at random in each stretch of 5 (five) kilometres of the Project Roads. The first pit for the sample shall be selected by the Independent Expert through an open draw of lots and every fifth kilometre from such first pit shall form part of the sample for this pavement quality Test.

2.5 Cross-section Test:
The cross-sections of the Project Roads shall be checked on a sample basis through physical measurement of their dimensions for determining the conformity thereof with Specifications and Standards. For the road portion, the sample shall consist of 4 (four) spots to be selected at random in each stretch of 1 (one) kilometre of the Project Network. The first spot for the sample shall be selected by the Independent Expert through an open draw of lots and the spots located at every quarter kilometre from such first spot shall form part of the sample. For the bridge portion, one spot shall be selected at random by the Independent Expert in each span of the bridge.
2.6 **Structural Test for bridges:**
All major and minor bridges constructed by the Service Provider shall be subjected to the Rebound Hammer and Ultrasonic Pulse Velocity tests, to be conducted in accordance with the procedure described on Non-destructive Testing Techniques, at 2 (two) spots in every span, to be chosen at random by the Independent Expert. Bridges with a span of 15 (fifteen) metres or more shall also be subjected to load testing.

2.7 **Other Tests:**
The Independent Expert may require the Service Provider to carry out or cause to be carried additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Project Roads with Specifications and Standards.

2.8 **Environmental audit:**
The Independent Expert shall carry out a check to determine conformity of the Project Roads with the environmental requirements set forth in Applicable Laws and Applicable Permits.

2.9 **Safety review:**
Safety audit of the Project Roads shall have been undertaken by an Independent Safety Consultant as set forth in Schedule L, and on the basis of such audit, the Independent Expert shall determine conformity of the Project Roads with the provisions of this Agreement.

3 **Agency for conducting Tests**

All Quality Control Tests set forth in this Schedule-I shall be conducted by the **Service Provider**, all Quality Assurance tests shall be conducted by the Independent expert.

4. **Completion/Provisional Certificate**

Upon successful completion of tests, the Independent Expert shall issue the Completion Certificate or the Provisional Certificate, as the case may be, in accordance with the provisions of Clause 14.
**SCHEDULE –J**

*(See Clauses 14.2 & 14.3)*

**COMPLETION CERTIFICATE**

1. I, **** (Name of the Independent Expert), acting as Independent Expert, under and in accordance with the Project Agreement dated *** (the “**Agreement**”), for the **Kenya National Highways Authority** for roads in **Lot 6** of (the “**Project Network**”) on Finance, Design, Build, Maintain and Transfer on annuity (FDBMT Annuity) basis, through ..................... **Ltd**, hereby certify that the Tests specified in Clause 14 and Schedule-I of the Agreement have been successfully undertaken to determine compliance of the Project Roads with the provisions of the Agreement, and I am satisfied that the Project Network has met the Milestone criteria.

2. It is certified that, in terms of the aforesaid Agreement, all works forming part of project roads have been completed, and the Project Network is hereby declared fit for entry into operation on this the *** day of *** 20**.

**SIGNED, SEALED AND DELIVERED**

For and on behalf of the

**INDEPENDENT EXPERT** by:

(Signature)
(Name)
(Designation)
(Address)
PROVISIONAL CERTIFICATE

1 I, **** (Name of the Independent Expert), acting as Independent Expert, under and in accordance with the Project Agreement dated *** (the “Agreement”), for Kenya National Highways Authority for Roads in Lot 6 of (the “Project Network”) on Finance, Design, Build, Maintain and Transfer on annuity (FDBMT Annuity) basis through ………………….. Ltd, hereby certify that the Tests specified in Clause 14 and Schedule-I of the Agreement have been undertaken to determine compliance of the Project Networks with the provisions of the Agreement.

2 Construction Works that were found to be incomplete and/or deficient have been specified in the Punch List appended hereto, and the Service Provider has agreed and accepted that it shall complete and/or rectify all such works in the time and manner set forth in the Agreement. Some of the incomplete works have been delayed as a result of reasons attributable to the Contracting (or due to Force Majeure and the Provisional Certificate cannot be withheld on this account. Though the remaining incomplete works have been delayed as a result of reasons attributable to the Service Provider, I am satisfied that having regard to the nature and extent of such incomplete works, it would not be prudent to withhold commercial operation of the Project Network, pending completion thereof.

3 In view of the foregoing, I am satisfied that the Project Network can be safely and reliably placed in commercial service of the Users thereof, and in terms of the Agreement, the Project Network is hereby provisionally declared fit for entry into commercial operation on this the *** day of *** 20**.

ACCEPTED, SIGNED, SEALED AND DELIVERED

For and on behalf of
SERVICE PROVIDER by: 

(Signature) 
(Name and Designation) 
(Address) 

SIGNED, SEALED AND DELIVERED

For and on behalf of
INDEPENDENT ENGINEER by: 

(Signature) 
(Name and Designation) 
(Address)
LOT 6

Schedules to Project Agreement

SCHEDULE – K

(See Clause 20.2)

AGREEMENT WITH
INDEPENDENT EXPERT

AGREEMENT WITH INDEPENDENT EXPERT

THIS AGREEMENT is made on 20[ ]

BETWEEN

(1) Kenya National Highways Authority ("the Contracting Authority");

(2) ……………………………………… Ltd (company registration number [ ] )
whose registered office is at ………………………………………[ ]
("Service Provider"); and

(3) [INDEPENDENT EXPERT] [(company registration number [ ] )]
whose registered office is at [of] [ ]
("Independent Expert").

RECITALS

A. The Contracting Authority and the Service Provider have entered into an agreement for
the rehabilitation, maintenance and operation of the Project Network pursuant to the
Government's public private partnership initiative ("Project Agreement") under the
terms of which they have jointly agreed to appoint an independent expert.

B. The Independent Expert is an independent adviser willing to provide services to the
Contracting Authority and the Service Provider.

C. The Contracting Authority and the Service Provider jointly engage the Independent
Expert to perform the duties and obligations which are ascribed to the Independent
Expert in the Project Agreement upon the terms of this Agreement (and which are set
out in appendix 1) upon the terms and conditions set out below.

D. The Independent Expert shall, for the purposes of this Agreement and the Project
Agreement fulfil the roles of the Independent Engineer as set out in the Public Finance
Management (Roads Annuity Fund) Regulations, 2015

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

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

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

"Party" means each of the Contracting Authority and the Service Provider, and "Parties"
means both of them;

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

"Final Date for Payment" has the meaning given to it in clause 4.3;
"Initial Fees" means the fees to be paid to the Independent Expert in respect of the Initial Services in accordance with clause 4.1, as set out in Appendix 1;

"Initial Services" means the services listed in Appendix 1;

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

"Party" means any party to this Agreement;

"Services" means together the Initial Services and the Varied Services;

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

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

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

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

2. APPOINTMENT

2.1 The Parties jointly engage the Independent Expert and the Independent Expert agrees to certify that the contractor has met all obligations for which an Annuity Payment is claimed under the Project Agreement, and to confirm that any deductions to an Annuity Payment that is due are justifiable.

2.2 The Parties also jointly engage the Independent Expert to perform:

2.2.1 the Initial Services; and

2.2.2 any Varied Services commissioned pursuant to clause 2.2, upon the terms and conditions set out below.

2.3 If the Parties require any Varied Services:

2.3.1 the Parties shall issue a Joint Notice to the Independent Expert specifying:

2.3.1.1 the services required;

2.3.1.2 which of the Parties will pay the Fees associated with the relevant services (or, if both are to pay, the proportion of the Fees for which they will each be responsible); and

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

2.3.2 within a reasonable time after issue of the Joint Notice the Independent Expert shall provide the Parties with a written quote of the cost of the relevant services, which cost shall:

2.3.2.1 wherever possible be based on the rates contained in part 2 of Appendix 2; and

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

2.3.3 if the Parties are satisfied with the Independent Expert's proposals they shall issue a further Joint Notice instructing the Independent Expert to undertake the Varied Services and the Independent Expert shall undertake the Varied Services at the time agreed by the Parties or, in the absence of agreement, as soon as reasonably practicable.

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

2.5 The Independent Expert shall provide the Services:

2.5.1 with the reasonable care, skill and diligence to be expected of a properly qualified and competent professional adviser who has held itself out as competent and experienced in rendering such services for projects of a similar size, nature, scope and complexity to the Project;
2.5.2 in accordance with Good Industry Practice, all Law and Highways Standards; and
2.5.3 in accordance with the methodology set out in Appendix 3.

For the purposes of this clause 2.5 "Good Industry Practice" shall mean using standards, practices, methods and procedures (as practised in Kenya) and exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator or other person (as the case may be) engaged in a similar type of undertaking as under this Agreement under the same or similar circumstances.

2.6 All instructions to the Independent Expert must be given jointly by the Contracting Authority’s Representative and the Service Provider’s Representative.

2.7 The Independent Expert shall comply with all reasonable instructions given to it by the Parties except and to the extent that the Independent Expert reasonably considers that any such instructions vary or might vary the Services or its authority or responsibilities under this Agreement or prejudices or might prejudice the exercise by the Independent Expert of its professional judgment in accordance with clause 2.5 above. The Independent Expert shall promptly confirm in writing to each of the Parties whether or not it shall comply with any such instruction setting out the grounds upon which the decision is made.

2.8 The Parties agree to co-operate with and provide reasonable assistance to the Independent Expert to familiarise the Independent Expert with all necessary aspects of the Project to enable the Independent Expert to carry out its obligations under this Agreement.

2.9 The Independent Expert shall be deemed to have full knowledge of the provisions of the Project Agreement, and shall be deemed to be aware of and to have taken full account of all the undertakings and warranties, both expressed and implied, on the part of either of the Parties which are set out in the Project Agreement.
Schedules to Project Agreement

Service Provider shall deliver to the Independent Expert that a true and accurate copy of the Project Agreement as soon as practicable following:

2.9.1 the date of this Agreement; and
2.9.2 any variation to the Project Agreement which is likely to affect the performance of the Services by the Independent Expert.

2.10 The Independent Expert shall promptly and efficiently perform the Services as soon as reasonably practicable but consistent with the standards specified in clause 2.4 above.

2.11 Subject to clause 2.12, the Independent Expert shall use the following partners, directors or employees in connection with the performance of the Services and such persons’ services shall be available when necessary and for so long as may be necessary to ensure the proper performance by the Independent Expert of the Services

2.11.1 [ ] ;
2.11.2 [ ] ;
2.11.3 [ ] .

Such persons shall have full authority to act on behalf of the Independent Expert for all purposes in connection with this Agreement.

2.12 None of the persons mentioned in clause 2.11 shall be removed or replaced unless he/she ceases to work as a partner in or director or employee of the Independent Expert or he/she is unable to work because of death or ill-health or by agreement of the Parties. The Independent Expert shall notify (giving a minimum of ten (10) Business Days' notice) the Parties of any such circumstances and shall be responsible for finding a replacement whose appointment shall be subject to approval in writing of the Parties.

2.13 The Parties agree that, notwithstanding the terms and effect of any provision of the Limitation of Actions Act 1968 (including any amendment or re-enactment of the same), the Independent Expert shall only be liable under this Agreement in respect of claims whether for any breach of this Agreement or in tort, negligence, for breach of statutory duty or otherwise which are notified to the Independent Expert before the expiration of the period of twelve (12) years from the date of completion of all of the Services under the terms of this Agreement.

3. DURATION

3.1 The Services shall commence on the date of this Agreement and cease on termination of this Agreement in accordance with clause 6.

3.2 This Agreement governs all of the Services provided by the Independent Expert in relation to the Project whether before or after the date hereof.

4. FEES

4.1 The Service Provider shall pay the Initial Fees to the Independent Expert in respect of the Initial Services. The Independent Expert shall issue invoices to the Service Provider for the Initial Fees in accordance with part 1 of Appendix 2.

4.2 The Independent Expert shall be entitled to be paid Additional Fees in respect of any Varied Services it provides. The Independent Expert shall issue an invoice to the Party responsible for payment on the date agreed by the Parties at the time the Varied Services were commissioned pursuant to clause 2.2 or, if both Parties are
responsible for payment, the Independent Expert shall issue an invoice to each of
them on the relevant date, in the proportions agreed pursuant to clause 2.2. Where
both Parties are responsible for payment of Varied Services, their obligations to
pay shall be several and not joint.

4.3 The date on which an invoice is by received by the Service Provider or the
Contracting Authority (as appropriate) shall constitute the due date. The final date
for payment by the Service Provider or the Contracting Authority (as appropriate)
shall be thirty (30) days after receipt of the Independent Expert’s invoice ("Final
Date for Payment").

4.4 Not later than five (5) Business Days after the due date ascertained in accordance
with clause 4.3, the Service Provider or the Contracting Authority (as appropriate)
may give written notice to the Independent Expert stating the amount which it
proposes to pay and the basis on which the amount is calculated.

4.5 Where the Service Provider or the Contracting Authority (as appropriate) intends
to withhold payment of any amount stated in the invoice, it shall give written
notice to the Independent Expert not later than five (5) Business Days before the
Final Date for Payment. The notice shall state the amount to be withheld and the
ground or grounds for withholding the payment and if there is more than one
ground, the notice shall identify the amount attributable to each ground.

4.6 If either Party fails to pay the Independent Expert any sum payable under this
Agreement by the Final Date for Payment, the relevant Party shall pay the
Independent Expert simple interest on that sum from the Final Date for Payment
until the actual date of payment at the Default Interest Rate and such rate is agreed
as a fair and reasonable rate for the purposes of the Late Payment of Commercial

4.7 If either Party fails to pay the amounts properly due pursuant to these provisions
and no notice to withhold the payment has been given pursuant to clause 4.5, the
Independent Expert may suspend performance of any or all of the Services. This
right is subject to the Independent Expert first giving both Parties not less than
seven (7) Business Days’ notice in writing of such intention stating the grounds
for suspension. The right to suspend performance shall cease when the Service
Provider (and/or the Contracting Authority (if appropriate)) pays the amount
properly due.

4.8 Neither Party shall issue instructions or do anything which does or is reasonably
likely materially to increase the fees payable to the Independent Expert without the
prior written approval of the other (such approval not to be unreasonably withheld
or delayed).

4.9 As soon as the Independent Expert becomes aware of the same and before acting
on the same the Independent Expert shall inform the Contracting Authority and the
Service Provider of any instructions which either Party has given him which will
or could reasonably be expected to increase the fees payable to the Independent
Expert under the terms of this Agreement. The Independent Expert shall if
requested by either the Service Provider or the Contracting Authority provide both
Parties with as detailed an estimate as is reasonably practicable of the increase to
the fees payable to it if it carries out such instructions. The estimate of increased
fees shall be based upon the rates contained in part 2 of Appendix 2.
5. LIMITATIONS ON AUTHORITY

The Independent Expert shall not:

5.1 make or purport to make any alteration or addition to or omission from the Output Specification (including, without limitation, the setting of performance standards) or issue any instruction or direction to any contractor or professional consultant employed or engaged in connection with the Project; or

5.2 unless both the Contracting Authority and the Service Provider consent in writing consent or agree to any waiver or release of any obligation of the Contracting Authority or the Service Provider under the Project Agreement or of any contractor or professional consultant employed or engaged in connection with the Project.

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

6. TERMINATION

6.1 Automatic termination

This Agreement will terminate immediately upon receipt by the Independent Expert of a Joint Notice confirming that the Project Agreement has terminated or upon expiry and non-renewal of a period of 3 (three) years from the date of this Agreement, whichever is the earlier.

6.2 Parties’ right to terminate

6.2.1 The Parties may by Joint Notice immediately terminate this Agreement if the Independent Expert:

6.2.1.1 is in breach of any of the terms of this Agreement which, in the case of a breach capable of remedy, shall not have been remedied by the Independent Expert within twenty one (21) days of receipt by the Independent Expert of a Joint Notice specifying the breach and requiring its remedy;

6.2.1.2 is incompetent, guilty of gross misconduct and/or any material failure, negligence or delay in the provision of the Services and/or its other duties under this Agreement;

6.2.1.3 fails to comply with clauses 2.10 and 2.11;

6.2.1.4 fails or refuses after written warning to provide the Services and/or its other duties under this Agreement reasonably and as properly required of him; or

6.2.1.5 is subject to an event analogous to any of the events set out in paragraphs (c), (d), (e) and (f) of the definition of Service Provider Default Event.

6.2.2 The Parties may terminate this Agreement at any time by issuing a Joint Notice to the Independent Expert at least six (6) months’ notice prior to the proposed termination date.

6.3 Independent Expert’s right to terminate

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

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

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

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

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

6.4 Consequences of Termination

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

6.4.2 Termination of this Agreement shall be without prejudice to any accrued rights and obligations under this Agreement as at the date of termination (including the right of either Party to recover damages from the Independent Expert).

6.4.3 If this Agreement is terminated in accordance with this clause 6, the Parties shall use reasonable endeavours to engage an alternative independent expert within 30 days, subject to Law and public procurement rules. If within such period the Parties are unable to procure the appointment of an alternative independent expert on reasonable
commercial terms, the Independent Expert shall pay to the Parties any reasonable incremental loss, damage or extra costs suffered by each of them.

6.4.4 Termination of this Agreement shall not affect the continuing rights and obligations of the Parties under clause 5 (Limitations on Authority), this clause 6, clause 7 (Confidential Information and Copyright), clause 8 (Professional Indemnity Insurance) or clause 16 (Dispute Resolution Procedure) or under any other clause which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

7. CONFIDENTIAL INFORMATION AND COPYRIGHT

7.1 The Independent Expert shall treat as secret and confidential and shall not at any time for any reason disclose or permit to be disclosed to any person or otherwise make use of or permit to be made use of any unpublished information relating to either Party's technology or other know-how business plans or finances or any such information relating to a subsidiary, supplier, customer or client of either Party where the information was received during the period of this Agreement. Upon termination of this Agreement for whatever reasons the Independent Expert shall deliver up to the relevant Party all working papers, computer disks and tapes or other material and copies provided to or prepared by him pursuant either to this Agreement or to any previous obligation owed to that Party.

7.2 The copyright in all reports, calculations and other similar documents provided by the Independent Expert in connection with the Project shall remain vested in the Independent Expert but the Independent Expert grants to the Parties and their nominees with full title guarantee a non-exclusive irrevocable royalty free licence to copy and use such drawings and other documents and to reproduce the designs contained in them for any purpose related to the Project including (but without limitation) the construction, completion, maintenance, letting, promotion, advertisement, reinstatement, extension and repair of the Project. Such licence shall include a licence to grant sub-licences and to transfer the same to third parties.

8. PROFESSIONAL INDEMNITY INSURANCE

8.1 Without prejudice to its obligations under this Agreement, or otherwise at law, the Independent Experts shall maintain professional indemnity insurance with a limit of indemnity of equivalent to 2.5 times the value of professional fees for each claim or series of claims that arise from the same cause or a single source or event in respect of any neglect, error or omission on the Independent Expert’s part in the performance of its obligations under this Agreement for the period commencing on the date of this Agreement and expiring eight (8) years after:

8.1.1 expiry of the Construction Period in accordance with the provisions of the Project Agreement; or

8.1.2 the termination of this Agreement, whichever is the earlier, provided that such insurance is available in the market place at commercially reasonable rates and terms.

8.2 The Independent Expert shall maintain such insurance with reputable insurers carrying on business in Kenya who are acceptable to the Parties such acceptance not to be unreasonably withheld or delayed.
8.3 Any increased or additional premium required by insurers by reason of the Independent Expert’s own claims record or other acts, omissions, matters or things particular to the Independent Expert shall be deemed to be within commercially reasonable rates.

8.4 The Independent Expert shall immediately inform the Parties if such insurance ceases to be available at commercially reasonable rates in order that the Independent Expert and the Parties can discuss means of best protecting the respective positions of the Parties and the Independent Expert in respect of the Project in the absence of such insurance.

8.5 The Independent Expert shall fully co-operate with any measures reasonably required by the Parties including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above commercially reasonable rates if the Parties undertake in writing to reimburse the Independent Expert in respect of the net cost of such insurance to the Independent Expert above commercially reasonable rates or, if the Parties effect such insurance at rates at or above commercially reasonable rates, reimbursing the Parties in respect of what the net cost of such insurance to the Parties would have been at commercially reasonable rates.

8.6 The Independent Expert shall, prior to commencing the provision of the Services and no less than ten (10) days after renewal dates, produce for inspection by the Parties documentary evidence that such insurance is being properly maintained.

8.7 The above obligations in respect of professional indemnity insurance shall continue notwithstanding termination of this Agreement for any reason whatsoever, including (without limitation) breach by either Party.

9. NOTICES

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

If to the Contracting Authority: [ ]
Address: [ ]
Fax number: [ ]

If to the Service Provider: [ ]
Address: [ ]
Fax number: [ ]

If to the Independent Expert: [ ]
Address: [ ]
Fax number: [ ]

9.2 Service shall be deemed to have been effected as follows:
9.2.1 if personally delivered, at the time of delivery to the addressee;
9.2.2 if sent by first class pre-paid post, on the second (2nd) Business Day after it is put in the post; and

9.2.3 if sent by facsimile transmission, at the time of transmission or if the time of transmission is outside normal working hours (which shall be deemed to be 9.00am to 5.00pm Monday to Friday excluding public holidays), at 9.00am on the next Business Day.

10. **ASSIGNMENT**

10.1 The Independent Expert shall not assign or transfer any of its rights or obligations under this Agreement or sub-contract the whole of the Services. The Independent Expert shall be entitled to sub-contract part of the Services subject to consent of the Parties which shall not be unreasonably withheld or delayed. For the avoidance of doubt the Independent Expert shall remain responsible for all the Services undertaken by any sub-contractor as if the same had been undertaken by the Independent Expert.

10.2 Neither of the Parties shall be entitled to assign or transfer any of their respective rights or obligations under this Agreement save where such assignment or transfer is contemporaneous to the assignment or transfer of the Project Agreement and is made to the same assignee or transferee. In the event that the Project Agreement is novated to a third party, the term "Project Agreement" shall include any replacement contract arising from such novation.

10.3 The Independent Expert shall not be entitled to contend that any person to whom this Agreement is assigned in accordance with clause 10.2 is precluded from recovering under this Agreement any loss incurred by such assignee resulting from any breach of this Agreement (whenever happening) by reason that such person is an assignee and not a named promisee under this Agreement.

11. **CUMULATIVE RIGHTS AND ENFORCEMENT**

11.1 Any rights and remedies provided for in this Agreement whether in favour of the Service Provider or the Contracting Authority or the Independent Expert are cumulative and in addition to any further rights or remedies which may otherwise be available to the parties.

11.2 The duties and obligations of the Independent Expert arising under or in connection with this Agreement are owed to the Parties jointly and severally and the Contracting Authority and the Service Provider may accordingly enforce the provisions hereof and pursue their respective rights hereunder in their own name, whether separately or with each other.

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

12. **WAIVER**

The failure of any Party at any one time to enforce any provision of this Agreement shall in no way affect its right thereafter to require complete performance by any other Party, nor shall the waiver of any breach or any provision be taken or held to be a waiver of any subsequent breach of any provision or be a waiver of the provision itself.
13. **SEVERABILITY**

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

14. **COUNTERPARTS**

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

15. **VARIATION**

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

16. **DISPUTE RESOLUTION PROCEDURE**

16.1 All disputes shall be resolved in accordance with terms equivalent (mutatis mutandis) to the Dispute Resolution Procedure as set out in the Project Agreement.

16.2 The Service Provider, the Contracting Authority and the Independent Expert shall co-operate to facilitate the proper, just, economical and expeditious resolution of any and all such disputes which arise under this Agreement.

17. **GOVERNING LAW AND JURISDICTION**

17.1 Subject to clause 16 above, this Agreement shall be governed by and construed in accordance with the laws of Kenya, and (subject as aforesaid) the Parties hereby submit to the non-exclusive jurisdiction of the courts of Kenya.

17.2 No action or proceedings may be commenced against the Independent Expert for any breach of this Agreement after the expiry of twelve (12) years following the date of completion of the Services or the termination of this Agreement, whichever is the earlier.

18. **THIRD PARTY RIGHTS**

A person who is not a party to this Agreement shall have no right to enforce any term of this Agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
IN WITNESS WHEREOF the Parties have executed and delivered this Agreement on the date first written above.

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

[Authorised Officer]

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

Director

Director/Secretary

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

Director

Director/Secretary
APPENDIX 1

Scope of Services – Independent Expert

The Independent Expert shall perform all the functions and obligations attributed to the Independent Expert in the relevant clauses of the Project Agreement (including complying with any time limits specified in such clauses) and in particular familiarise itself with the Project Agreement (including any design documents issued from time to time and any other relevant documentation or information referred to in the Project Documents) and the Principal Sub-Contracts to the extent necessary to be in a position to carry out its duties in accordance with the terms of this Agreement. The scope of Services include but are not limited to the following:

1. CERTIFICATION OF COMPLETION OF PROJECT MILESTONES AND COMPLIANCE WITH OUTPUT SPECIFICATIONS

1.1 Tests and inspections prior to Certification of Project Milestones

1.1.1 The Service Provider shall grant the Independent Expert access at all times (on giving reasonable notice) to the Site of any works or services being undertaken by the Service Provider in relation to the Project Network in order to enable each of them to assess whether the Project Milestones have been achieved and whether such works or services comply with the Output Specifications as the case may be, provided always that the Independent Expert shall use reasonable endeavours to minimise any disruption caused to the relevant works or services being undertaken by the Contracting Authority.

1.1.2 The Independent Expert shall apply the provisions of Schedule M1 (Output Specifications) in respect of those inquiries, tests, investigations, surveys and/or inspections required to be undertaken and/or observed, as the case may be, by the Independent Expert in connection with the certification pursuant to clause 13.2.

1.1.3 The Independent Expert shall take into account any representations made by the Contracting Authority (or Contracting Authority's Representative) as to whether the Project Milestones or Output Specifications have been satisfied.

1.2 Certification

1.2.1 Pursuant to the relevant provisions of the Project Agreement and Schedule M, the Independent Expert shall assess whether completion of a Project Milestone or compliance with the Output Specifications has been achieved by the Service Provider, and shall, within ten (10) Business Days of the date of the assessment issue to the Service Provider (with a copy to the Contracting Authority):

1.2.1.1 a Certificate of Provisional Completion and which shall specify shall specify the outstanding matters (Snagging matters) that must be attended to before a Certificate of Completion or a Certificate of Partial Completion can be issued; or

1.2.1.2 a Certificate of Completion; or

1.2.1.3 a Certificate of Partial Completion, in which case the certificate shall:

(a) identify those sections of the Project Network in respect of which completion has been achieved; and
(b) in respect of the remaining sections of the Project
1.2.2 The provisions of this clause 1.2 (Certification) shall repeat and apply to the extent relevant until such time as a Certificate of Completion has been issued.

1.3 **Snagging List**

In the event that the Independent Expert issues a Certificate of Provisional Completion:

1.3.1 the Independent Expert shall issue to the Service Provider and the Contracting Authority a list of the relevant Snagging items ("Snagging List");

1.3.2 the Independent Expert shall review the programme for making good each Snagging item on the Snagging List provided by the Service Provider and notify the Service Provider whether it agrees with such programme within five (5) Business Days.

1.3.3 The parties shall seek to agree such programme and in default of agreement shall refer the matter for determination under Dispute Resolution, and the programme agreed or determined in accordance with this clause 1.3 (Snagging List) shall be known as the "Snagging Programme".

1.3.4 The Independent Expert shall inspect the completed works carried out in accordance with the Snagging Programme and notify the Contracting Authority whether they have been carried out to the Independent Expert’s satisfaction.

1.4 **Effect of Issue of Certificates of Completion etc.**

1.4.1 As between the Parties the decision of the Independent Expert to issue any Certificate of Completion, Certificate of Partial Completion or Certificate of Provisional Completion at any time shall, in the absence of fraud or manifest error, be final and binding on the Parties but without prejudice to the right of either Party to make a claim under the Independent Expert’s Appointment.

1.4.2 The issue of any Certificate of Completion or any Certificate of Partial Completion shall in no way affect the obligations of the Service Provider under this Contract (including without limitation in respect of any failure by the Service Provider to meet the requirements of Schedule M1 (Output Specifications)).

1.5 **Structures and Bridges**

The Independent Expert shall certify the works carried out on the Site in the Construction Period (in order to comply PS1 and achieve completion of the Project Milestones) in accordance with the relevant programme for such works and shall notify the Contracting Authority of any issues arising in respect of such works which the Independent Expert considers (acting reasonably) demonstrate that completion of a Project Milestone may not be achieved by the target date for each Project Milestone.

1.6 **Compliance with Schedule M1 (Output Specifications)**

The Independent Expert shall carry out the Initial Services outlined in this paragraph 1 of Appendix 1 in accordance with the provisions of schedule M1 (Output Specifications).
2. SERVICES IN RELATION TO DIVESTMENT
   2.1 General
   The Independent Expert shall familiarise itself with the Divestment Requirements.

   2.2 Compliance with the Divestment Requirements

Project Network
   2.3 Upon notification by the Service Provider, the Independent Expert shall review all
   information generated by the Service Provider in accordance with clause 13.1, 19.1 and
   19.5 of the Project Agreement and any relevant surveys, inspections, tests and
   assessments carried out by the Service Provider pursuant to the Project Agreement
   (irrespective of whether or not the Service Provider has complied with
   clause 13.1, 19.1 and 19.5 of the Project Agreement) to:

   2.3.1 determine whether the Project Network complies with the Divestment
   Requirements;

   2.3.2 determine whether any further works are required in order to ensure that
   such Project Network shall meet the Divestment Requirements at
   Termination.

   2.4 The Independent Expert shall by the date that is five (5) Months prior to the
   Termination of the Project Agreement notify the Authority and the Service
   Provider (in writing) whether or not all Project Network comply with the
   Divestment Requirements.

   2.5 Where the Independent Expert notifies the Authority and the Service Provider
   pursuant to clause 3.4 that any of the Project Network do not meet the Divestment
   Requirements, the Independent Expert shall, (within ten (10) Business Days of
   receipt by the Authority of such notification pursuant to clause 3.4):

   2.5.1 issue a schedule of works that are required in order to ensure that the Site
   shall meet the Divestment Requirements at Termination of the Project
   Agreement ("Divestment Requirements Works"); and

   2.5.2 provide (in the Independent Expert’s reasonable opinion) a written
   estimate of the cost of the Divestment Requirements Works ("First
   Estimate").

   2.6 The Independent Expert (using all available information in respect of the condition
   of the Project Network (including the data generated from the inspections and
   surveys carried out in the final year of the Term of the Project Agreement shall,
   no earlier than [three (3)] months prior to Termination of the Project Agreement but
   no later than [two (2)] months prior to Termination of the Project Agreement,
   notify the Contracting Authority and the Service Provider in writing of the
   following:

   2.6.1 which parts of the Site have complied with and have not complied with
   the Divestment Requirements; and

   2.6.2 (if pursuant to clause 3.6.1 above, the Independent Expert confirms that
   not all parts of the Site comply with the Divestment Requirements) confirmation
   as to which parts of the Site have not complied with which
   requirements within the Divestment Requirements;

   2.6.3 which Divestment Requirements Works are still outstanding (if any);

   2.6.4 if failure to meet the Divestment Requirements is as a result of failure to
   undertake works other than the Divestment Requirements Works, an
   estimate (in the reasonable opinion of the Independent Expert) of the cost
   of such additional works; and
2.6.5 any of the Divestment Requirements Works which have been undertaken to the reasonable satisfaction of the Independent Expert.

2.7 The Independent Expert shall procure and, as soon as reasonably practicable following receipt by the Contracting Authority of the notice pursuant to paragraph 3.5 and in any event not less than two (2) Months prior to the Termination of the Project Agreement, provide the Contracting Authority and the Service Provider with two written estimates provided by two (2) independent contractors of the cost of the Divestment Requirements Works.

The Site

2.8 Upon notification by the Service Provider, the Independent Expert shall inspect the Site to determine:

2.8.1 whether all works required to be carried out on the Site, as identified by those inspections and/or structural assessments carried out by the Service Provider have been completed so that the Site complies with the Divestment Requirements;

2.8.2 whether the Service Provider has complied with the Method Statements in respect of the works identified in paragraph 3.8.1; and

2.8.3 whether the Site complies with the Divestment Requirements and if any part of the Site does not comply with the Divestment Requirements, provide full details as to which parts of the Site failed to comply with which requirements within the Divestment Requirements;

2.8.4 the cost of the works identified in 3.8.1 to 3.8.3 (inclusive) provided by two independent contractors and if the Independent Expert is unable to obtain such costs, an estimate in the Independent Expert’s opinion (acting reasonably).

2.9 The Independent Expert shall notify the Contracting Authority (in writing) within five (5) Business Days prior to the end of the [ ] year of the Term of the Project Agreement of the following:

2.9.1 whether the works referred to in paragraph 3.8.1 have been completed;

2.9.2 whether the Service Provider has complied with the Method Statements for the first 6 Months of the [ ] year of the Term of the Project Agreement in respect of the works identified in paragraph 3.8.1;

2.9.3 whether the Site complies with the Divestment Requirements and if any part of the Site does not comply with the Divestment Requirements, provide full details as to which parts of the Site failed to comply with which requirements within the Divestment Requirements; and

2.9.4 the cost of the works identified in 3.9.1 to 3.9.4 (inclusive) provided by two independent contractors and if the Independent Expert is unable to obtain such costs, an estimate in the Independent Expert’s opinion (acting reasonably).

2.10 Upon notification by the Service Provider, the Independent Expert shall inspect the Site to determine:

2.10.1 whether all works required to be carried out on the Site, as identified by any inspections carried out by the Service Provider in the [ ] year of the Term of the Project Agreement to the extent that Good Industry Practice for the maintenance of the Site would require such works to be completed by Termination of the Project Agreement so that the Site complies with the Divestment Requirements, have been completed;

2.10.2 whether the Service Provider has complied with the Method Statements for the first 6 Months of the [ ] year of the Term of the Project Agreement
in respect of the works identified in clause 3.10.1; and

2.10.3 whether all parts of the Site complies with the Divestment Requirements and if any part of the Site do not comply with the Divestment Requirements, provide full details as to which parts of the Site not comply with which requirements within the Divestment Requirements; and

2.10.4 the cost of the works identified in 3.10.1 to 3.10.4 (inclusive) provided by two independent contractors and if the Independent Expert is unable to obtain such costs, an estimate in the Independent Expert’s opinion (acting reasonably).

2.11 The Independent Expert shall notify the Authority (in writing) within five (5) Business Days prior to the end of the ninth (9th) year of the Term of the Project Agreement of the following:

2.11.1 whether the works required to in clause 3.10.1 have been completed;

2.11.2 whether the Service Provider has complied with the Method Statements for the first 6 Months of the ninth (9th) year of the Project Term in respect of the works identified in clause 3.10.1; and

2.11.3 whether the Site complies with the Divestment Requirements and if any part of the Site does not comply with the Divestment Requirements, provide full details as to which parts of the Site do not comply with which requirements within the Divestment Requirements; and

2.11.4 the cost of the works identified in 3.11.1 to 3.11.3 (inclusive) provided by two independent contractors and if the Independent Expert is unable to obtain such costs, an estimate in the Independent Expert’s opinion (acting reasonably).

2.12 The Independent Expert shall inspect the Site no later than three (3) Months prior to Termination of the Project Agreement to determine whether:

2.12.1 whether the Site complies with the Divestment Requirements;

2.12.2 if any part of the Site does not comply with the Divestment Requirements, which requirements within the Divestment Requirements have not been complied with;

2.12.3 an estimate (in the reasonable opinion of the Independent Expert) of the cost for ensuring that the Site complies with the Divestment Requirements.

2.13 The Independent Expert shall notify the Authority (in writing) 2 Months prior to Termination of the Project Agreement of:

2.13.1 whether the Site complies with the Divestment Requirements;

2.13.2 if any parts of the Site do not comply with the Divestment Requirements, which requirements within the Divestment Requirements have not been complied with;

2.13.3 an estimate (in the reasonable opinion of the Independent Expert) of the cost for ensuring that the Site complies with the Divestment Requirements.

2. PARTICIPATION IN DISPUTE RESOLUTION

As and when required by the Authority or the Service Provider, the Independent Expert shall participate in any Dispute Resolution pursuant to the Project Agreement (as such term is defined in the Project Agreement) to the extent that issues under the Project Agreement which have been referred to the said Dispute Resolution relate to the Independent Expert’s other obligations and tasks as set out in this appendix 1 and this Agreement.
APPENDIX 2
Initial Fees
Part 1 - Fee Instalments
[details to be inserted]

Part 2 - Fee Rates
[details to be inserted]

APPENDIX 3
Methodology to Respond to Scope of Services
[to be inserted]
SCHEDULE –L
(See Clause 5.2.2)

LIST OF PRINCIPAL SUB-CONTRACTS AND FINANCING AGREEMENTS
1. **INTRODUCTION**

1.1 The Service Provider shall supply the Services continuously throughout the Contract Period in accordance with the specifications set out in each part of this Annex (Output Specification).

1.2 Each part of this annex details the overall aspirations of the Authority. For the purposes of determining whether or not any Adjustments are to be made to the payments pursuant to Schedule M (Payment Schedule) of this Contract, the performance of the Service Provider shall be measured against the Service Delivery Outputs and their corresponding Performance Targets set out in this Annex in accordance with the Monitoring Procedures set out in this Contract.

**Part 1**

**PERFORMANCE STANDARD 1 - CONSTRUCTION OF ROADS IN THE LOT**

2. **Required Outcomes**

2.1 The Service Provider shall comply with the provisions of this Performance Standard 1 and ensure that for the whole of the Contract in relation to the roads in the Lot:

- 2.1.1 That all roads forming the lot are constructed in accordance with design
- 2.1.2 Project Milestones are met.

3. **Service Delivery Outputs**

3.1 Design of Roads in the Lot

- 3.1.1 Design of roads shall include: drainage design, geometric and pavement design, design of structures, road furniture and street lighting designs where applicable.

- 3.1.2 All designs shall be in accordance with the Kenya Road Design Standards, Kenya standards for structures etc. or equivalent;

- 3.1.3 All designs shall where necessary make provisions for service ducts for utilities along the project road(s);

3.2 The Service Provider shall ensure cross sections of the roads comply with the
3.2.1 Existing Road condition and inventory data shall be collected by the Service Provider and submitted to the Authority within one month of Service Commencement;

3.2.2 All designs shall be accommodated in the existing road reserve and shall ensure minimum or no land acquisition. In exceptional circumstances where additional right of way is required Clause 10.3.2 of the Project Agreement shall apply.

3.2.3 The Service Provider shall submit land acquisition and relocation of services Plans for roads requiring land acquisition and relocation of service utilities to the Authority;

3.2.4 The Service Provider shall carry out land acquisition and relocation of services adhering to the plans set out in the Resettlement Action Plan where necessary for the implementation of their proposals;

3.2.5 The Service Provider shall ensure all designs meet safety requirements;

3.2.6 The Service Provider shall carry out baseline study to provide baseline data for the project road as per Environmental Management and Coordination Act, 1999 and the Environmental (Impact Assessment and Audit) regulations, 2003 and other regulations under EMCA, 1999;

3.2.7 The Service Provider shall consult as much as possible all stakeholders during the design of the project roads;
3.2.8 The Service Provider shall undertake An Environmental and Social Impact study and Resettlement Action Plans (RAP) for each road in accordance with National Environmental Management (NEMA) Guidelines; and

3.2.9 The Service Provider shall submit E & SIA Report to NEMA for purposes of obtaining an EIA license and pay the required fee to NEMA.

3.2.10 The Service Provider shall liaise with the Contracting Authority and other relevant Government Agencies to determine the extent of the road reserve of each road. The Service Provider shall mark the extent of the road reserve using beacons.

3.3 Construction of New Roads

3.3.1 The roads in the Lot requiring new construction shall be constructed to paved standards complete with the requisite road furniture and structures if any;

3.3.2 In addition, the following shall be constructed or installed to ensure safety:

   a) Delineators at the following locations;
      • at changes in road alignment,
      • at changes in roadway width,
      • at roadside hazards,
      • at turning movements,
      • In advance of a guardrail end treatment that is turned away from the highway
   b) Guardrails at major hazard areas including but not limited: roadside obstacles, permanent water bodies and steep slopes or high embankments.

3.3.3 The Service Provider shall provide Quality Assurance Plan for the works during construction. The quality assurance plan shall cover among other
issues tests to be carried out on materials and completed works including all project activities in the Contract. The plan should provide strategies of addressing non-conformities.

3.3.4 The Service Provider shall provide Traffic Management Plan during the construction period. Issues to be covered may include the following:

(a) Improvements to and maintenance of existing roads if used as diversions;

(b) Construction and maintenance of deviations;

(c) Passage of traffic through or over the Works;

(d) Provision and maintenance of temporary signs, barriers, lights etc. along deviations and existing roads adjacent to the Works;

(e) Provision of adequate notice of the implementation of deviations etc.; and

(f) Provision and maintenance of all access and haul roads to ensure access to all parts of the Site for his plant, labour and materials.

3.3.5 The Service Provider shall carry out Environmental Mitigation measures as per the Environmental Impact Assessment License issued by NEMA;

3.3.6 The Service Provider shall specify the materials to be procured locally and local skills to be engaged. The Service Provider shall comply with existing Kenya Labour Laws, National Construction Authority, 2011, affirmative action requirements especially for youth, women and persons living with disabilities and the Constitution of Kenya during the Execution of Works;

3.3.7 The Service Provider shall create an inventory of facilities constructed on each road and submit to the Authority in an agreed format a data base on the same for information and monitoring;
3.3.8 On completion, the ‘as built drawings’ including construction parameters data base shall be submitted to the Authority within 30 days of the issue of the Partial Completion Certificate.

3.4 Rehabilitation of Existing Roads

3.4.1 For roads in the Lot requiring rehabilitation, the Service Provider shall undertake survey including assessment of the structural soundness of all existing pavements and all structures on the road section(s) covered in the Contract;

3.4.2 Where the existing road pavements and facilities are found to have adequate residual life in relation to traffic loading and maintainable, the Service Provider shall provide strategy for maintaining or improving the same if any in order to conform to the specified level of service for the whole Contract Period.

3.4.3 Where the existing road requires rehabilitation, the Service Provider shall rehabilitate full width of the road as per agreed cross sections and Schedule B.

3.4.4 The Service Provider shall ensure that where existing materials, structures and other facilities are to be reused, refurbished or rebuilt, such materials, structures and facilities shall meet the relevant performance requirements;

3.4.5 The Service Provider shall use only materials approved by the Authority in the carrying out of such works.

3.4.6 All rehabilitated roads shall have all requisite road furniture installed;

3.4.7 On completion, the as built drawing shall be submitted to the Authority for information;

3.4.8 The Service Provider shall create an inventory / data base of each reconstructed roads and facilities and submit the same to the Authority for information;
3.4.9 The Service Provider shall provide Traffic Management Plan during the rehabilitation period similar to the provisions in section 3.3.4.

3.5 **Technological Transfer**

3.5.1 The Service Provider shall provide skills transfer methodology for Authority’s technical staff, local contractors and local communities during the Contract Period;

3.5.2 The Service Provider shall train the Authority’s staff and sub-contractors in the duration of the Contract;

4. **Required service levels**

4.1 The Service Provider shall comply with the Construction Period Milestones as set out in Table 1.

**Table 1: Construction Period Milestones**

<table>
<thead>
<tr>
<th>Project Milestone- (PM)</th>
<th>Project Roads</th>
</tr>
</thead>
<tbody>
<tr>
<td>At Service Commencement (PM-I)</td>
<td>1%</td>
</tr>
<tr>
<td>90 days after commencement (PM-II)</td>
<td>5%</td>
</tr>
<tr>
<td>180 days after commencement (PM-III)</td>
<td>10%</td>
</tr>
<tr>
<td>270 days after commencement (PM-IV)</td>
<td>30%</td>
</tr>
<tr>
<td>360 days after commencement (PM-V)</td>
<td>50%</td>
</tr>
<tr>
<td>450 days after commencement (PM-VI)</td>
<td>70%</td>
</tr>
<tr>
<td>540 days after commencement (PM-VII)</td>
<td>80%</td>
</tr>
<tr>
<td>630 days after commencement (PM-VIII)</td>
<td>90%</td>
</tr>
<tr>
<td>735 days after commencement (PM-IX)</td>
<td>100%</td>
</tr>
</tbody>
</table>

**Notes**

- The percentages indicated refer to the proportion of completed works compared to the Total Project Cost of the relevant road.
- Refer also to schedule G of the Project Agreement.
5. **Required Outcomes**

5.1 The Service Provider shall comply with the provisions of this Performance Standard 2 & ensure that for the whole of the Contract in relation to the roads in the Lot:

5.1.1 No Road Section length is Unavailable;

5.1.2 No Road Section Lengths have failed;

5.1.3 No Road Section Lengths have an IRI of more than 5

5.1.4 During the Contract Period no road section length shall have a residual life of less than [8] years;

5.1.5 All Structures and Bridges shall be capable of carrying full HA and 40 units of HB loading.

5.1.6 All Road Lighting, where applicable, meets the road lighting requirements

6. **Service Delivery Outputs**

6.1 The Service provider shall ensure that:

6.1.1 No Road Section Length should have a residual life of less than 8 years

6.1.2 No Road Section length should have an IRI of more than 5

6.1.3 All Structures and Bridges shall be capable of carrying full HA and 40 units of HB loading

7. **Required Service Levels**

<table>
<thead>
<tr>
<th>Defect</th>
<th>Service level Requirements</th>
<th>Rectification Period</th>
<th>Moratoria</th>
<th>Performance Deduction Category</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residual Life</td>
<td>No Road Section Length should have a residual life of less than 8 years</td>
<td>3 months</td>
<td>Construction Period</td>
<td>Deemed Available</td>
</tr>
<tr>
<td>Intentional Roughness Index (IRI)</td>
<td>No Road Section length should have an IRI of greater than 5</td>
<td>3 months</td>
<td>Construction Period</td>
<td>Deemed Available</td>
</tr>
<tr>
<td>Bridges and Structures</td>
<td>All Structures and Bridges shall be capable of carrying full HA and 40 units of HB loading</td>
<td>3 months</td>
<td>Construction Period</td>
<td>Deemed Available</td>
</tr>
</tbody>
</table>
8. **Required Outcomes**

8.1 The Service Provider shall carry out routine maintenance, major maintenance and emergency works if need be in order to ensure the required levels of service.

8.2 The Service Provider shall carry out an Initial Environmental Audit and subsequent Environmental Audits as per the requirements of the National Environmental Management Authority for roads in the Contract.

8.3 No potholes on any part of the Project Network.

8.4 No side drain and / or culvert on the Project Network shall be blocked, silted or damaged.

8.5 No standing water on the Project Network

8.6 No road furniture on the Project Network shall be missing

8.7 The Project Network is safe for all users

8.8 No defects on the project network

8.9 No Road Section Lengths shall be Unavailable

8.10 The Service Provider shall liaise with relevant Agencies in carrying out axle load control within the Contract Period.

9. **Service Delivery Outputs**

9.1 **Routine Maintenance**

9.1.1 The services to be provided by the Service Provider shall include all activities, physical and others, which the Service Provider needs to carry out in order to comply with the Service Level requirements in the Contract and to ensure that no Road Section lengths are Unavailable.

9.1.2 For guidance these activities include, but not limited to, management tasks and physical works associated with the following road-related assets and items:

- Inspect road for safety defects and defects likely to impact on the integrity of the Project network;
- Inspect road, identify and remove all obstructions (including encroachment to the Road Reserve);
• Clear side drains, mitre drains and cut-off drains;
• Repair and replace scour checks;
• Repair eroded ditches;
• Clean cross culverts, access culverts, outlets and inlets;
• Headwall repairs;
• Clear stream channels;
• Vegetation control: grass slashing, bush clearing, tree pruning;
• Maintenance and minor repairs to bridges;
• Road furniture maintenance;
• Replacement of damaged Chainage markers;
• Repairs to culverts, replacing rings etc.;
• Pot hole patching;
• Replacement of damaged street lighting, where applicable;
• Replacement of damaged guard rails; and
• Replacement of traffic signs;

9.1.3 The Service Provider shall prepare and submit a Quality Management Plan covering the Maintenance and Operation activities

9.1.4 The Service Provider shall prepare and submit Routine Maintenance Strategy for each road in the Contract. The Strategy shall include as a minimum the fore listed activities.

9.2 Emergency Works

9.2.1 The Service Provider shall provide, and comply with, an Emergency Response Plan for works, repairs and related issues for all the road sections during the Contract period. The Plan shall include (without limitation) all details of the following:

i. introduction and policy on emergency works;

ii. management arrangements;

iii. operational structure;

iv. roles and responsibilities;
v. liaison to be undertaken with third parties, including other road authorities and/or their maintaining agents, the police, other emergency services, County Governments, Service Utility owners among others;

vi. responses in relation to Road Emergencies;

vii. staffing;

viii. mobilisation procedures;

ix. attendance levels at incidents;

x. communications;

xi. access to labour, plant, equipment and materials;

xii. reporting, records and liaison;

xiii. liaison with the Authority relating to additional resources;

9.3 Major maintenance

9.3.1 The Service Provider shall carry major maintenance in order to comply with the required service levels.

9.3.2 Major maintenance works shall cover the Project network including associated infrastructure

9.3.3 The major maintenance to be undertaken shall ensure that no Road Section length has a residual life of less than 8 years at any time during the contract.

9.4 Environmental audits

9.4.1 The Service Provider shall carry out initial environmental Audits and subsequent self-audits for each road in accordance with the EMCA, 1999 and regulations.

9.4.2 The Service Provider shall submit all audit reports to NEMA with copies to the Contracting Authority.

9.5 Inspections and Surveys

9.5.1 The Service Provider shall undertake Safety and Asset Integrity Inspections of the complete Project Network every month and record all defects using hand held data recorders and load the results into the Contracting Authorities’ RMMS database within one hour of completion of the inspection
9.5.2 The Service Provider shall undertake Service Inspections of the complete Project Network every six months and record the level of service being provided using hand held data recorders and load the results into the Contracting Authorities’ RMMS database within one hour of completion of the end of the working day.

9.5.3 The Service Provider shall undertake Technical Survey of the complete Project Network on an annual basis, download the results into the Contracting Authorities RMMS Database and prepare a Network Condition Report within one month of the end of the Technical Surveys.

9.5.4 The Service Provider shall daily monitor axle load on the pavements of the completed sections of the project roads in the whole Contract Period and shall prepare and submit monthly axle load monitoring reports.

9.6 Waste Disposal

9.6.1 The Service Provider shall be responsible for the collection and disposal of all categories of waste arising as a consequence of the provisions of the Services each day (save in relation to those Work Sites in which case the Service Provider shall ensure that all waste categories remaining on such Work Site are stock piled and safely secured in a tidy manner) and ensure that the Project Roads are left in a clean and tidy condition.

9.6.2 The project Company shall also clear all obstacles during the construction and operation of the road.

10. Required Service Levels

10.1 The Service Provider shall meet the following Service Levels for each and every road section Length from the Date of Service Commencement:

<table>
<thead>
<tr>
<th>Defect</th>
<th>Service level Requirements</th>
<th>Response Time</th>
<th>Moratoria</th>
<th>Performance Deduction Category</th>
</tr>
</thead>
<tbody>
<tr>
<td>General</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Quality Management Plan</td>
<td>Prepare and Submit a Quality Management Plan in accordance with Clause 9.1.3 of this Output Specification</td>
<td>Approved by Service Commencement Date</td>
<td>n/a</td>
<td>SP3(a)</td>
</tr>
<tr>
<td>-------------------------</td>
<td>---------------------------------------------------------------------------------------------------</td>
<td>--------------------------------------</td>
<td>-----</td>
<td>--------</td>
</tr>
<tr>
<td>Routine Maintenance Strategy</td>
<td>Prepare and Submit a Routine Maintenance Strategy for each road within the Lot in accordance with Clause 9.1.4 of this Output Specification</td>
<td>Approved by Service Commencement Date</td>
<td>n/a</td>
<td>SP3(a)</td>
</tr>
<tr>
<td>Emergency Response Plan</td>
<td>Prepare and Submit and Emergency Response Plan in accordance with Clause 9.2.1 of this Output Specification</td>
<td>Approved by Service Commencement Date</td>
<td>n/a</td>
<td>SP3(a)</td>
</tr>
</tbody>
</table>

**Category 1 Defects**

<table>
<thead>
<tr>
<th>Category 1 Defects</th>
<th>There shall NOT be Category 1 Defects on the Project Network or part thereof at any time</th>
<th>Make safe / Temporary repair - 24 hours</th>
<th>1 month</th>
<th>Deemed Available</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Permanent repair – 28 days</td>
<td>1 month</td>
<td>Deemed Available</td>
</tr>
</tbody>
</table>

**Carriageway**

<table>
<thead>
<tr>
<th>The 3m profile variance</th>
<th>Not greater than 17 mm IRI not greater than 5</th>
<th>3 months</th>
<th>Construction Period</th>
<th>Deemed Available</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wheel Track Rutting</td>
<td>Not more than 5% of a lane length has Wheel Track Rutting of a depth exceeding 12 mm</td>
<td>1 month</td>
<td>Construction Period</td>
<td>Deemed Available</td>
</tr>
<tr>
<td>Defect</td>
<td>Service level Requirements</td>
<td>Response Time</td>
<td>Moratoria</td>
<td>Performance Deduction Category</td>
</tr>
<tr>
<td>--------------------------------</td>
<td>-------------------------------------------------------------------------------------------</td>
<td>---------------</td>
<td>----------------------------</td>
<td>--------------------------------</td>
</tr>
<tr>
<td>No Wheel Path has Wheel Track Rutting of more than 20mm for a length exceeding 10 metres;</td>
<td>1 month</td>
<td>Construction Period</td>
<td>Deemed Available</td>
<td></td>
</tr>
<tr>
<td>Edge Deterioration</td>
<td>Not more than 7.5% of a lane length has Edge Deterioration which exceeds Severity 3</td>
<td>1 month</td>
<td>Construction Period</td>
<td>Deemed Available</td>
</tr>
<tr>
<td>Road Markings</td>
<td>The Service Provider shall ensure that all Road Markings are in conformity to the Manual for Traffic Signs in Kenya: Have a colour luminance factor which shall not be less than 60% for paint and 45% for thermoplastic; have a skid resistance which is greater than 45 except in relation to road markings with a large surface area, such as letters, numerals and arrows where skid resistance shall be greater than 55 and transverse yellow bar markings where skid</td>
<td>1 month</td>
<td>Construction period</td>
<td>Deemed Available</td>
</tr>
<tr>
<td>Cleanliness</td>
<td>Road pavement surface and shoulders should be clean and free of soil, oil, debris, trash and other objects to ensure</td>
<td>4 hours</td>
<td>Construction period</td>
<td>Deemed Available</td>
</tr>
<tr>
<td>Defect</td>
<td>Service level Requirements</td>
<td>Response Time</td>
<td>Moratoria</td>
<td>Performance Deduction</td>
</tr>
<tr>
<td>------------------------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>---------------</td>
<td>-------------------</td>
<td>-----------------------</td>
</tr>
<tr>
<td></td>
<td>that there are no safety related issues</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Road pavement surface and shoulders should be clean and free of soil, oil, debris, trash and other objects for all other matters</td>
<td>5 days</td>
<td>Construction period</td>
<td>Deemed Available</td>
</tr>
<tr>
<td>Cleanliness</td>
<td>Footway surface should be clean and free of soil, oil, debris, trash and other objects to ensure that there are no safety related issues</td>
<td>4 hours</td>
<td>Construction Period</td>
<td>Deemed Available</td>
</tr>
<tr>
<td></td>
<td>Footway surface should be clean and free of soil, oil, debris, trash and other objects for all other matters</td>
<td>5 days</td>
<td>Construction period</td>
<td>Deemed Available</td>
</tr>
<tr>
<td>Bridges and other structures</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Steel or other metal structures (where applicable)</td>
<td>Guardrails must be present and not deformed. All metal parts of overall structure shall be painted (every twelve months) or otherwise protected and free of corrosion. Drainage system (e.g. weep holes) to be kept in good condition and fully functional.</td>
<td>Damage and defects must be repaired within seven (7) days</td>
<td>3 months</td>
<td>Deemed Available</td>
</tr>
<tr>
<td>Minor concrete structures</td>
<td>Concrete structures shall be inspected for defects every six months and also before onset of rains</td>
<td>Damage and defects must be repaired within Seven (7) days</td>
<td>3 months</td>
<td>Deemed Available</td>
</tr>
<tr>
<td>Expansion joints</td>
<td>Clean and in good working condition</td>
<td>Damage and defects must be repaired within seven (7) days</td>
<td>3 months</td>
<td>Deemed Available</td>
</tr>
<tr>
<td>Retention walls</td>
<td>The Service Provider must maintain in good working condition retaining walls and their drainage system functional.</td>
<td>Damage and defects must be repaired within seven (7) days.</td>
<td>3 months</td>
<td>Deemed Available</td>
</tr>
<tr>
<td>-------------------------</td>
<td>---------------------------------------------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------</td>
<td>----------</td>
<td>------------------</td>
</tr>
<tr>
<td>Riverbeds</td>
<td>The Service Provider must ensure free flow of water under bridge and up to 50 metres upstream and downstream. The Service Provider must maintain design clearance under bridge clearing all debris deposited during floods. The Service Provider shall take all reasonable measures to control erosion around bridge abutments and piers.</td>
<td>Causes for non-compliance must be eliminated within fourteen (14) days after water has sufficiently receded to allow minimum working conditions.</td>
<td>3 months</td>
<td>Deemed Available</td>
</tr>
<tr>
<td><strong>Road Safety</strong></td>
<td><strong>Traffic Calming Measures</strong></td>
<td>All Traffic calming Measures should be complete, functional and free from defects at all times</td>
<td>7 days</td>
<td>3 months</td>
</tr>
<tr>
<td>Traffic signs (where applicable) and traffic signals</td>
<td>All traffic signs shall be correctly positioned, visible to road users, clean, true and plumb, no significant degradation of colours or retro reflective properties of the sign face material, resulting in the surface retaining less than 75% of its original brightness.</td>
<td>7 days</td>
<td>3 months</td>
<td>Deemed Available</td>
</tr>
<tr>
<td>Defect</td>
<td>Service level Requirements</td>
<td>Response Time</td>
<td>Moratoria</td>
<td>Performance Deduction</td>
</tr>
<tr>
<td>--------</td>
<td>----------------------------</td>
<td>---------------</td>
<td>-----------</td>
<td>-----------------------</td>
</tr>
<tr>
<td>Safety Improvement Assessment</td>
<td>The Service Provider shall complete a Safety Improvement Assessment of the Project Roads</td>
<td>No later than four (4) months prior to the commencement of each Contract Year (excluding the first Contract Year)</td>
<td>n/a</td>
<td>SP3(a)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>The Service Provider shall submit Lot Safety Improvement Assessment Report to the Contracting Authority</td>
<td>No later than three (3) months prior to the commencement of each Contract Year (excluding the first Contract Year)</td>
<td>n/a</td>
<td>SP3(a)</td>
</tr>
<tr>
<td>Railway Crossing</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Inspection of Railway Crossing</td>
<td>All railway crossings should be inspected weekly and immediately following the completion of any maintenance activity that has been carried out in close proximity to the crossing. Visual checks should be performed more frequently on those crossings that are known to be problematic</td>
<td>Weekly</td>
<td>n/a</td>
<td>Deemed Available</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>All crossings will be kept clear of all debris resulting from roadway maintenance activities</td>
<td>4 hours</td>
<td>n/a</td>
<td>Deemed Available</td>
</tr>
<tr>
<td>Service In Focus</td>
<td>Description</td>
<td>Period</td>
<td>Deemed</td>
<td></td>
</tr>
<tr>
<td>-----------------</td>
<td>-------------</td>
<td>--------</td>
<td>--------</td>
<td></td>
</tr>
<tr>
<td>The railway operator should be deemed immediately notified of conditions which may interfere with the safe operation of the crossing</td>
<td>n/a</td>
<td>n/a</td>
<td>Deemed</td>
<td></td>
</tr>
<tr>
<td><strong>Inspections and Surveys</strong></td>
<td><strong>The Service Provider shall undertake Safety and Asset Integrity Inspections of the complete Project Network every month and record all defects using hand held data recorders and load the results into the Contracting Authorities’ RMMS database within [one] hour of completion of the inspection</strong></td>
<td>n/a</td>
<td>n/a</td>
<td>SP3(a)</td>
</tr>
<tr>
<td></td>
<td><strong>The Service Provider shall undertake Service Inspections of the complete Project Network and record the level of service being provided using hand held data recorders.</strong></td>
<td>n/a</td>
<td>n/a</td>
<td>SP3(b)</td>
</tr>
<tr>
<td></td>
<td><strong>The Service Provider shall undertake Technical Survey of the complete Project Network on an annual basis, and prepare a Network Condition Report within one month of the end of the Technical Surveys</strong></td>
<td>n/a</td>
<td>Construction Period</td>
<td>SP3(c)</td>
</tr>
<tr>
<td></td>
<td><strong>The Service Provider shall daily monitor on the pavements of the completed sections of the project roads in the whole Contract Period and shall prepare and submit monthly axle load monitoring reports</strong></td>
<td>n/a</td>
<td>n/a</td>
<td>SP3(c)</td>
</tr>
<tr>
<td>Waste</td>
<td>The Service Provider shall be responsible for the collection and disposal of all categories of waste arising as a consequence of the provisions of the Services each day (save in relation to those Work Sites in which case the Service Provider shall ensure that all waste categories remaining on such Work Site are stock piled and safely secured in a tidy manner) and ensure that the Project Roads are left in a clean and tidy condition</td>
<td>n/a</td>
<td>n/a</td>
<td>SP3(d)</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>Waste</td>
<td>The project Company shall also clear all obstacles during the construction and operation of the road</td>
<td>n/a</td>
<td>n/a</td>
<td>SP3(d)</td>
</tr>
</tbody>
</table>
### Appendix to Annex 7B (Output Specifications)

<table>
<thead>
<tr>
<th>Lot Route No.</th>
<th>Road name</th>
<th>Approximate Length (Km)</th>
<th>Approximate Start Node</th>
<th>Approximate End Node</th>
<th>Additional requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Kilgoris - Lolgorian</td>
<td>30</td>
<td>Kilgoris</td>
<td>Lolgorian</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Turbo - Sikhendu - Endebess</td>
<td>64</td>
<td>Turbo</td>
<td>Endebess</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Kakamega (Sichirai) – Ingotse – Namukoye – Nzoia River – Musikoma (Khalaba) Road</td>
<td>43</td>
<td>Kakamega</td>
<td>Musikoma</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Ruambwa – Port Victoria (Mabinju)</td>
<td>17.5</td>
<td>Ruambwa</td>
<td>Port Victoria</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Kehancha - Lolgorian</td>
<td>25</td>
<td>Kehancha</td>
<td>Lolgorian</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Kimaeti – Malakisi - Lwakhakha</td>
<td>25</td>
<td>Malakisi</td>
<td>Lwakhakha</td>
<td></td>
</tr>
</tbody>
</table>
2. PAYMENT MECHANISM GUIDANCE

1. INTRODUCTION

1.1. This Document

This document comprises a Guidance Paper on the Payment Mechanism for the Development of 2,000 Km of Roads Supporting Primary Growth Sectors through Contractor Facilitated Financing Mechanism (Phase 1) using an Output Specification. Its purpose is to provide a general explanation of how the mechanism will link achievement of the key objectives of the project to the payment of the service provider.

1.2. Purpose of the Payment Mechanism

The purpose of the payment mechanism is to ensure that the Service Provider is only paid for those services that it delivers fully in accordance with the standards specified in the Output Specification so that the Service Provider is effectively motivated to achieve the Contracting Authorities objectives for the project, i.e.:

- Development of 2,000 Km of Roads Supporting Primary Growth Sectors Through Contractor Facilitated Financing Mechanism: Lot No.6 Tender No. KeNHA/1291/2016

In that context, the Payment Mechanism comprises a formulaic methodology for calculating the amount payable to the Service Provider for its delivery of the required Services. It therefore details:

- The timing of payments and how the agreed instalments are calculated from the Service Provider’s tendered Annuity (see Section 2);
- How the Annuity tendered by the Service Provider will be indexed (see Section 2);
- How the Annuity will be adjusted to accommodate increases / accruals to the network during the Contract Period (see Section 2);
- How the Annuity will be ramped up on completion of milestones during the Construction Phase
- How the Annuity will be Adjusted during the post-Construction Phase should the asset condition not deliver the required outputs
- How instalments will be adjusted consequent upon the Service Provider’s performance against the standards of service detailed in the Output Specification, as measured through the use of the [3] Performance Standards listed below (see Sections 3 to 13).

1.3. Performance Standards

The following Performance Standards form the core of the Payment Mechanism:

PS 1 Construction and Rehabilitation of Roads in the Lots

This Performance Standard covers the design and construction of the Works required during the Construction Phase of this project.

PS 2 Post Construction Asset Condition

This Performance Standard covers the asset condition following the completion of the Construction
PS 3  Operation and Maintenance Service Delivery Output

This Performance Standard covers the entire term of the contract and sets the outputs required from maintenance and operation of all the elements of the road and its associated infrastructure.

These Performance Standards and the way adjustments to the Service Providers payment instalments are calculated for each of them are considered in Sections 3.

1.4.  Double Counting

It is the underlying intention of the payment mechanism that there should be no unreasonable double counting. Where a single performance failure results in failure against two or more Performance Standards, only one deduction (the highest one) will be applied unless stated to the contrary in this paper.

2.  CALCULATION OF QUARTERLY ANNUITY

2.1.  Annuity

The Annuity will be the amount tendered by the Service Provider. This will be adjusted annually on 1 April for indexation to produce an Indexed Annuity (Annuity).

2.2.  Indexation of the Annuity

The Annuity will be indexed on 1 April each year to produce an Indexed Annuity for each year of the contract calculated by multiplying the Annuity by a proportion of the percentage change in The Index since January 2015. For example, if Annuity tendered by the Service Provider was Ksh 88 million, The Index in January 2015 was 180 and in January 2017 is 189 and the proportion of The Index change applied is [80%] 2, then the Annuity for April 2016 would be:

\[
(Kshs. \ 88,000,000 \times ((1+ ((189 - 180) ÷ 180)) \times [0.8])) + (Kshs.\ 88,000,000 \times [0.2]) = Kshs.\ 91,520,000
\]

2.3.  Adjustment of Annuity to Accommodate Accruals and De-Accruals

During the Project Term the network is likely to change as a consequence of the addition of new developments, adoptions etc. The detailed methodology for making adjustments to the Annuity to accommodate such changes is currently being developed and is likely to be based on a schedule of...
2.4. **Base Quarterly Annuity Charge**

The Service Provider will be paid its Annuity in quarterly instalments.

The Quarterly Annuity Charge (QAC) will be the amount payable to the Service Provider at the end of each calendar quarter for delivery of the services fully in accordance with the minimum requirements specified in the Service Performance Requirements. The amount will be calculated as follows:

The Annuity (calculated as in 2.2) divided by 12 and multiplied by the number of months concerned. For example, if the Annuity is Ksh91.5 million (as example above), then the QAC for the 1st quarter would be:

\[
\text{Ksh } 91,520,000 \div 12 \times 3 = \text{Ksh } 22,880,000
\]

1. The Index to be used will be determined through discussions with shortlisted bidders during the Competitive Dialogue phase of the RfP

2. The NPV of the Initial Capital element in the bidder’s model (i.e. that for which the Service Provider’s costs would be fixed) is approximately 20% of the NPV of the total contract costs.

2.5. **Adjusted Quarterly Annuity Charge**

The actual amount paid to the Service Provider each quarter would be the QAC adjusted for the Service Provider's actual performance against the [3] Performance Standards (see 1.3) as follows:

<table>
<thead>
<tr>
<th>Quartely Annuity Charge</th>
<th>Kshs</th>
<th>Less:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deduction for PS1</td>
<td>Kshs</td>
<td>[ ]</td>
</tr>
<tr>
<td>Deduction for PS2</td>
<td>Kshs</td>
<td>[ ]</td>
</tr>
<tr>
<td>Deduction for PS3</td>
<td>Kshs</td>
<td>[ ]</td>
</tr>
<tr>
<td>Adjusted payment</td>
<td>Kshs</td>
<td>[ ]</td>
</tr>
</tbody>
</table>

The workings and calculation of the adjustments due under each of the Performance Standards are explained in Sections [3] of this paper.

3. **PS1 CONSTRUCTION AND REHABILITATION WORKS**

3.1. **Definitions**
Step-Down Period: The six month period for which Construction / Rehabilitation milestone targets have been set for each Lot.

Step-Down Amount: The amount by which the PS1 deductions to the QAC will be reduced following each Step-Down Period if all of the Step-Down Period targets are achieved.

3.2. PS1 Objective and Overview

The objective of PS1 is to motivate the Service Provider to deliver the improvements in the network and infrastructure required to achieve the target standards detailed in PS1.

When the contract commences there will be a gap between the current service standards and those that the Service Provider is required to achieve by the end of the Construction Period. PS1 drives deductions from the QAC commensurate with the size of the gap between prevailing service standards and that required by the end of the Construction Period.

PS1 uses six monthly Step-Down Periods and thereby enables the Contracting Authority (if required) to focus each Step-Down Period on a particular bias of Construction improvements over the six month Step Down Periods. Of greater importance, it provides a quantifiable means of measuring progress towards the ultimate goal of the Construction Period.

3.3. Operation of PS1 Deductions during the Core Investment Period

The step-changes illustrated in Diagram 3.3 will be programmed to occur every six months (the Step-Down Periods). Target improvements milestones to be achieved through the Construction Period by each Step-Down Period will be set for a number of key infrastructure elements (e.g. roads, footways, etc.). Service Provider performance at the end of each Step-Down Period will be measured against the targets for each of the infrastructure elements as set out in PS1. Diagram 3.3 below provides an example.

Diagram 3.3: Illustration of PS1 Operation
What will happen in practice at each Step-Down Period is that:

- The Service Provider will be required to achieve 100% of the targets to receive any part of the Step-Down Amount (i.e. the amount automatically deducted from the QAC for PS1 will be reduced).
- If less than 100% of the PS1 targets, the Step-Down Amount relating to that Lot will not be applied.
- If the Service Provider can demonstrate that the targets previously missed have been achieved within two months of the end of the Step-Down Period then the Step-Down Amount will be applied to the next QAC payment (i.e. the payment for the third month after the Step-Down Period).
- Where targets are not achieved within two months of the end of any relevant Step-Down Period, the relevant Step-Down Amounts will not be applied until the end of the next Step-Down Period (assuming that all the targets have been met).
- Where the Service Provider does not catch up with the programme and targets within a Lot for one Step-Down Period by the end of the next Step-Down Period, the deduction from the QAC will be increased by a multiplier – ‘E’ – as follows:
  - If the Service Provider’s CIP targets achieved are one complete Step-Down Period behind schedule, $E = [1.5]$;
  - If the Service Provider’s CIP targets achieved are two complete Step-Down Periods behind schedule, $E = [2]$;
  - If the Service Provider’s CIP targets achieved are three complete Step-Down Periods behind schedule, the Contracting Authority will have the right to terminate the contract.

The Step-Down Amount profile shown in Diagram 3.3 is an indicator of the maximum Step-Down Amount that will be applied at each Step-Down Period, assuming all targets have been met. This means that if the Service Provider were to meet all of the CP targets early, deductions under PS1 would not be reduced more quickly than indicated in the diagram.

### 3.4. Anticipated Deduction (Step-Down Amount) Profile

If the Service Provider achieves all of the targets set out in the Service Performance Requirements by each Step-Down Period the deduction under PS1 will be:

- [During Step-Down Period 1: 70% of full AUC]
- [During Step-Down Period 2: 60% of full AUC] and so on until:
- [During Step-Down Period 6: 10% of full AUC]

Following Step-Down Period 6, provided that all the CP targets have been achieved, deductions from the full QAC for performance failures against the various elements of the network will be made through the methodology outlined in PS2.

Assuming a QAC of [Ksh 7,522,192] and based on the profile outlined above, the minimum PS1 deductions would be as shown in Table 3.5 (i.e. Step-Down Period 1 minimum deduction = Ksh 7,522,192 x 60%):
3.7 Failure to meet a PS1 Milestone

In the event that the Service Provider fails to meet (say) Period 2 Milestone the Step Down will revert to the last achieved milestone. If the last milestone achieved was period 1, instead of the period 2 Step Down of 60% and contractor will only be entitled to the Milestone 1 Step Down i.e. 70%

3.8 PS1 Following Completion of the CP

As outlined in 3.5 above, PS1 will not apply after completion of the CIP. Thereafter, deductions from the full BMUC for performance failures against those road and infrastructure elements measured under PS1 during the CIP will be made through the methodology outlined in PS2. The targets set for PS2 will ensure that the Service Provider continues to invest a sufficient level of resources into the roads and infrastructure elements previously assessed under PS1.

4. PS2 POST CONSTRUCTION ASSET CONDITION

After completion of the Construction Period (CP), targets will be set for the following road and infrastructure elements every six months until the end of the contract:

- Surfaces and footways

5. PS3 OPERATIONS & MAINTENANCE PERFORMANCE

5.1 Objectives and Overview

The objective of PS3 is to motivate the Service Provider to maintain and manage the roads and infrastructure in the lot so that it is “available” to the standards specified in the Service Performance Requirements at all times. PS3 will achieve this by:

- generating “Unavailability Deductions”, i.e. where an element of the project network (e.g. a lane(s) on the carriageway) within a given RSL is actually closed contrary to the agreed maintenance programme, a deduction will be made
- generating “Deemed Unavailability Deductions” deductions where performance for a given element of the network infrastructure is below a deemed service failure threshold. Deemed Unavailability Deductions will be lower than Unavailability Deductions to encourage the Service Provider to keep RSLs open and deal with performance failures in the least disruptive way for road users. In applying Deemed Unavailability Deductions it will be assumed that the entire RSL (e.g. the full length and all lanes) is deemed unavailable
- generating “Service Points” in respect of failures in infrastructure quality standards which will result in deductions only if the accumulated number of service points incurred during any monthly period exceed [1,000]
• generating “Termination Points” in respect of failures in infrastructure quality standards if the accumulated number of service points incurred during any revolving 12 month period exceed 9,000]

5.2. Diversion Availability

Planned unavailability (i.e. unavailability agreed in the agreed Annual Maintenance Programme (AMP)) will not lead to a deduction.

5.3. PS3 Standards

PS3 Standards are set out in the Service Performance Requirements (see Schedule 4 Tables [x]). PS2 will be split into three parts:

- PS3 (a) Unavailability and Deemed Unavailability
  This part will focus on the standards maintained for all elements of the road infrastructure within each RSL and any resulting cases of unavailability or deemed unavailability.

- PS3 (b) Quality and Performance Standards
  This part will focus on the standards maintained for specific elements of the network infrastructure within each RSL where these are below the required standard but not to the extent which would result in the Deemed Unavailability of an RSL.

5.4. PS3 (a) Deduction Methodology

The level of deduction made for each instance of unavailability will be determined by:

- Whether the deduction is a consequence of actual Unavailability or Deemed Unavailability
- The category of road into which the RSL falls (‘Failure Category’),
- The number of metres of RSL which is either Unavailable or Deemed Unavailable as a result of the failure
- The time of the day / week at during which the Unavailability or Deemed Unavailability occurs (‘Time of Day Multiplier’)
- The time taken to rectify the failure (‘Delay Multiplier’)
- Whether the unavailability or performance failure is a repeat failure, i.e. the same failure has occurred within the last [X] months on the same RSL (‘Incident Repeat Multiplier’)

5.5. Calculation of PS3 (a) Deductions

The PS3 (a) Deduction Tables determine the amount that will be deducted from the QAC for each day or part during which the Unavailability or Deemed Unavailability occurs as follows3:

\[
PS3 \ (a) = PS3 \ (a) \ 1 \times M \times PS3 \ (a) \ 2 \times PS3 \ (a) \ 3 \times N/Y + (A \times [Ksh12] \times PS3 \ (a) \ 2)
\]

Where:

\[
PS3 \ (a) = \text{Deduction per day or part of under PS2 for each RSL which is subject to Unavailability or Deemed Unavailability}
\]
LOT 6

Schedules to Project Agreement

PS3(a)1 = the amount (Ksh) of the deduction based on whether a failure has been classified as Unavailability or Deemed Unavailability, and the ‘Failure Category’ derived from Table 4.5i

3 The PS3 (a) deduction formula does not include a delay multiplier. Escalation of deductions relating to delays in response times is dealt with under [PS5: Emergency and Operational Responsiveness]

4 Table 4.5i: Unavailability and Deemed Unavailability Deductions

<table>
<thead>
<tr>
<th>Road Category</th>
<th>Unavailability Deduction per metre of RSL (Ksh)</th>
<th>Deemed Unavailability Deduction per metre of RSL (Ksh)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strategic/Main Distributor</td>
<td>Ksh[xxx] x [The Index]</td>
<td>Ksh[xxx] x [The Index]</td>
</tr>
<tr>
<td>Link Road</td>
<td>Ksh[xxx] x [The Index]</td>
<td>Ksh[xxx] x [The Index]</td>
</tr>
<tr>
<td>Local Access Road</td>
<td>Ksh[xxx] x [The Index]</td>
<td>Ksh[xxx] x [The Index]</td>
</tr>
</tbody>
</table>

The Index = The Indexation agreed on 1 April each year M = number of metres of RSL which is Unavailable

N = 1 for Deemed Unavailability and number of lanes actually unavailable in an RSL for Unavailability

Y = 1 for Deemed Unavailability and total number of lanes in an RSL for Unavailability A = number of Car Park Bays Unavailable

PS3 (a) 2 = the ‘Time of Day Multiplier’, derived from Table 4.5ii

Table 4.5ii: Time of Day Multiplier

| Where the Duration of the Unavailability or Deemed Unavailability includes a mix of the below time-bands, the highest multiplier will be applied to the whole Unavailability / Deemed Unavailability period. |
|-----------------------------------------------|-----------------------------------------------------|-------------------------------------------------|-------------------------------------------------|-------------------------------------------------|
| Weekday [7.00am to 10.00am] and [3.00pm to 8.00pm] | [3]                                                  | [2]                                           | [2]                                           | [1]                                           |
| Weekday [10.00am to 3.00pm]                     |                                                      |                                               |                                               |                                               |
| Weekend and Bank Holiday [8.00am to 7.00pm]     |                                                      |                                               |                                               |                                               |
| All other times                                 |                                                      |                                               |                                               |                                               |
PS3 (a)3 = the ‘Incident Repeat Multiplier’, as shown in Table 4.5iv

Table 4.5iv: Incident Repeat Multiplier

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>[1]</td>
<td>[1.2]</td>
<td>[1.5]</td>
<td>[2]</td>
</tr>
</tbody>
</table>

For the avoidance of doubt, where an RSL is subject to Unavailability for one part (e.g. one lane out of four) and Deemed Unavailability for other part(s), deduction for the RSL will be the sum of the deductions for Unavailability and Deemed Unavailability. However, the deduction will never be greater than it would have been if 100% of the RSL was classed as Unavailable.

5.6. PS3 (a) Example

Assuming the deduction for Unavailability of a Strategic/Main Distributor Road is Ksh10 per metre of RSL and The Index is 1:

- 1 lane of a 3 lane Strategic/Main Distributor RSL of 200 metres length is Unavailable at 8.00am on a weekday
- the road is made available again within 2 days
- it was last unavailable for the same reason just five days before
- Ksh10 x 1 x 200 x 3 x 2 x 1/3 + (3 x [Ksh12] x 1.5) = Ksh4,054

5.7. PS3 (b) Deduction Methodology

Specific types of quality and performance failures will result in the Service Provider incurring Service Points. The number of Service Points will be derived on the basis of the importance of the failure and the time taken to rectify it. The Service Requirements categorise each type of failure into category [A, B, C, D or E] with an associated number of points per category.

5.8. Calculation of PS3 (b) Deductions

Deductions will be calculated as follows:

Table 4.12: PS3 (b) Deductions

<table>
<thead>
<tr>
<th>PS3 Performance Category</th>
<th>Service Points Allocated per RSL where Failure Occurs</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>[50] per day or part</td>
</tr>
</tbody>
</table>
To reflect the fact that there is always likely to be some level of performance failure, the Service Provider will be permitted a threshold of [1,000] Service Points a month before the accumulation of Service Points results in a financial deduction from the QC.

<table>
<thead>
<tr>
<th>Total Service Points per Lot for the Month</th>
<th>Deduction from QC (Ksh)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to [1,000]</td>
<td>Zero</td>
</tr>
<tr>
<td>[1,001] – [2,000]</td>
<td>[Ksh50] per point over [1,000]</td>
</tr>
<tr>
<td>[2,001] and above</td>
<td>[Ksh50] per point over [1,000] and [Ksh100] per point over [2,000]</td>
</tr>
</tbody>
</table>

5.9. **Total PS3 Deduction**

The total deduction for PS3 in any given month is as follows: PS2 Deduction = PS3 (a) + PS3 (b)
3. PAYMENT MECHANISMS

DEFINITIONS

Adjustment Default Point means a point awarded to the Service Provider in accordance with paragraphs 6.1 and 6.2 and the term Adjustment Default Points shall be construed accordingly.

Adjustments means those adjustments to be made to the Quarterly Payment applicable to each of Performance Standards 1 - 3 (inclusive) and the term Adjustments shall be construed accordingly.

Annual Charge is [to be inserted].

Carriageway Adjustments means the Individual Road Section Length Adjustments.

Deemed Available has the meaning given to it in paragraph 2.4.5.

Individual Road Section Length Adjustment has the meaning given to it in paragraph 2.3.4.

Milestone Adjustment Factor or MAF means the figure calculated in accordance with paragraph 1.3.

Milestone Base Factor or MBF means the figure calculated in accordance with paragraph 1.3.

Payment Year means [** ].

Performance Standard 1 or PS1 means [Construction and Rehabilitation of Roads in the Lot].

Performance Standard 2 or PS2 means [Post Construction Asset Condition].

Performance Standard 3 or PS3 means [Operation and Maintenance Service Delivery Output].

Performance Target means those Performance Targets set out in Schedule [** ] (Output Specifications) and Performance Targets shall be construed accordingly.

Period means a period of three months.

Planned Service Commencement Date means [insert date].

Quarterly Annuity Charge or QAC is the quarterly Annuity Charge calculated in accordance with paragraph 1.3 of this Schedule.

Quarterly Payment is the Quarterly Payment calculated in accordance with paragraph 1.4

Rectification means the completion of any actions and/or works undertaken by the Service Provider in order to resolve an event of Unavailability, Deemed Unavailability or failure to meet a Performance Target (as the case may be) and Rectify and Rectified shall be construed
Accordingly.

**Rectification Period** means those time periods specified in column [** ] of each of the tables in Part [** ] of Schedule [** ] (Output Specifications) in respect of each Performance Target.

**Reporting Failure Deductions** mean an adjustment made pursuant to paragraph 3.1

**Road Section Length** or **RSL** means the individual section length of a road within the Project Network.

**Route** means [** ].

**RSL Category** means any of the categories set out in the column headed "RSL Category" in paragraph 2.3.3.

**Service Commencement** means the commencement of [Project Operations/the O&M Services.]

**Service Points** means the Service Points set out in paragraph 2.4.4.

**Unavailability Adjustments** means Adjustments to be made as a result of Unavailability.

**Unavailability** means in respect of each RSL (or parts thereof), any partial or total closure or other restriction of a lane of traffic (in one direction of travel), unless the cause of such partial or total closure or other restriction of a lane of traffic (in one direction of travel) results from the occurrence of an event that falls within the definition of Deemed Available and Unavailable shall be construed accordingly.

**PAYMENT MECHANISM**

1. **QUARTERLY CHARGE**

   1.1 **General**

   The Quarterly Charge (QC) shall be calculated and adjusted from time to time in accordance with this schedule [M] (Payment Mechanism), Clause 24 (Annuity Payment) and any other express provisions of this Contract including without limitation, Clause 16 (Changes of Scope), and Clause 36 (Change in Law).

   1.2 **Indexation: Quarterly Charge**

   The Quarterly Charge shall be reviewed on [1st July] in each year following the Planned Service Commencement Date until the Transfer Date in accordance with the following formula:

   \[ QC = (OCx + NCy) \times (1 + (X \times (CPIn - CPIm) / (CPIm))) \]

   where:

   \( OCx = \) the Quarterly Charge immediately preceding the date of review [excluding
adjustments for Change included within or removed from the Project Network during the preceding Payment Year in accordance with paragraph 2.1 of this Schedule M (Payment Mechanism)];

NCy = the value of Change within the Project Network [less the value of Change removed from the Project Network during the preceding Payment Year in accordance with paragraph 2.1 of this Schedule M (Payment Mechanism)];

1. This Schedule M may be updated by the Contracting Authority as a result of any potential further amendments to Schedule [ ] (Output Specification)

X =the Indexation Factor [20%];

CPIn = CPI [ to be agreed during negotiations ] as at the end of January in the Payment Year ending immediately prior to the date of review and for the avoidance of doubt CPI at the end of [ January 2015] will be applied in the first [ Contract] Year;

CPIm =CPI [ to be agreed during negotiations] as at the end of January in the Payment Year preceding that which ended immediately prior to the date of review and for the avoidance of doubt CPI at the end of January [ 2015] will be applied in the first Contract Year.

1.3 Quarterly Charge

The Quarterly Charge ("QC") shall be calculated in accordance with the following formula:

QC =AC /NY xNM xMAF

where:

AC =the Annual Charge for the relevant Payment Year calculated in accordance with paragraph 1.2 of this schedule-M (Payment Mechanism);

2

3 A mechanism will be developed to accommodate the fact that completion or part completion of a Milestone may occur part way through a Period

NY = the number of days in the relevant Payment Year;

NM = the number of days in the relevant period; and

MAF =the applicable Milestone Adjustment Factor calculated in accordance with the following formula:

MAF = (MBF x DP1) + (MBF x DP2) + (MBF x DP3) + (MBF x DP4) + (MBF x DP5)

where:

MBF = the applicable Milestone Base Factor, being, the appropriate figure from Table 1 below which reflects the last Project Milestone for each Lot in respect of which the Independent
Engineer has issued a Completion Certificate or a Provisional Certificate (as the case may be) in accordance with Clause 14 of this Agreement:

### Table 1

<table>
<thead>
<tr>
<th>Milestone</th>
<th>MBF</th>
</tr>
</thead>
<tbody>
<tr>
<td>At Service Commencement</td>
<td></td>
</tr>
<tr>
<td>Milestone I</td>
<td>[1%]</td>
</tr>
<tr>
<td>Milestone II</td>
<td>[5%]</td>
</tr>
<tr>
<td>Milestone III</td>
<td>[10%]</td>
</tr>
<tr>
<td>Milestone IV</td>
<td>[30%]</td>
</tr>
<tr>
<td>Milestone V</td>
<td>[50%]</td>
</tr>
<tr>
<td>Milestone VI</td>
<td>[70%]</td>
</tr>
<tr>
<td>Milestone VII</td>
<td>[80%]</td>
</tr>
<tr>
<td>Milestone VIII</td>
<td>[90%]</td>
</tr>
<tr>
<td>Milestone IX</td>
<td>[100%]</td>
</tr>
</tbody>
</table>

DP = the applicable Route Percentage for each Route within a Lot being the appropriate figure from Table 2 below:

### Table 2

<table>
<thead>
<tr>
<th>Route</th>
<th>Route percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kilgoris - Lolgorian</td>
<td>15</td>
</tr>
<tr>
<td>Turbo - Sikhendu - Endebess</td>
<td>31</td>
</tr>
<tr>
<td>Kakamega (Sichirai) – Ingotse – Namukoye - Nzoia River – Musikoma (Khalaba) Road</td>
<td>21</td>
</tr>
<tr>
<td>Ruambwa – Port Victoria (Mabinju)</td>
<td>9</td>
</tr>
<tr>
<td>Kehancha - Lolgorian</td>
<td>12</td>
</tr>
<tr>
<td>Kimaeti – Malakisi - Lwakhakha</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td>100%</td>
</tr>
</tbody>
</table>
1.4 Quarterly Payment

The Quarterly Payment ("QP") shall be calculated in accordance with the following formula and such payment shall be made in accordance with Clause 24 (Payment and Financial Matters):

\[
\text{Quarterly Payment} = QC - (PS1T + PS2T + PS3T) - A2 + A3 + A4 - A5 + A6 - A7 + A8 - \text{RFD}
\]

where:

- \( QC \) = the Quarterly Charge calculated in accordance with paragraph 1.3 of this schedule [ ] (Payment Mechanism) for the relevant Period;
- \( PS1T \) = the sum of any Adjustments due in accordance with Performance Standard 1 pursuant to paragraph 2.2 of this schedule [ ] (Payment Mechanism) in respect of the Period that is two (2) Periods prior to that to which the QC relates;
- \( PS2T \) = the sum of any Adjustments due in accordance with Performance Standard 2 pursuant to paragraph 2.3 of this schedule [ ] (Payment Mechanism) in respect of the Period that is two Periods prior to that to which the QC relates;
- \( PS3T \) = the sum of any Adjustments due in accordance with Performance Standard 3 pursuant to paragraph 2.4 of this schedule [ ] (Payment Mechanism) in respect of the Periods that is two Periods prior to that to which the QC relates;
- \( A2 \) = any adjustments to reflect previous overpayments by the Contracting Authority;
- \( A3 \) = any adjustments to reflect previous underpayments by the Contracting Authority;
- \( A4 \) = any other amounts payable by the Contracting Authority to the Service Provider under this Agreement;
- \( A5 \) = any other amounts payable by the Service Provider to the Contracting Authority under this Agreement;
- \( A6 \) = any interest payable by the Contracting Authority to the Service Provider under this Agreement;
- \( A7 \) = any interest payable by the Service Provider to the Contracting Authority under this Agreement;
- \( A8 \) = Adjustment resulting from increase in axle loads or overloading and
- \( \text{RFD} \) = any Reporting Failure Deductions calculated in accordance with paragraph 5 of this schedule [M] (Payment Mechanism).

1.5 Aggregate Adjustments Cap

The maximum amount of Adjustments that may be made by the Contracting Authority in respect of any Period shall be limited to and shall not exceed [70%] of the Quarterly Charge.
LOT 6
relating to that Period.
2. **CALCULATION OF MONTHLY ADJUSTMENTS**

2.1 **Adjustment Regime**

2.1.1 Adjustments will be calculated on a month by month basis and aggregated to the Quarterly Charge invoice submitted pursuant to Clause 24 of the Agreement.

2.1.2 In schedule [ ] (Output Specification) and in this schedule [ ] (Payment Mechanism), any period expressed in terms of:

2.1.2.1 a month or months shall mean the period starting at the relevant time and date in the first month and ending at the same time and date in the following or subsequent month;

2.1.2.2 a day or days shall mean a full 24-hour period starting at the relevant time on the first day and ending at the same time the following or subsequent day;

2.1.2.3 a Business Day shall have the meaning given to it in schedule 1 (Definitions, Interpretation and Construction) and:

2.1.2.3.1 the length of a Business Day shall be the full 24-hour period starting at the relevant time on the first day and ending at the same time the following day (for example, a period that is stated to be three (3) Business Days commencing at 15:00:00 on a Friday is exceeded at the commencement of the first hour of the fourth (4) Business Day being 15:00:00 on the following Wednesday (except where a bank holiday occurs during this time period)); and

2.1.2.3.2 where an event triggering an Rectification Period or Adjustment Period expressed in Business Days occurs on a day other than a Business Day, such Rectification Period or Adjustment Period shall commence at 00:00:01 on the next following Business Day.

2.1.3 No Adjustments in relation to any Performance Standards may be imposed other than in accordance with the terms and procedures set out in this Schedule M (Payment Mechanism).

2.1.4 If a single event occurs which results in the Service Provider failing to meet or comply with two (2) or more of the Performance Standards then the Service Provider will only be liable for the Adjustment in relation to that Performance Standard which has the highest service points or monetary value, except:

2.1.4.1 any failure leading to an Individual Road Section Length Adjustment;

2.1.4.2 a single failure may result in both the imposition of an Adjustment
2.1.4.3 and the accrual of Service Points (and any Adjustment consequential upon any accrual of Service Points);

2.1.4.4 where any provision of this Schedule M (Payment Mechanism) states to the contrary.

2.1.5 Rectification Periods shall be deemed to commence from the time and date that the Service Provider first became aware or should reasonably have become aware of the relevant event of Unavailability or failure to meet a Performance Target (as the case may be).

2.1.6 Adjustments shall begin to accrue from the expiry of the relevant Rectification Period or (where no Rectification Period is specified) from the date and time at which the Service Provider first became aware of or should reasonably have become aware of the event of Unavailability or failure to meet a Performance Target (as the case may be) and shall continue to accrue in respect of each Adjustment Period that commences prior to Rectification. For the avoidance of doubt, the Service Provider shall not be liable for any Adjustments where the Service Provider Rectifies the relevant event of Unavailability or failure to meet a Performance Target (as the case may be) prior to the expiry of any applicable Rectification Period.

2.1.7 Adjustments shall cease to accrue from the time that the relevant event of Unavailability or failure to meet a Performance Target (as the case may be) has been Rectified save as otherwise expressly stated in this Schedule M (Payment Mechanism).

2.1.8 Each Adjustment due under this Schedule M (Payment Mechanism) shall be applied against the Quarterly Charge relating to the Period falling two (2) Periods after the Adjustment accrued. Where any Adjustment is expressed as a percentage of the Quarterly Charge, the relevant Quarterly Charge shall be that which related to the Period in which the Adjustment accrued (not, for the avoidance of doubt, the Quarterly Charge relating to the Period falling two (2) Periods later).

2.1.9 The Service Provider shall not be liable in respect of any Adjustment(s) incurred in respect of each failure to comply with any Performance Target during the applicable Moratoria Period.

2.2 Part 1 - Performance Standard 1 (Construction and Rehabilitation of Roads in the Lot)

2.2.1 If the Project Completion Schedule Programme is not progressed in accordance with the Project Milestones set out in Schedule G, then the provision of clause 12.5 will apply.
2.2.2 As set out in paragraph 1.3 of this Schedule M (Payment Mechanism), the Quarterly Charge will be adjusted during the Construction Period through application of the Milestone Adjustment Factor to reflect the progress of the Service Provider against the Milestones.

2.3 Part 2 - Performance Standard 2 (Post Construction Asset Condition)

2.3.1 In respect of each Route within a Lot, from the date of issue of a Completion Certificate of Completion (or where relevant, a Certificate of Partial Completion) for Project Milestone [ ] until the Transfer Date the Service Provider shall meet the requirements of Part 2 of schedule [ ] (Output Specification).

2.3.2 In the event that the Service Provider fails to comply with the requirements of part 2 of Schedule [ ] (Output Specification) then Adjustments shall be made in accordance with the following formula:

\[ PS2T = TCA \]

where:

\[ PS2T = \text{has the meaning given to it in paragraph 1.4 of this schedule [ ] (Payment Mechanism)}; \]

\[ TCA = \text{the sum of the Carriageway Adjustments calculated in accordance with paragraph 2.3.4 of this schedule M (Payment Mechanism)}; \]

2.3.3

2.3.4 Individual Road Section Length Adjustments

Where the Service Provider fails to comply with any of paragraph [ ] of schedule [ ] (Output Specification) and their corresponding Performance Targets then an Adjustment shall be calculated in accordance with the following formula ("Individual Road Section Length Adjustment"):

\[ IRSLA = RSLP \times TLRSL \]

where:

\[ IRSLA = \text{Individual Road Section Length Adjustment}; \]

\[ RSLP = \text{the price per metre of the relevant Road Section Length in accordance with Performance Standard 2 Table 4 below}; \]

Performance Standard 2 Table 4

<table>
<thead>
<tr>
<th>RSL Category</th>
<th>Price per RSL (Ksh) (Indexed)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strategic Traffic Routes</td>
<td>[ t[1500] Ksh ]</td>
</tr>
<tr>
<td>Schedules to Project Agreement</td>
<td></td>
</tr>
<tr>
<td>--------------------------------</td>
<td></td>
</tr>
<tr>
<td><strong>Strategic and Main</strong></td>
<td></td>
</tr>
<tr>
<td>Distributor Routes</td>
<td>[500] Ksh</td>
</tr>
<tr>
<td><strong>Secondary Distributor Routes</strong></td>
<td>[150] Ksh</td>
</tr>
<tr>
<td><strong>Link Routes</strong></td>
<td>[100] Ksh</td>
</tr>
<tr>
<td><strong>Local Access Routes</strong></td>
<td>[15] Ksh</td>
</tr>
</tbody>
</table>

TLRSL = the total length of the relevant RSL in metres as set out in the [Project Network Model].

and such Individual Road Section Length Adjustment shall accrue in respect of each Adjustment Period that commences until such failure to meet each of those paragraphs of part 2 of schedule [ ] (Output Specification) and their corresponding Performance Targets is Rectified in accordance with paragraph 2.1.6 of this schedule [ ] (Payment Mechanism).

2.4 Part 3 - Performance Standard 3 (Operation and Maintenance Service Delivery Output)

2.4.1 In the event that the Service Provider does not comply with the requirements set out in part 3 of schedule [ ] (Output Specification) then Adjustments shall be made in accordance with the following formula:

\[ PS3T = TUA + TFS3A + TPS3SPA + TPS3MA + TWA \]

where:

\[ PS3T \] = has the meaning given in paragraph 1.4 of this schedule [ ] (Payment Mechanism);

\[ TUA \] = the sum of the Unavailability Adjustments for the relevant Period each calculated in accordance with paragraph 2.4.2;

\[ TFS3A \] = the sum of the Performance Standard 3 Adjustments for the relevant Period each calculated in accordance with paragraph 2.4.4;

\[ TPS3SPA \] = the sum of the Performance Standard 3 Service Points Adjustments for the relevant Period each calculated in accordance with paragraph 2.4.5;

2.4.2 Unavailability Adjustment

2.4.2.1 Subject to paragraph 2.4.2.2 where, in respect of an RSL, the Service Provider has failed to comply with each part of paragraph [2.2] of part 3 of schedule [ ] (Output Specification) and its corresponding
Performance Targets an Adjustment ("RSL Unavailability Adjustment") in respect of such RSL shall be calculated in accordance with the following formula:

\[ \text{RSLUA} = \text{RSLV} \times \text{IRM} \times \text{NUL} \times \text{NUH} \]

where:

\( \text{RSLUA} = \) the RSL Unavailability Adjustment;

\( \text{RSLV} = \) the value attributed to the relevant RSL that is Unavailable multiplied by the relevant multiplier both of which are set out in Performance Standard 3 Table 1 below:

**Performance Standard 3 Table 1**

<table>
<thead>
<tr>
<th>RSL Category</th>
<th>Value per RSL (Ksh) (Indexed)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strategic Traffic Routes</td>
<td>[1500] Ksh</td>
</tr>
<tr>
<td>Strategic/Main Distributor</td>
<td>[500] Ksh</td>
</tr>
<tr>
<td>Secondary Distributor</td>
<td>[150] Ksh</td>
</tr>
<tr>
<td>Link Road</td>
<td>[100] Ksh</td>
</tr>
<tr>
<td>Local Access Road</td>
<td>[15] Ksh</td>
</tr>
</tbody>
</table>

\( \text{IRM} = \) the applicable Incident Repeat Multiplier set out in Performance Standard 2 Table 3 below:

**Performance Standard 3 Table 3**

<table>
<thead>
<tr>
<th>No previous occurrence</th>
<th>Re-occurrence within 6 months of the date of the previous incident</th>
<th>Re-occurrence within 3 months of the date of the previous incident</th>
<th>Re-occurrence within 1 month of the date of the previous incident</th>
<th>Re-occurrence within 7 days of the date of the previous incident</th>
</tr>
</thead>
<tbody>
<tr>
<td>IRM = 1</td>
<td>IRM = 1.5</td>
<td>IRM = 2</td>
<td>IRM = 2.5</td>
<td>IRM = 3</td>
</tr>
</tbody>
</table>

\( \text{NUL} = \) the number of lanes in the RSL that are Unavailable;

\( \text{NUH} = \) the number of hours that the RSL is Unavailable;
and such RSL Unavailability Adjustment shall accrue in respect of each Adjustment Period that commences until such event of Unavailability is Rectified in accordance with paragraph 2.1.6 of this schedule [ ] (Payment Mechanism).

2.4.2.2 Where an RSL is Unavailable as a direct result of a closure and/or restriction due to the occurrence of Programmed Maintenance and/or Routine Maintenance that is in accordance with the applicable agreed Annual Programme then the Service Provider shall not incur an RSL Unavailability Adjustment in accordance with paragraph [2.4.2.1].

2.4.3 Performance Standard 3 Adjustments (Deemed Availability)

2.4.3.1 Where the Service Provider fails to comply with any paragraph of part 2 of schedule 2 (Output Specification) and their corresponding Performance Targets the RSL shall be Deemed Available and the Service Provider shall incur in respect of each RSL Deemed Available an Adjustment in accordance with the following formula ("Performance Standard 3 Adjustment or PS3 Adjustment"):  

\[
PS3A = Y \times M \times LLRSL
\]

where:

- \( Y \) = the relevant amount from Standard 3 Table 6 below in respect of the Adjustment Type of the relevant Performance Target:

**Performance Standard 3 Table 6**

<table>
<thead>
<tr>
<th>RSL Category</th>
<th>Amount (Ksh (Indexed)) per metre lane length for each RSL Deemed Available.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strategic Traffic Routes</td>
<td>[300] Ksh</td>
</tr>
<tr>
<td>Strategic/Main Distributor</td>
<td>[125] Ksh</td>
</tr>
</tbody>
</table>
and

\[ M = \text{the relevant multiplier from Performance Standard 3 Table 7 below} \]

\[ \text{LLRSL} = \text{The lane length of each RSL} \]

**Performance Standard 3 Table 7**

<table>
<thead>
<tr>
<th>Number of Adjustment Periods that have commenced prior to Rectification</th>
<th>M</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1</td>
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<tr>
<td>2</td>
<td>5</td>
</tr>
<tr>
<td>3</td>
<td>20</td>
</tr>
<tr>
<td>4 and all subsequent Adjustment Periods</td>
<td>25</td>
</tr>
</tbody>
</table>

and where an Adjustment Period is stated to apply to such failure such Performance Standard 3 Adjustment shall accrue in respect of each Adjustment Period that commences until each such failure has been Rectified in accordance with paragraph 3.1.6 of this schedule M 3 (Payment Mechanism).

**2.4.4 Service Points Adjustments**

2.4.4.1 Where the Service Provider fails to comply with any paragraph part 3 of schedule [ ] (Output Specification) and their corresponding Performance Targets the Service Provider shall incur in respect of each such failure Service Points in accordance with the following Performance Standard 3 Table 8:
Performance Standard 3 Table 8

<table>
<thead>
<tr>
<th>Adjustment Type of relevant Performance Target</th>
<th>Number of Service Points awarded in respect of each failure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adjustment Type SP3(a)</td>
<td>15</td>
</tr>
<tr>
<td>Adjustment Type SP3(b)</td>
<td>25</td>
</tr>
<tr>
<td>Adjustment Type SP3(c)</td>
<td>30</td>
</tr>
<tr>
<td>Adjustment Type SP2(d)</td>
<td>15</td>
</tr>
<tr>
<td>Adjustment Type SP3(e)</td>
<td>5</td>
</tr>
</tbody>
</table>

and Service Points shall accrue for each such failure in respect of each Adjustment Period that commences until such failure is Rectified in accordance with paragraph 3.1.6 of this schedule M 3 (Payment Mechanism).

Calculation of PS3 (b) Deductions

Deductions will be calculated as follows: **Table [ ]: PS3(b)**

**Deductions**

<table>
<thead>
<tr>
<th>PS3 Performance Category</th>
<th>Service Points Allocated per RSL where Failure Occurs</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>[50] per day or part</td>
</tr>
<tr>
<td>B</td>
<td>[100] per day or part</td>
</tr>
<tr>
<td>C</td>
<td>[150] per day or part</td>
</tr>
<tr>
<td>D</td>
<td>[200] per day or part</td>
</tr>
</tbody>
</table>

To reflect the fact that there is always likely to be some level of performance failure, the Service Provider will be permitted a threshold of [1,000] Service Points a month before the accumulation of Service Points results in a financial deduction from the QC.
<table>
<thead>
<tr>
<th>Total Service Points per Lot for the Month</th>
<th>Deduction from QC (Ksh)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to [1,000]</td>
<td>Zero</td>
</tr>
<tr>
<td>[1,001] – [2,000]</td>
<td>[Ksh50] per point over [1,000]</td>
</tr>
<tr>
<td>[2,001] and above</td>
<td>[Ksh50] per point over [1,000] and [Ksh100] per point over [2,000]</td>
</tr>
</tbody>
</table>

**Total PS3 Deduction**

The total deduction for PS3 in any given month is as follows: PS2 Deduction = PS3 (a) + PS3 (b)

2.4.4.2 Where in any Period the Service Provider incurs Service Points in excess of the Performance Standard 3 Permitted Threshold then the Contracting Authority shall be entitled to make an Adjustment and such Adjustment shall be calculated in accordance with the following formula ("Performance Standard 3 Service Points Adjustment or PS3 Service Points Adjustment"):

\[ \text{PS3SPA} = \text{Number of Service Points} \times X \]

where:

- \( \text{PS3SPA} \) = the Performance Standard 2 Service Points Adjustment
- \( \text{Number of Service Points} \) = the number of Service Points incurred by the Service Provider in the relevant Period above the Performance Standard 3 Permitted Threshold; and
- \( X = [10,000] \) Ksh [to be agreed during negotiations] (Indexed)

- generating “Service Points” in respect of failures in infrastructure quality standards which will result in deductions only if the accumulated number of service points incurred during any monthly period exceed [1,000]
- generating “Termination Points” in respect of failures in infrastructure quality standards if the accumulated number of service points incurred during any revolving 12 month period exceed 9,000]

**2.4.5 Deemed Availability**

Notwithstanding paragraph [ ] an RSL is Unavailable shall be deemed to be not Unavailable ("Deemed Available"):

2.4.5.1 for the period of time that such Unavailability arises from the presence of a broken down vehicle and/or an abandoned vehicle on the Project Network provided that the Service Provider has complied with the requirements of paragraph [ ] of part 2 of schedule 2 (Output Specification);
2.4.5.2 for the period of time that such Unavailability arises from the presence of Large Item(s) and/or Large Spillage(s) on the Project Network provided that the Service Provider has complied with the requirements of paragraphs [ ] of part 2 of schedule 2 (Output Specification);

2.4.5.3 for the period of time that such Unavailability arises from the presence of Small Item(s) and/or Small Spillage(s) on the Project Network where the Service Provider has complied with the requirements of paragraph [ ] of part 2 of schedule 2 (Output Specification);

2.4.5.4 for the period of time that such Unavailability arises from the presence of any other unlawful blockages, closures, partial closures or restrictions of passage provided that the Service Provider has complied with any applicable requirements set out in this Contract;

2.4.5.5 for the period of time that such Unavailability arises in accordance with paragraph [ ] of this schedule [ ] (Payment Mechanism);

2.4.5.6 for the period of time that such Unavailability arises as a result of the police and/or the Emergency Services taking control of an area on the Project Network and for one (1) hour immediately after such control of such area has been relinquished by the Police and/or Emergency Services and, for the avoidance of doubt, the Service Provider shall not incur any Unavailability Adjustments in respect of such incidents of Unavailability that are Deemed Available in accordance with this paragraph [ ] of schedule [ ] (Payment Mechanism).

3. REPORTING FAILURE DEDUCTIONS

3.1 In the event that it is agreed or determined that there is any inaccuracy in calculating the Quarterly Payment in respect of a Period by failing to report or report accurately on any information which is required in accordance with the Output Specification and which affects any Adjustment, the Contracting Authority shall be entitled to make the relevant Adjustment which is the subject of the reporting failure and, in addition, a Reporting Failure Deduction of a sum equal to 1000 Service Points of the relevant Adjustment.

3.2 If the Contracting Authority and the Service Provider disagree over whether a reporting failure has occurred pursuant to paragraph 3.1 of this schedule [ ] (Payment Mechanism) then the Contracting Authority's decision shall prevail for the purposes of calculating Reporting Failure Deductions under this schedule [ ] (Payment Mechanism) and the Service Provider may refer the matter for resolution in accordance with Clause 41 (Dispute Resolution).
3.3 The Reporting Failure Deduction shall be applied to the Quarterly Payment in the Period immediately following the Period in which it is agreed or determined that a Reporting Failure has occurred pursuant to paragraph 3.1 of this schedule [ ] (Payment Mechanism).

4. MONITORING AND REPORTING

4.1 All Performance Targets shall be monitored in accordance with Clause 19 (Monitoring of Operation and Maintenance) [and schedule 11 (Monitoring) of this Agreement.]

5. SERVICE DEFAULT TERMINATION POINTS

5.1 Service Default Termination Points Notice

If at any time any reports delivered pursuant to Clauses 13.1 or 19.1 indicates or the Contracting Authority’s Representative becomes aware that the Service Provider or Service Provider Party has failed to perform any of its obligations under the Contract then the Contracting Authority’s Representative may (without prejudice to any other right or remedy available to the Contracting Authority) by written notice (Service Default Termination Points Notice) to the Service Provider award points (Service Default Termination Points)

6. ADJUSTMENT DEFAULT POINTS

6.1 Construction Period

During the Construction Period an Adjustment Default Point shall be awarded to the Service Provider where:

6.1.1 total Adjustments in any one (1) Period in respect of Performance Standard 1 and 3 are greater than [3]% of the Quarterly Charge; or

6.1.2 total Adjustments in any rolling period of three (3) consecutive Periods in respect of Performance Standard 1 and 3 are greater than [2]% of the sum of the Quarterly Charge payable in respect of that rolling period of three (3) consecutive Periods; or

6.1.3 total Adjustments in any one (1) Contract Year in respect of Performance Standard 1 are greater than [2] % of the Quarterly Charge.

6.2 Post Construction Period

From the expiry date of Construction Period an Adjustment Default Point shall be awarded to the Service Provider where:

6.2.1 total Adjustments in any one (1) Period in respect of Performance Standards
2 and 3 are greater than [2]% of the Quarterly Charge; or

6.2.2 total Adjustments in any rolling period of three (3) consecutive Periods in respect of Performance Standards 2 and 3 (inclusive) are greater than [1.5]% of the sum of the Quarterly Charge payable in respect of that rolling period of three (3) consecutive Periods; or

6.2.3 total Adjustments in any one (1) Contract Year in respect of Performance Standards 2 and 3 are greater than [1.5]% of the Quarterly Charge;

In the event that the Service Provider is awarded a total of three (3) or more Adjustment Default Points in any rolling 13 month period then this shall constitute a Service Provider Default Event as set out in Clause 37.1.1[(z)].
4. INVOICING

1. Invoicing and Payment

1.1 The Service Provider shall be entitled to send an invoice (such invoice to be in a form acceptable to the Kenya Revenue Authority as a valid VAT invoice) to the Contracting Authority, addressed to the Contracting Authority's Representative, on the fifth (5th) Business Day following the Payment Commencement Date for the Quarterly Payment for the Quarter in which Service Commencement occurs ("Quarter 1").

1.2 Ten (10) Business Days following receipt by the Contracting Authority of the invoice issued by the Service Provider in accordance with paragraph 1.1 above the Contracting Authority shall pay to the Service Provider the Quarterly Annuity Payment due.

1.3 For each subsequent Quarter following Quarter 1, the Service Provider shall deliver to the Contracting Authority on the fifth (5th) Business Day of the addressed to the Contracting Authority's Representative:

1.3.1 an invoice (such invoice to be in a form acceptable to Kenya Revenue Authority as a valid VAT invoice) for the Quarterly Annuity Payment for the Quarter; and.

1.3.2 the Draft Quarterly Monitoring Report in respect of the relevant Quarter.

1.4 Ten (10) days following receipt by the Contracting Authority of the invoice issued by the Service Provider in accordance with paragraph 1.3.1 the Contracting Authority shall pay to the Service Provider the Quarterly Payment in respect of Quarter 2.

1.5 The Independent Expert shall review the Draft Quarterly Monitoring Report for each Quarter, and shall evaluate any disputes relating to calculations, Adjustments and any other payment issues. Where the Parties are unable to agree the contents of the Draft Quarterly Monitoring Report for Quarter 1 and/or resolve any disputes generated at the Quarterly Monitoring Meeting, or any subsequent meeting arranged with the agreement of both Parties to agree the contents of the Actual Quarterly Monitoring Report in respect of Quarter 1, the matter in dispute shall be resolved in accordance with Clause 39 (Dispute
1.6 Each invoice issued in accordance with paragraph 1.1 ("Invoice") shall contain the following information:

1.6.1 the Quarterly Payment (if any) due in respect of the applicable Quarter;
1.6.2 the Adjustments (if any) as set out in the relevant Actual Quarterly Monitoring Report in respect of the pre-preceding Quarter;
1.6.3 any other adjustments required pursuant to the calculation of the Quarterly Payment set out in Schedule M 3 (Payment Mechanism);
1.6.4 any VAT payable in respect of such amounts referred to in this paragraph 1.6; and
1.6.5 the net amount owing by the Contracting Authority to the Service Provider or by the Service Provider to the Contracting Authority.

1.8 For the purposes of calculating the Quarterly Payment to be included within the Invoice issued pursuant to paragraph 45.4 the Service Provider shall take into account only such Milestones (or part thereof) where the applicable Project Milestone Completion Date has actually occurred at the first day of the Quarter to which such Invoice relates. Where such Project Milestone Completion Date occurs part way through a Quarter, the Service Provider shall be entitled to issue a supplementary Invoice in an amount equal to "X" Kenya Shillings where "X" is the difference between:

1.8.1 such sum as would have been the Quarterly Payment for that Quarter had the Project Milestone Completion Date occurred prior to the commencement of the relevant Quarter; and
1.8.2 that Quarterly Payment actually included in the Invoice issued pursuant to paragraph 1.7 in respect of that Quarter;

provided that "X" shall be adjusted pro rata based on the number of days in the Quarter before and after the day on which the Project Milestone Completion Date (as the case may be) occurred.

2 Set off

2.1 The Service Provider shall not be entitled to retain or set off any
amount due to the Contracting Authority by it (other than as expressively set out in this Contract), but the Contracting Authority may retain or set off any amount owed to it by the Service Provider under this Contract which has fallen due and payable against any amount due to the Service Provider under this Contract.

5. **ANNUITY PAYMENT SCHEDULE**

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Annuity Payment Date</th>
<th>Annuity Amount (Ksh. million)</th>
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**Note:** Based on the Bid submitted by the Bidder / Service Provider
6. METHOD STATEMENTS
[TO BE INSERTED FROM THE BID SUBMITTED BY THE BIDDER/SERVICE PROVIDER]
TRAFFIC SAMPLING

1 Traffic sampling

The Contracting Authority may, in its discretion and at its own cost, undertake traffic sampling, pursuant to Clause 22.3, in order to determine the actual traffic on the Project Roads. Such traffic sampling shall be undertaken through the Independent Expert in the manner set forth below.

2 Manual traffic count

The Independent Expert shall employ the required number of enumerators who shall count, classify and record all the vehicles as they pass by, and divide the survey into fixed time periods. The count stations shall be located near the Service Provider’s Yard on a straight section of the road with good visibility. The survey shall be conducted continuously for a minimum of 24 (twenty four) hours and maximum of 7 (seven) days at a time. The count period shall be 15 (fifteen) minutes with results summarised hourly.

3 Automatic traffic count

For automatic traffic count to be conducted on intermittent (non-continuous) basis, the Independent Expert shall use suitable and standardised equipment to classify and record the range of vehicles passing through the Service Provider’s Yard. For this purpose, the counter shall be checked with at least 100 (one hundred) vehicles, including all major vehicle types, over a range of speeds to ensure that all vehicles are being counted and classified correctly.

4 Variation between manual and automatic count

Average Daily Traffic (ADT) for each type of vehicle shall be determined separately by the aforesaid two methods and in the event that the number of vehicles in any category, as counted by the manual method, varies by more than 1% (one per cent) of the number of such vehicles as counted by the automatic method, the manual and automatic count of such category of vehicles shall be repeated, and in the event of any discrepancy between the two counts in the second enumeration, the average thereof shall be deemed to be the actual traffic. For the avoidance of doubt, it is expressly agreed that the Contracting Authority may, in consultation with the Service Provider, adopt modified or alternative processes of traffic sampling for improving the reliability of such sampling.
1 Selection of Independent Expert

1.1 The provisions of Part II of the Standard Bidding Documents for Consultancy Assignments: Time Based (Volume V) issued by the Ministry of Finance, GOK in July, 1997 shall apply, mutatis mutandis for invitation of bids and evaluation thereof save as otherwise provided herein.

1.2 The Contracting Authority shall invite expressions of interest from consulting engineering firms or bodies corporate to undertake and perform the duties and functions set forth in Schedule Q and thereupon shortlist a maximum of 6 (six) qualified firms in accordance with pre-determined criteria. The Contracting Authority shall convey the aforesaid list of firms to the Service Provider for scrutiny and comments, if any. The Service Provider shall be entitled to scrutinise the relevant records of the Contracting Authority to ascertain whether the selection of firms has been undertaken in accordance with the prescribed procedure and it shall send its comments, if any, to the Contracting Authority within 15 (fifteen) days of receiving the aforesaid list of firms. Upon receipt of such comments, if any, the Contracting Authority shall, after considering all relevant factors, finalise and constitute a panel of 6 (six) firms (the “Panel of Firms”) and convey its decision to the Service Provider.

1.3 The Contracting Authority shall invite the aforesaid firms in the Panel of Firms to submit their respective technical and financial offers, each in a separate sealed cover. All the technical bids so received shall be opened and pursuant to the evaluation thereof, the Contracting Authority shall shortlist eligible firms on the basis of their technical scores. The financial bids in respect of and the order of priority as among these firms shall be determined on the basis of a weighted evaluation where technical and financial scores shall be assigned respective weights of 80:20.

1.4 In the event that the Contracting Authority shall follow the selection process specified in the model RFP for selection of Technical Consultants, as published by the Ministry of Finance/ Planning Commission, the selection process specified in the Schedule-P shall be deemed to be substituted by the provisions of the said model RFP and the Service Provider shall be entitled to scrutinise the relevant records forming part of such selection process.

2 Fee and expenses

2.1 In determining the nature and quantum of duties and services to be performed by the Independent Expert during the Construction Period, the Contracting Authority shall endeavour that payments to the Independent Expert on account of fee and expenses do not exceed 2% (two per cent) of the Total Project Cost. Payments not exceeding such 2% (two per cent) shall be borne equally by the
Contracting Authority and the Service Provider in accordance with the provisions of this Agreement and any payments in excess thereof shall be borne entirely by the Contracting Authority.

22 The nature and quantum of duties and services to be performed by the Independent Engineer during the Operation Period shall be determined by the Contracting Authority in conformity with the provisions of this Agreement and with due regard for economy in expenditure. All payments made to the Independent Expert on account of fee and expenses during the Operation Period shall be borne equally by the Contracting Authority and the Service Provider.

3 Constitution of fresh panel

Not later than three years from the date of this Agreement, and every three years thereafter, the Contracting Authority shall prepare a fresh panel of firms in accordance with the criteria set forth in this Schedule-P; provided that the Contracting Authority may, at any time, prepare a fresh panel with prior written consent of the Service Provider.
TERMS OF REFERENCE FOR INDEPENDENT EXPERT

1 Scope

1.1 These Terms of Reference for the Independent Expert (the “TOR”) are being specified pursuant to the Project Agreement dated *** (the “Agreement”), which has been entered into between the Contracting Authority and **** (the “Service Provider”) for the roads in Lot 6 on Finance, Design, Build, Maintain and Transfer on Annuity (FDBMT Annuity) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this TOR.

1.2 This TOR shall apply to 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 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 role and functions of the Independent Expert shall include the following:
   (i) review of the Drawings and Documents as set forth in paragraph 4;
   (ii) review, inspection and monitoring of Construction Works as set forth in paragraph 5;
   (iii) conducting Tests on completion of construction and issuing Completion/Provisional Certificate as set forth in paragraph 5;
   (iv) review, inspection and monitoring of O&M as set forth in paragraph 6;
   (v) review, inspection and monitoring of Divestment Requirements as set forth in paragraph 7;
   (vi) determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
   (vii) determining, as required under the 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; and
   (ix) undertaking all other duties and functions in accordance with the
32 The Independent Engineer 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 geotechnical and hydrological investigations, characteristics of materials from borrow areas and quarry sites, topographical surveys and traffic surveys. The Independent Engineer 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 the conformity or otherwise of such Drawings with the Output Specifications.

4.2 The Independent Engineer 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 Drawings or Documents.

4.3 The Independent Expert shall review the Safety Report and furnish its comments thereon to the Contracting Authority within 15 (fifteen) days of receiving such report.

4.4 The Independent Expert shall review the detailed design, construction methodology, quality assurance plan and procedures 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.

4.5 Upon reference by the Contracting Authority, the Independent Expert shall review and comment on the EPC Contract or any other contract for construction, operation and maintenance (O&M) of the Project Network, and furnish its comments within 7 (seven) days from receipt of such reference from the Contracting Authority.

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.

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 Engineer shall send a copy of its Inspection Report to the Contracting
Authority and the Service Provider within 7 (seven) days of the inspection.

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

55 For determining that the Construction Works conform to the Output Specifications, 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 by the Independent Expert or as 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 any other prescribed manual (the “Quality Control
Manuals”) or any modification/substitution thereof shall be deemed to be tests
conforming to Good Industry Practice for quality 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.

56 The sample size of the tests, to be conducted by the Independent Engineer 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 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.

57 The timing of tests referred to in paragraph 5.5, and the criteria for acceptance/ rejection
of their results shall be in accordance with the Quality Assurance Manuals of the
Independent Expert. 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.

58 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 require the
Service Provider to carry out, or cause to be carried out, tests to determine that such
remedial works have brought the Construction Works into conformity with the Output
Specifications, and the provisions of this Paragraph 5 shall apply to such tests.

59 In the event that the Service Provider fails to achieve any of the Project Milestones, the
Independent Engineer 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
Methods Statement, 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 Contracting Authority forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.

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 3 (three) days of receiving such notice, the Independent Expert shall inspect the suspended works and make a report to the Contracting Authority forthwith, 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 determine 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 The Independent Engineer shall carry out, or cause to be carried out, all the Tests 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 and Schedule-I.

5.14 Upon reference from the Contracting Authority, the Independent Engineer shall make a fair and reasonable assessment of the costs of providing information, works and services as set forth in Clause 16 and certify the reasonableness of such costs for payment by the Contracting Authority to the Service Provider.

5.15 The Independent Engineer shall aid and advise the Service Provider in preparing the Maintenance Manual.

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.

6.3 The Independent Expert shall review the monthly status 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.

6.4 The Independent Expert shall inspect the Project Roads once every month, preferably after receipt of the monthly status 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 Maintenance Requirements and Safety Requirements. 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.

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

66 The Independent Expert shall in its O&M Inspection Report specify the 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 Maintenance Requirements. 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, alternatively, conduct the test as specified in its Quality Control Manuals.

67 In respect of any defect or deficiency referred to in [ ], 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.

68 The Independent Expert shall determine if any delay has occurred in completion of repair or remedial works in accordance with the Methods Statement, Output Specifications, and PPP Agreement, and shall also determine the Damages, if any, payable by the Service Provider to the Contracting Authority for such delay.

69 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 5 (five) 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.

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

611 In the event that the Service Provider notifies the Independent Engineer 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.

612 The Independent Expert shall undertake traffic sampling, as and when required by the Contracting Authority, under and in accordance with Clause 22 and Schedule-N.

613 As per the provisions of the Project Agreement the Independent Engineer shall verify
the invoices for Annuity payment submitted by the Service Provider and duly adjust
the same for any bonus or reduction in Annuity in accordance with Clause 28 of the
Project Agreement 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 15 days prior to the relevant Annuity Payment Date.

7 Termination

7.1 At any time, not earlier than 90 (ninety) days prior to Termination but not later
than 10 (ten) days prior to such Termination, the Independent Expert shall, in
the presence of a representative of the Service Provider, inspect the
Project Roads for determining compliance by the Service Provider with the
Divestment Requirements set forth in Clause 38.1 and, if required, cause tests to
be carried out at the Service Provider’s cost for determining such compliance. If
the Independent Expert determines that the status of the Project Roads is such
that its repair and rectification would require a larger amount than the sum set
forth in Clause 39.2, it shall recommend retention of the required amount and
the period of retention thereof.

8 Determination of costs and time

8.1 The Independent Expert shall determine the costs, and/or their reasonableness,
that are required to be determined by it under the PPP Agreement.

8.2 The Independent Expert shall determine the period, or any extension thereof,
that is required to be determined by it under the PPP 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
PPP Agreement, the Independent Expert shall specify such meaning, scope and
nature 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 PPP
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.
112 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.

113 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 PPP Agreement, by the Service Provider to the Independent Engineer, whereupon the Independent Engineer shall send one of the copies to the Authority along with its comments thereon.

114 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.

115 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 Contracting Authority or such other person as the Contracting Authority may specify, and obtain written receipt thereof. Two copies of the said documents shall also be furnished in micro film form or in such other medium as may be acceptable to the Contracting Authority.
SCHEDULE – Q

(See Clause 33.2.1)

PANEL OF CHARTERED ACCOUNTANTS

1  Panel of Chartered Accountants
Pursuant to the provisions of Clause 33.2.1 of the Agreement, the Service Provider shall identify a panel of 6 (six) reputable firms of Chartered Accountants having their registered offices in Kenya (the “Panel of Chartered Accountants”) subject to the Contracting Authority’s right to object to the inclusion of any firm in the panel with reasons for such objection. The criteria for preparing such Panel and the procedure to be adopted in this behalf shall be as set forth in this Schedule Q.

2  Invitation for empanelment
2.1 The Contracting Authority shall invite offers from all reputable firms of Chartered Accountants who fulfil the following eligibility criteria, namely:
(a) the firm should have conducted statutory audit of the annual accounts of at least one hundred companies registered under the Companies Act, of which at least ten should have been public sector undertakings;
(b) the firm should have at least 5 (five) practising Chartered Accountants on its rolls, each with a minimum experience of ten years in the profession;
(c) the firm or any of its partners should not have been disqualified or black-listed by the Auditor General of Kenya or the Contracting Authority; and
(d) the firm should have an office in Kenya.

2.2 Interested firms meeting the eligibility criteria shall be required to submit a statement of their capability including the bio-data of all the practising Chartered Accountants on its rolls. In particular, each firm shall be required to furnish information annually relating to the names of all the companies with an annual turnover exceeding Ksh. 1 (One) Billion whose annual accounts were audited by such firm in any of the preceding 5 (five) Accounting Years.

3  Evaluation and selection
3.1 The information furnished by each firm shall be scrutinised and evaluated by the Service Provider and 1 (one) point shall be awarded for each annual audit of the companies specified in Paragraph 2.2 above. (For the avoidance of doubt, a firm which has conducted audit of the annual accounts of any such company for five years shall be awarded five points).

3.2 The Service Provider shall prepare a list of all the eligible firms along with the points scored by each such firm and 6 (six) firms scoring the highest points shall be identified and included in the draft Panel of Chartered Accountants.

4  Consultation with the Contracting Authority
The Service Provider shall convey the aforesaid panel of firms to the Contracting Authority for scrutiny and comments, if any. The Contracting Authority shall be entitled to scrutinise the relevant records of the Contracting Authority to ascertain whether the selection of firms has been undertaken in accordance with the prescribed procedure and it shall send its comments, if any, to the Contracting Authority within 15 (fifteen) days of receiving the aforesaid panel.
5 **Mutually agreed panel**

5.1 The Contracting Authority shall, after considering all relevant factors including the comments, if any, of the Service Provider, finalise and constitute a panel of 6 (six) firms which shall be deemed to be the mutually agreed Panel of Chartered Accountants.

5.2 After completion of every five years from the date of preparing the mutually agreed Panel of Chartered Accountants, or such earlier period as may be agreed between the Contracting Authority and the Service Provider, a new panel shall be prepared in accordance with the provisions of this Schedule - T.
SCHEDULE – R
(See Clause 34.4)

VESTING CERTIFICATE

1 The Director General, Kenya National Highways Authority (the “Contracting Authority”) refers to the Project Agreement dated *** (the “Agreement”) entered into between the Contracting Authority and ........................................ Ltd (the “Service Provider”) for the roads in Lot 6 on Finance, Design, Build, Maintain and Transfer on annuity (FDBMT Annuity) basis Project.

2 The Contracting Authority hereby acknowledges compliance and fulfilment by the Service Provider of the Divestment Requirements set forth in Clause 38.1 of the Agreement on the basis that upon issue of this Vesting Certificate, the Contracting Authority shall be deemed to have acquired, and all title and interest of the Service Provider in or about the Project Roads shall be deemed to have vested unto the Contracting Authority, free from any encumbrances, charges and liens whatsoever.

3 Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Service Provider to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Service Provider in any manner of the same.

Signed this *** day of ***, 20** at Nairobi.

AGREED, ACCEPTED AND SIGNED
For and on behalf of
SERVICE PROVIDER by:

SIGNED, SEALED AND DELIVERED
For and on behalf of
Kenya National Highways Authority by:

(Signature) (Signature)
(Name) (Name)
(Designation) (Designation)
(Address) (Address)

In the presence of:
SCHEDULE – S  
(See Clause 35.3)  

DIRECT AGREEMENT  

THIS DIRECT AGREEMENT is entered into on this the *** day of *** 20**.  

AMONGST  

1 The Kenya National Highways Authority, body established under the Roads Act 2007, represented by its Director General and of P. O. Box 49712-00100 Nairobi, having its principal offices at Blue Shield Towers, Hospital Road (hereinafter referred to as the “Contracting Authority” which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);  

2 …………………………………… Ltd, a company incorporated under the provisions of the Companies Act, CAP 486 of the laws of Kenya and having its registered office at ……………………………………, (hereinafter referred to as the “Service Provider” which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes);  

3 …………………………………… Bank name and particulars of Lenders’ Representative and having its registered office at ****, acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “Lenders’ Representative”, which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);  

WHEREAS:  

(A) The Contracting Authority has entered into a Project Agreement dated *** with the Service Provider (the “Project Agreement”) for the roads in Lot 6 on Finance Design, Build, Maintain and Transfer on annuity (FDBMT Annuity) basis Project, and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.  

(B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.  

(C) Senior Lenders have requested the Contracting Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the PPP to a Nominated Company in accordance with the provisions of this Agreement and the Project Agreement.  

(D) In order to enable implementation of the Project including its financing, construction, operation and maintenance, the Contracting Authority has agreed and undertaken to transfer and assign the Project to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Project Agreement.
NOW IT IS HEREBY AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Substitution Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

“Agreement” means this Substitution Agreement and any amendment thereto made in accordance with the provisions contained in this Agreement;

“Financial Default” means occurrence of a material breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Service Provider for a minimum period of 3 (three) months;

“Lenders’ Representative” means the person referred to as the Lenders’ Representative in the foregoing Recitals;

“Nominated Company” means a company, incorporated under the provisions of the Companies Act, CAP 486 of the laws of Kenya, selected by the Lenders’ Representative, on behalf of Senior Lenders, and proposed to the Contracting Authority for assignment/transfer of the Project as provided in this Agreement;

“Notice of Financial Default” shall have the meaning ascribed thereto in Clause 3.2.1; and

“Parties” means the parties to this Agreement collectively and “Party” shall mean any of the Parties to this Agreement individually.

1.2 Interpretation

1.2.1 References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Senior Lenders.

1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

1.2.3 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Project Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Project Agreement.

1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Project Agreement shall apply, mutatis mutandis, to this Agreement.
2 ASSIGNMENT

2.1 Assignment of rights and title

The Service Provider hereby assigns the rights, title and interest in the Project to, and in favour of, the Lenders’ Representative pursuant to and in accordance with the provisions of this Agreement and the Project Agreement by way of security in respect of financing by the Senior Lenders under the Financing Agreements.

3 SUBSTITUTION OF THE SERVICE PROVIDER

3.1 Rights of substitution

3.1.1 Pursuant to the rights, title and interest assigned under Clause 2.1, the Lenders’ Representative shall be entitled to substitute the Service Provider by a Nominated Company under and in accordance with the provisions of this Agreement and the Project Agreement.

3.1.2 The Contracting Authority hereby agrees to substitute the Service Provider by endorsement on the Project Agreement in favour of the Nominated Company selected by the Lenders’ Representative in accordance with this Agreement. (For the avoidance of doubt, the Senior Lenders or the Lenders’ Representative shall not be entitled to operate and maintain the Project Roads as Service Provider either individually or collectively).

3.2 Substitution upon occurrence of Financial Default

3.2.1 Upon occurrence of a Financial Default, the Lenders’ Representative may issue a notice to the Service Provider (the “Notice of Financial Default”) along with particulars thereof, and send a copy to the Contracting Authority for its information and record. A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Service Provider for the purposes of this Agreement.

3.2.2 Upon issue of a Notice of Financial Default hereunder, the Lenders’ Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Service Provider by a Nominated Company in accordance with the provisions of this Agreement.

3.2.3 At any time after the Lenders’ Representative has issued a Notice of Financial Default, it may by notice require the Contracting Authority to suspend all the rights of the Service Provider and undertake the operation and maintenance of the Project Roads in accordance with the provisions of Clause 36 of the Project Agreement, and upon receipt of such notice, the Contracting Authority shall undertake Suspension under and in accordance with the provisions of the Project Agreement. The aforesaid Suspension shall be revoked upon substitution of the Service Provider by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Contracting Authority may terminate the Project Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Project Agreement; provided that upon written request from the Lenders’ Representative and the Service Provider, the Contracting Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.
3.3 Substitution upon occurrence of Service Provider Default

3.3.1 Upon occurrence of a Service Provider Default, the Contracting Authority shall by a notice inform the Lenders’ Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days’ time to the Lenders’ Representative to make a representation, stating the intention to substitute the Service Provider by a Nominated Company.

3.3.2 In the event that the Lenders’ Representative makes a representation to the Contracting Authority within the period of 15 (fifteen) days specified in Clause 3.3.1, stating that it intends to substitute the Service Provider by a Nominated Company, the Lenders’ Representative shall be entitled to undertake and complete the substitution of the Service Provider by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the Contracting Authority shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the Lenders’ Representative and the Service Provider, the Contracting Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

3.4 Procedure for substitution

3.4.1 The Contracting Authority and the Service Provider hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Contracting Authority under Clause 3.3.2, as the case may be, the Lenders’ Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Project Roads including the Project to the Nominated Company upon such Nominated Company’s assumption of the liabilities and obligations of the Service Provider towards the Contracting Authority under the Project Agreement and towards the Senior Lenders under the Financing Agreements.

3.4.2 To be eligible for substitution in place of the Service Provider, the Nominated Company shall be required to fulfil the eligibility criteria that were laid down by the Contracting Authority for shortlisting the bidders for award of the Project; provided that the Lenders’ Representative may represent to the Contracting Authority that all or any of such criteria may be waived in the interest of the Project, and if the Contracting Authority determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.

3.4.3 Upon selection of a Nominated Company, the Lenders’ Representative shall request the Contracting Authority to:

(a) accede to transfer to the Nominated Company the right to construct, operate and maintain the Project Roads in accordance with the provisions of the Project Agreement;

(b) endorse and transfer the Project to the Nominated Company, on the same terms and conditions, for the residual Term; and

(c) enter into a Substitution Agreement with the Lenders’ Representative and the Nominated Company on the same terms as are contained in this Agreement.
3.4 If the Contracting Authority has any objection to the transfer of Project in favour of the Nominated Company in accordance with this Agreement, it shall within 7 (seven) days from the date of proposal made by the Lenders’ Representative, give a reasoned order after hearing the Lenders’ Representative. If no such objection is raised by the Contracting Authority, the Nominated Company shall be deemed to have been accepted. The Contracting Authority thereupon shall transfer and endorse the Project within 7 (seven) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Contracting Authority, the Lenders’ Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Service Provider.

3.5 Selection to be binding

The decision of the Lenders’ Representative and the Contracting Authority in selection of the Nominated Company shall be final and binding on the Service Provider. The Service Provider irrevocably agrees and waives any right to challenge the actions of the Lenders’ Representative or the Senior Lenders or the Contracting Authority taken pursuant to this Agreement including the transfer/assignment of the Project in favour of the Nominated Company. The Service Provider agrees and confirms that it shall not have any right to seek revaluation of the Service Provider’s shares. It is hereby acknowledged by the Parties that the rights of the Lenders’ Representative are irrevocable and shall not be contested in any proceedings before any court or Contracting Authority and the Service Provider shall have no right or remedy to prevent, obstruct or restrain the Contracting Authority or the Lenders’ Representative from effecting or causing the transfer by substitution and endorsement of the Project as requested by the Lenders’ Representative.

4 PROJECT AGREEMENTS

4.1 Substitution of Nominated Company in Project Agreements

The Service Provider shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its discretion, in place and substitution of the Service Provider in the event of such Nominated Company’s assumption of the liabilities and obligations of the Service Provider under the Project Agreement.

5 TERMINATION OF PROJECT AGREEMENT

5.1 Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Lenders’ Representative may by a notice in writing require the Contracting Authority to terminate the Project Agreement forthwith, and upon receipt of such notice, the Contracting Authority shall undertake Termination under and in accordance with the provisions of Clause 35 of the Project Agreement.

5.2 Termination when no Nominated Company is selected

In the event that no Nominated Company acceptable to the Contracting Authority is selected and recommended by the Lenders’ Representative within the period of 180 (one hundred and eighty) days or any extension thereof as set forth in Clause 3.3.2, the Contracting Authority may terminate the Project Agreement forthwith in accordance with the provisions thereof.
5.3 Realisation of Debt Due

The Contracting Authority and the Service Provider hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders’ Representative is entitled to receive from the Service Provider, without any further reference to or consent of the Service Provider, the Debt Due upon Termination of the Project Agreement.

6 DURATION OF THE AGREEMENT

6.1 Duration of the Agreement

This Agreement shall come into force from the date hereof and shall expire at the earliest to occur of the following events:

(a) Termination of the Agreement; or

(b) no sum remains to be advanced, or is outstanding to the Senior Lenders, under the Financing Agreements.

7 INDEMNITY

7.1 General indemnity

7.1.1 The Service Provider will indemnify, defend and hold the Contracting Authority and the Lenders’ Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Service Provider of any of its obligations under this Agreement or on account of failure of the Service Provider to comply with Applicable Laws and Applicable Permits.

7.1.2 The Contracting Authority will indemnify, defend and hold the Service Provider harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Contracting Authority to fulfil any of its obligations under this Agreement, materially and adversely affecting the performance of the Service Provider’s obligations under the Project Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.

7.1.3 The Lenders’ Representative will indemnify, defend and hold the Service Provider harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders’ Representative to fulfil its obligations under this Agreement, materially and adversely affecting the performance of the Service Provider’s obligations under the Project Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders’ Representative, its officers, servants and agents.

7.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the “Indemnified Party”), it shall notify the other Party responsible for indemnifying such claim hereunder (the “Indemnifying Party”) within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the
proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

8 DISPUTE RESOLUTION –
8.1 Dispute resolution

8.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Contracting Authority, Service Provider and the Lenders’ Representative. Such arbitration shall be undertaken through the Nairobi Centre for International Arbitration in accordance with the rules thereunder (or such amended rules in force on the date on which the proceeding is instituted) or such other rules as may be mutually agreed by the Parties, and shall be subject to provisions of the Arbitration Act.

8.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be Nairobi and the language of arbitration shall be English.

9 MISCELLANEOUS PROVISIONS

9.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of Kenya, and the Courts at Nairobi shall have jurisdiction over all matters arising out of or relating to this Agreement.

9.2 Waiver of sovereign immunity

The Contracting Authority unconditionally and irrevocably:

(a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;

(b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Contracting Authority with respect to its assets;

(c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and

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

9.3 Priority of agreements

In the event of any conflict between the Project Agreement and this Agreement, the provisions contained in the Project Agreement shall prevail over this Agreement.
9.4 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

9.5 Waiver

9.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

(a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;

(b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and

(c) shall not affect the validity or enforceability of this Agreement in any manner.

9.5.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

9.6 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

9.7 Survival

9.7.1 Termination of this Agreement:

(a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and

(b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

9.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

9.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such
invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or 
unenforceable provision. Failure to agree upon any such provisions shall not be subject to 
dispute resolution under Clause 8 of this Agreement or otherwise.

9.9 Successors and assigns

This Agreement shall be binding on and shall inure to the benefit of the Parties and their 
respective successors and permitted assigns.

9.10 Notices

All notices or other communications to be given or made under this Agreement shall be in 
writing, shall either be delivered personally or sent by courier or registered post with an 
additional copy to be sent by facsimile. The address for service of each Party and its facsimile 
number are set out under its name on the signing pages hereto. A notice shall be effective upon 
actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or 
on a day that is a public holiday, the notice shall be deemed to be received on the first working 
day following the date of actual receipt. It is hereby agreed and acknowledged that any Party 
may by notice change the address to which such notices and communications to it are to be 
delivered or mailed. Such change shall be effective when all the Parties have notice of it.

9.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this 
Agreement shall be in English.

9.12 Authorised representatives

Each of the Parties shall by notice in writing designate their respective authorised 
representatives through whom only all communications shall be made. A Party hereto shall be 
etitled to remove and/or substitute or make fresh appointment of such authorised representative 
by similar notice.

9.13 Original Document

This Agreement may be executed in three counterparts, each of which when executed and 
delivered shall constitute an original of this Agreement.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS 
AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

SIGNED, SEALED AND DELIVERED For and on behalf of Kenya National Highways 
Authority by:

(Signature)

(Name)

(Designation)

(Address)
Schedules to Project Agreement

In the presence of:

1. 2.

SIGNED, SEALED AND DELIVERED For and on behalf of SERVICE PROVIDER by:

[Signature]
(Name)
(Designation)
(Address)
(Fax)

In the presence of:

1. 2.

SIGNED, SEALED AND DELIVERED For and on behalf of SENIOR LENDERS by the Lenders’ Representative:

[Signature]
(Name)
(Designation)
(Address)
(Fax)

In the presence of:

1. 2.
SCHEDULE – T
(See Clause 16.5)

ACCRUALS AND DE-ACCRUALS OF PARTS OF THE PROJECT NETWORK

Part 1

1. ADDITION AND REMOVAL OF PROJECT NETWORK PARTS

1.1 the Service Provider shall accept Project Network Parts into the scope of the Services in accordance with Clause 50 (Accrual and De-Accrual of Project Network Parts) and paragraph 3.1 of this Schedule T(Accrual and De-Accrual of Project Network Parts); and

1.2 the Authority is entitled to remove Project Network Parts from the scope of the Services pursuant to paragraph 4 of this Schedule T(Accrual and De-Accrual of Project Network Parts).

1.3 If the Service Provider fails to perform any of its obligations within the relevant timescales as set out in this Schedule T (Accrual and De-Accrual of Project Network Parts) then the Quarterly Charge shall be abated at the rate of Kshs [ ] (Indexed) for every day of delay from the date the obligation should have been performed by until the date such obligation is performed.

2. PRE-ACCRUAL AND DE-ACCRUAL PROCESS - MAINTAINABILITY ASSESSMENT

2.1 In the event that New Works have been or are to be procured from or undertaken by a party other than the Service Provider, or in any other circumstances in which the Authority is contemplating whether to Accrue and/or De-Accrue any Proposed Project Network Part or a Scheme, the Authority may notify the Service Provider of:

2.1.1 any New Works that include proposals for any Proposed Project Network Part or Scheme which may result in a change to the Project Network; or

2.1.2 any other Proposed Project Network Part(s) which the Authority is intending to become part of the Project Network or remove from the Project Network,(a "Maintainability Assessment Notice"). If the Authority serves such notice, then provisions of this paragraph 2 shall apply.

2.2 The Authority shall include in the Maintainability Assessment Notice the following:

2.2.1 the location and extent of the New Works being or to be carried out
2.2.2 the likely timescale for the New Works and the anticipated completion date of the New Works; and

2.2.3 the location and details of the Proposed Project Network Part or Scheme,

and may (at the Authority's absolute discretion) where such information is available include details of:

2.2.4 any conditions to which the New Works have been made subject by the Authority (if applicable); and

2.2.5 any relevant documentation detailing the technical proposals.

2.3 The Authority may provide information in respect of paragraph 2.2.4 and paragraph 2.2.5 at a date later than the date of the Maintainability Assessment Notice.

2.4 The Service Provider shall notify the Authority of any specific further documentation it reasonably believes it requires in order to provide sufficient commentary pursuant to paragraph 2.8 and/or 2.9 on any Proposed Project Network Part or Proposed Project Network Parts, which it has not received from the Authority or cannot obtain, having used reasonable endeavours, from a Third Party Developer.

2.5 Without prejudice to paragraph 2.6, the Authority shall use reasonable endeavours to procure and provide to the Service Provider as soon as reasonably practicable any further documentation that the Service Provider has requested pursuant to paragraph 2.5.

2.6 The Service Provider shall within ten (10) Business Days of any Maintainability Assessment Notice or the date on which the Authority subsequently provides the information pursuant to paragraph 2.2.4 and paragraph 2.2.5 provide a written commentary on the Proposed Project Network Part or Scheme and/or any documentation provided by the Authority, and such commentary shall include:

2.6.1 confirmation of whether the Proposed Project Network Part or Scheme complies with the Service Provider Assumptions and the relevant requirements of the Output Specification and if not, an explanation of why not and any relevant supporting documentation; and

2.6.2 any proposed amendments to the design of the Proposed Project Network Part or Scheme (if applicable) to minimise lifecycle costs during the Term, (the “Initial Maintainability Assessment Response”).

2.7 Following the submission of the Service Provider's Initial Maintainability Assessment Response, the Service Provider may:

2.7.1 attend pre-start site meetings to familiarise itself with details and issues concerning the New Works (if applicable); and/or
2.7.2 inspect any Proposed Project Network Part or Scheme having regard to the nature and complexity of the Proposed Project Network Part or Scheme,

as the Service Provider may reasonably require in order to provide the Maintainability Assessment pursuant to paragraph 2.8 and the Authority shall, if the Service Provider so requests, use reasonable endeavours to procure access for the Service Provider or any Service Provider Party to attend any such pre-start site meeting and/or to inspect any Proposed Project Network Part or Proposed Project Network Parts.

2.8 As soon as reasonably practicable following any Maintainability Assessment Notice and having regard to the nature and complexity of the New Works if applicable, the Service Provider shall, in respect of all Proposed Project Network Part or Scheme referred to in the Maintainability Assessment Notice provide the Authority with the following information:

2.8.1 whether the Proposed Project Network Part or Scheme meets the relevant requirements of the Output Specification, or if the Service Provider (acting reasonably) considers that the Proposed Project Network Part or Scheme does not meet the relevant requirements of the Output Specification, details of the work required to be carried out to improve the standard of the Proposed Project Network Part or Scheme to meet the relevant requirements of the Output Specification;

2.8.2 whether the Proposed Project Network Part or Scheme meets the Service Provider's Assumptions or not, together with any relevant supporting documentation if they do not; and

2.8.3 in respect of the Accrual of any Proposed Project Network Part or Scheme, if the Proposed Project Network Part or Scheme does not meet the Service Provider's Assumptions or there are no appropriate value(s) in the Tables contained in Part 2 and 3 of this Schedule 19, including as appropriate the Intervention, the Year of Accrual Intervention, the Accrual Unit Cost of Intervention and/or Operational Maintenance Value (the “Accrual Calculation Values”) for the Proposed Project Network Part(s), the Service Provider’s (acting reasonably) proposed maintenance costs related to the Proposed Project Network Part or Proposed Project Network Parts and the extent, if any, to which the maintenance costs vary from any relevant Accrual Values calculated pursuant to Paragraph 5.1 of this Schedule T(Accrual and De-Accrual of Project Network Parts) with an explanation as to how the Service Provider has calculated such costs and why the Accrual Values should be varied, and whether these maintenance costs may, in the reasonable opinion of the Service Provider may be reduced or mitigated;

2.8.4 in respect of the De-Accrual of any Proposed Project Network Part or Scheme, if the Proposed Project Network Part or Scheme does not meet the Service Provider's Assumptions or there are no appropriate value(s) in the Table contained in Part 2 and/or 4 of
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this Schedule 19, including as appropriate the Intervention, the Year of De-Accrual Intervention, the Operational Maintenance Value and/or the De-Accrual Unit Cost of Intervention (the “De-Accrual Calculation Values”) for the Proposed Project Network Part or Scheme, the Service Provider’s (acting reasonably) proposed reduction in maintenance costs related to the Proposed Project Network Part or Scheme and the extent, if any, to which the reduction in maintenance costs vary from any relevant De-Accrual Values calculated pursuant to Paragraph 5.2 of this Schedule T(Accrual and De-Accrual of Project Network Parts) with an explanation as to how the Service Provider has calculated such costs and why the De-Accrual Values should be varied, and whether the reduction in maintenance costs may, in the reasonable opinion of the Service Provider may be increased, (a "Maintainability Assessment").

2.9 The Authority shall notify the Service Provider as soon as reasonably practicable where it has permitted a change to any New Works which include any Proposed Project Network Part or Scheme the subject matter of a Maintainability Assessment Notice and the Service Provider shall (as soon as reasonably practicable):

2.9.1 reassess any Maintainability Assessment it has submitted to the Authority or is in the process of producing; and

2.9.2 make any further inspection of the Proposed Project Network Part or Scheme,

as it considers is required (acting reasonably) to consider if such permitted change to the New Works has any impact on any Maintainability Assessment and the Service Provider shall take into account the impact of any such change in the Maintainability Assessment and shall provide the Authority with an updated copy of any Maintainability Assessment, when relevant. The Authority shall, if the Service Provider so requests use reasonable endeavours to procure access for the Service Provider or any Service Provider Party to inspect any such Proposed Project Network Part or Proposed Project Network Parts.

2.10 If the Service Provider receives a Maintainability Assessment Notice and if relevant, any notification pursuant to paragraph 2.9 and the Service Provider has failed to provide a Maintainability Assessment in respect of such Maintainability Assessment Notice as soon as reasonably practicable pursuant to paragraph 2.8 and/or, if relevant, an updated Maintainability Assessment pursuant to paragraph 2.9 the Service Provider shall only be entitled to use the relevant Accrual Calculation Values or De-Accrual Calculation Values (as applicable) for such Proposed Project Network Part or Scheme and not claim any maintenance costs which exceed the relevant Accrual Values or are lower than De-Accrual Values (as applicable). Any dispute in relation to this paragraph shall be dealt with in accordance with the provisions of Clause 82 (Dispute Resolution).

2.11 In the event that the Service Provider receives information from a Third Party Developer in respect of any New Works the Service Provider shall
2.12 The Service Provider shall or shall ensure that any Service Provider Party shall keep confidential any information that it receives in the performance of any of its obligations under this paragraph 2.

2.13 Notwithstanding where the Service Provider has provided a Maintainability Assessment to the Authority pursuant to paragraph 2.8 above, the Authority shall not be under any obligation to take any action identified by the Service Provider in any Maintainability Assessment. The Authority shall always be responsible (at its own discretion) for determining whether any Project Network Part or Proposed Project Network Parts meet the relevant standards (including any applicable Highway Standards) and for adopting the relevant Project Network Parts under section 38 of the Highways Act.

3. ACCRUAL OF PROJECT NETWORK PARTS

3.1 Where the Authority requires the Service Provider to accept into the scope of the Services and the Project Network a Proposed Project Network Part or a Scheme, the following procedure shall apply:

3.1.1 the Authority, shall provide to the Service Provider notice ("Authority Notice of Accrual") stating:

3.1.1.1 that the Authority requires the Accrual of the Proposed Project Network Part or the Scheme;

3.1.1.2 if the Proposed Project Network Part or the Scheme includes a Road Section Length, which Carriageway Hierarchical Type it shall belong to once Accrued;

3.1.1.3 details of any Underground Apparatus forming part of the Proposed Project Network Part or the Scheme for whose maintenance it is intended that the Service Provider will become responsible;

3.1.1.4 the Accrual Date in respect of the Proposed Project Network Part or the Scheme;

3.1.1.5 the location and a description of the Proposed Project Network Part or the Scheme;

3.1.1.6 the date on which the Service Provider shall become responsible for:

(a) the rectification of Category 1 Defects, Urgent Defects and Urgent Faults;

(b) the performance of all obligations in order to comply with Service Standard 7 of the Output Specification;
(c) the performance of all obligations pursuant to Clauses 27 (Independent Surveys and Inspections) and 28 (Service Provider Surveys and Inspections),

in respect of the Proposed Project Network Part or the Scheme, which shall be not less than one (1) Business Day from the date of the Authority Notice of Accrual and no later than the Accrual Date (and unless otherwise stated in the Authority Notice of Accrual, such date shall be the Accrual Date);

3.1.1.7 whether the Authority considers that the Project Network Part or any Project Network Parts within a Scheme do not comply with the Output Specification, and if not, details of such failure to comply;

3.1.1.8 if paragraph 3.1.1.4 applies, whether the Authority:

(a) requires the Service Provider to undertake works pursuant to Schedule 7 (Non-Core Services) to the Proposed Project Network Part or any Proposed Project Network Part within the Scheme so that the Proposed Project Network Part or the Scheme complies with the Output Specification, in which case the provisions of Schedule 7 (Non-Core Services) shall apply; and/or

(b) shall undertake (or shall procure) the necessary works to the Proposed Project Network Part or any Proposed Project Network Parts within the Scheme so that the Proposed Project Network Part or the Scheme complies with the Output Specification and informing the Service Provider of a date by which such works shall be completed; and/or

(c) requires such Proposed Project Network Part or any Proposed Project Network Parts within the Scheme to be deemed to comply with specific Performance Requirements of the Output Specification for the remainder of the Term or until such time that any works are carried out to such Proposed Project Network Part or Proposed Project Network Parts within the Scheme so that they are compliant with the Output Specification;
3.1.1.9 whether the Authority considers there to be appropriate Accrual Calculation Values or whether the Authority will be relying on any Accrual Calculation Values put forward by the Service Provider in the Maintainability Assessment pursuant to paragraphs 2.8 or 2.9 in determining the appropriate Accrual Value pursuant to paragraph 5.1; and to the extent that such information is available and relevant, the Authority shall provide the following information with the Authority Notice of Accrual, or on a later date where the information is relevant but not available on that date, provided that failure to provide such information with the Authority Notice of Accrual or at all shall be without prejudice to the Service Provider’s obligations in Paragraphs 3.1.2 to 3.1.9 inclusive:

3.1.1.10 the identity of any Third Party Developers involved;

3.1.1.11 whether the Service Provider has provided the Authority with a Maintainability Assessment (including any amendments to such Maintainability Assessment pursuant to paragraph 2.9);

3.1.1.12 when "as-built" plans of the Proposed Project Network Part or the Scheme will be available to the Service Provider (if applicable);

3.1.1.13 substantial completion certificates;

3.1.1.14 information concerning any defects liability period in respect of the Proposed Project Network Part or the Scheme together with any relevant snagging list (if applicable); and

3.1.1.15 whether the Proposed Project Network Part or the Scheme includes Powered Apparatus and if so, provide the Service Provider with any available electrical test certificates for such Proposed Project Network Part or Project Network Part within the Scheme;

3.1.2 the Service Provider shall, from the date specified in the Authority Notice of Accrual pursuant to paragraph 3.1.1.6, be responsible for:

3.1.2.1 the rectification of Category 1 Defects, Urgent Defects and Urgent Fault;

3.1.2.2 the performance of all obligations in order to comply with Service Standard 7 of the Output Specification; and
3.1.2.3 the performance of all obligations pursuant to Clauses 27 (Independent Surveys and Inspections) and 28 (Service Provider Surveys and Inspections),

in respect of the Proposed Project Network Part or the Scheme,

3.1.3 the Service Provider shall within twenty (20) Business Days of receipt of the Authority Notice of Accrual, inspect the Proposed Project Network Part or the Scheme and within ten (10) Business Days of such inspection (or where the Service Provider fails to undertake an inspection of the Proposed Project Network Part or the Scheme, within thirty (30) Business Days of receipt of the Authority Notice of Accrual) the Service Provider shall serve a notice on the Authority ("Project Network Part Compliance Notice"):

3.1.3.1 stating that the Service Provider considers (acting reasonably) that the Proposed Project Network Part or the Scheme:

(a) meets the standard referred to in the Authority Notice of Accrual; or

(b) does not meet the standard referred to in the Authority Notice of Accrual providing details of such failure; and

(c) if the Authority has not provided the Service Provider with a Maintainability Assessment Notice pursuant to paragraph 2.1 in respect of such Proposed Project Network Part or the Scheme, do or do not comply with the Service Provider's (acting reasonably) considers that the Authority has specified the appropriate Accrual Calculation Values in the Authority Notice of Accrual; and

(d) if the Authority has provided the Service Provider with a Maintainability Assessment Notice pursuant to paragraph 2.1 in respect of such Proposed Project Network Part or the Scheme, stating that it:

(a) considers that the commentary and Accrual Calculation Value(s) provided by the Service Provider in the Maintainability Assessment remain valid; or

(b) does not consider that the commentary and Accrual Calculation Value(s) stated by the Service Provider in the Maintainability Assessment remain valid (provided that the Parties acknowledge and agree that the validity of the commentary and Accrual Calculation Value(s) may only become invalid to the extent the Third Party Developer has changed the specification commented on by the Service
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Provider pursuant to paragraph 2 or the Proposed Project Network Part or the Scheme has not been built in accordance with the specification commented on by the Service Provider pursuant to paragraph 2 and providing details as to why with a revised assessment of the Accrual Calculation Values(s), provided that where the Proposed Project Network Parts or the Scheme were constructed and/or provided by the Service Provider pursuant to Schedule 7 (Non-Core Services), the Service Provider shall not be entitled to dispute any Accrual Calculation Values except in accordance with the relevant provisions of that Schedule.

3.1.3.2 if, pursuant to paragraph 3.1.3.1(c) and/or paragraph 3.1.3.1(d) (ii), the Service Provider finds that the Proposed Project Network Part or the Scheme does not comply with the Service Provider's Assumptions, and the Authority has not specified the appropriate Accrual Calculation Values in the Authority Notice of Accrual and/or the commentary and Accrual Calculation Values provided by the Service Provider in the Maintainability Assessment does not remain valid, the Service Provider shall (acting reasonably) propose the appropriate Accrual Calculation Values;

3.1.4 if the Service Provider fails to provide the Project Network Part Compliance Notice within the time period specified in paragraph 3.1.3, the Service Provider shall be deemed to have accepted that the Proposed Project Network Part or the Scheme meets the standard referred to in the Authority Notice of Accrual;

3.1.5 either Party may refer any dispute in relation to this paragraph 3, Part 1 of Schedule T (Accrual and De-Accrual of Project Network Parts) to Dispute Resolution. Subject to paragraph 2.10, the Service Provider shall not be entitled to refer any dispute to Dispute Resolution in relation to the application of any comments made under the Maintainability Assessment;

3.1.6 if paragraph 3.1.3.1(b) applies and the Authority agrees (acting reasonably) with the standard and reasons notified to it by the Service Provider pursuant to paragraph 3.1.3.1(b), the Authority shall:

3.1.6.1 undertake (or shall procure the undertaking) of the necessary works to the Proposed Project Network Part or Proposed Project Network Parts within the Scheme so that the Proposed Project Network Part or the Scheme meets the Output Specification and when the Authority is satisfied that any failures have been rectified, inform the Service Provider of such compliance and the provisions of paragraph 2 shall apply; and/or

3.1.6.2 provide the relevant instructions requiring the Service Provider
to carry out Non-Core Scheme Services to rectify the failure to meet the Output Specification pursuant to paragraphs 4 and 5 of Schedule 7 (Non-Core Services); and

3.1.6.3 specify in the opinion of the Authority (acting reasonably) which Performance Requirements of the Output Specification the Proposed Project Network Part or the Scheme shall be deemed to comply with and whether any relief should be provided from any other obligations on the Service Provider under the Contract:

(a) in respect of works carried out pursuant to paragraph 3.1.6.1, until the date on which the Authority informs the Service Provider that works are completed;

(b) in respect of works carried out pursuant to paragraph 3.1.6.2, until the date by which the works are completed pursuant to paragraph 3.1.6.2; or

(c) in respect of any Proposed Project Network Part or Scheme, for the remainder of the Term, provided that in respect of paragraphs 3.1.6.3(a) and (b), such relief shall only subsist until the works are completed pursuant to paragraph 3.1.6.1 or 3.1.6.2;

3.1.7 if paragraph 3.1.3.1(b) applies and the Authority disagrees (acting reasonably) with the standard and reasons notified to it by the Service Provider pursuant to paragraph 3.1.3.1(b), the provisions of paragraph 3.1.5 shall apply;

3.1.8 if following a notice issued by the Authority pursuant to paragraph 3.1.6.3, the Service Provider (acting reasonably) disputes the contents of such notice, the Parties shall meet within ten (10) Business Days to discuss and agree the appropriate relief that should be provided to the Service Provider pursuant to paragraph 3.1.6.3;

3.1.9 if paragraph 3.1.1.6(b) applies, the Authority shall notify the Service Provider within five (5) Business Days of becoming satisfied that the Proposed Project Network Part or the Scheme meet the Output Specification. If the Parties fail to agree that the Proposed Project Network Part or the Scheme meet the Output Specification the provisions of paragraph 3.1.5 shall apply;

3.1.10 from the Accrual Date:

3.1.10.1 the Proposed Project Network Part or Scheme shall become Accrued and the Service Provider shall, subject to paragraphs 3.1.6.3 and 3.1.7, provide the Services to such Project Network Part or Scheme from such date;

3.1.10.2 the risk in such Accrued Project Network Part or Scheme shall transfer to the Service Provider;

3.1.10.3 the Service Provider shall update the Management Information
3.1.10.4 The Service Provider shall revise the energy forecast in accordance with paragraph 4.1.2 of the Payment Mechanism; and

3.1.10.5 The Authority shall revise the Quarterly Annuity Charge in accordance with paragraph 5,

3.1.11 where the Authority requires the Service Provider to carry out works to any Proposed Project Network Part or Scheme pursuant to paragraph 3.1.6.2 and Schedule 7 (Non-Core Services), the Proposed Project Network Part or Scheme shall from the Accrual Date until the date completion of works pursuant to paragraph 5 of Schedule 7 (Non-Core Services) be deemed non-compliant with the Performance Requirements of the Output Specification to which the Authority referred in its notice pursuant to paragraph 3.1.6.3 and, subject to such agreed non-compliance, the risk in such Proposed Project Network Part or Scheme shall transfer on the Accrual Date to the Service Provider. The Service Provider shall be obliged to perform all the Services (other than those specified in the Authority’s notice in paragraph 3.1.6.3 or as agreed or determined pursuant to paragraph 3.1.8) from the Accrual Date and shall be obliged to perform all Services from the completion date pursuant to paragraph 5 of Schedule 7 (Non-Core Services).

3.2 The Authority shall use reasonable endeavours to procure and transfer or assign to the Service Provider or any Service Provider Party the benefit of any warranties or guarantees provided to it by third parties in relation to any Accrued Project Network Parts provided that the Authority shall not be obliged to use reasonable endeavours where to do so would require the Authority to incur material expenditure and/or where the Authority is not permitted to assign or transfer the warranty or guarantee pursuant to the terms and conditions therein.

4. DE-ACCRUAL OF PROJECT NETWORK PARTS

4.1 The Authority shall be entitled to request the De-Accrual of a Proposed Project Network Part or Scheme from the scope of the Services by giving written notice to the Service Provider ("De-Accrual Notice") of the following:

4.1.1 the location of the Proposed Project Network Part or Scheme to be De-Accrued;

4.1.2 details of the Proposed Project Network Part or Scheme to be De-Accrued;

4.1.3 whether the Authority considers there to be appropriate De-Accrual Calculation Values in respect of the Proposed Project
whether the Service Provider has provided the Authority with a Maintainability Assessment (including any amendments to such Maintainability Assessment pursuant to paragraph 2.9), and whether the Authority will be relying on any De-Accrual Calculation Values put forward by the Service Provider in the Maintainability Assessment pursuant to paragraphs 2.8 or 2.9 in determining the appropriate De-Accrual Value pursuant to paragraph 2;

the date on which the De-Accrual of the Proposed Project Network Part or Scheme is to take place (the "De-Accrual Date"); and

if the Authority requires the Proposed Project Network Part or Scheme to be De-Accrued to enable it to undertake work (or procure work to be undertaken) to such Project Network Part or Scheme and following completion of such work, for the Project Network Part or Scheme to be Accrued, the Authority shall confirm whether following such work the Project Network Part or Scheme will consist of different asset types from those which were De-Accrued provided that the Authority shall not be obliged pursuant to this paragraph 4.1.6 to Accrue any such De-Accrued Project Network Part or Scheme.

The Service Provider may not object to the De-Accrual of any Proposed Project Network Part or Scheme where the Authority has served a De-Accrual Notice. The Service Provider shall comply with all instructions of the Authority (acting reasonably) given in relation to the De-Accrual.

The Service Provider shall, within twenty (20) Business Days of receipt of the De-Accrual Notice, inspect the Proposed Project Network Part or the Scheme and within ten (10) Business Days of such inspection, (or where the Service Provider fails to undertake an inspection of the Proposed Project Network Part or the Scheme, within thirty (30) Business Days of receipt of the De-Accrual Notice) the Service Provider shall serve a notice on the Authority ("Project Network Part Compliance Notice") stating whether the Service Provider considers (acting reasonably) that the Proposed Project Network Part or the Scheme:

meets the standard referred to in the De-Accrual Notice; or

does not meet the standard referred to in the De-Accrual Notice providing details of such failure,

and

if the Authority has not provided the Service Provider with a Maintainability Assessment Notice pursuant to paragraph 2.1 in respect of such Proposed Project Network Part or the Scheme, does or does not
comply with the Service Provider's Assumptions and confirming whether the Service Provider (acting reasonably) considers that the Authority has specified the appropriate De-Accrual Calculation Values in the De-Accrual Notice; and

4.3.4 if the Authority has provided the Service Provider with a Maintainability Assessment Notice pursuant to paragraph 2.1 in respect of such Proposed Project Network Part or the Scheme, stating that the commentary and De-Accrual Calculation Values(s) provided by the Service Provider in the Maintainability Assessment remain valid; or

provided that where, pursuant to paragraph 4.3.3, the Service Provider finds that the Proposed Project Network Part or the Scheme does not comply with the Service Provider's Assumptions, and the Authority has not specified the appropriate De-Accrual Calculation Values in the De-Accrual Notice, the Service Provider shall (acting reasonably) propose the appropriate De-Accrual Calculation Values.

4.4 The Service Provider shall maintain the Proposed Project Network Part or Scheme that are the subject of a De-Accrual Notice in accordance with the provisions of the Output Specification until the De-Accrual Date.

4.5 From the De-Accrual Date:

4.5.1 the Proposed Project Network Part or Scheme which are the subject of a De-Accrual Notice shall cease to be treated as a Project Network Part or Project Network Parts for the purposes of this Contract;

4.5.2 risk in such Project Network Part(s) shall transfer to the Authority; and

4.5.3 the Service Provider shall:

4.5.3.1 if the De-Accrual Notice includes a Road Section Length, supply to the Authority (on request) any information relating to the carrying out of the Services on (or in the area of) the Road Section Length that is the subject of the De-Accrual Notice;
4.5.3.2 update the Management Information System in respect of such De- Accrual in accordance with the timescales set out in Service Standard 1 of the Output Specification;

4.5.3.3 revise the energy forecast in accordance with paragraph 4.1.2 of Schedule 4 (Payment Mechanism) where the relevant Proposed Project Network Part or Scheme is Powered Apparatus; and

4.5.4 the Authority shall revise the Annuity in accordance with paragraph 5 of this Schedule T(Accrual and De-Accrual of Project Network Parts), to reflect any De-Accrual.

5. EFFECT ON ANNUITY OF AN ACCRUAL OR DE-ACCRUAL

5.1 With effect from the Accrual Date, an Accrual Adjustment shall be made to the Quarterly Annuity. The Accrual Adjustment in respect of Accrued Project Network Part(s) shall include the sum of the Accrual Values for each of the Project Network Parts to be Accrued and shall be determined as follows:

5.1.1 the Accrual Value shall be calculated by adding the Operational Maintenance Value to the Programmed Maintenance Accrual Value, where the following formula shall be used to calculate the Programmed Maintenance Accrual Value:

\[ \frac{\sum_{I} NPV \text{ of Accrual Unit Cost of Intervention}}{\text{Annuity Factor}} \]

Where:

**NPV of Accrual Unit Cost of Intervention** is the net present value of the Accrual Unit Cost of Intervention, discounted from the Year of Accrual Intervention to the Accrual Date using the Treasury Discount Rate of 3.5%;

**Accrual Unit Cost of Intervention** is the value as contained in the column titled “Accrual Unit Cost of Intervention” of the Table in Part 3 of this Schedule Tof the unit cost of the appropriate Intervention;

**Year of Accrual Intervention** is the value contained in the column titled “Number of Years from Accrual Date until
Intervention” of the Table in Part 3 of this Schedule 19 added to the Accrual Date, provided that where such value would be greater than 25 the Programmed Maintenance Accrual Value shall be zero;

$I$ is each appropriate Intervention required for each of the Project Network Parts;

**Intervention** is the treatment to be carried out to the Project Network Part which, for the three (3) Contract Years (or parts thereof) from the date at which the calculation is being carried out, shall be determined by reference to the Annual or Three Year Investment Programme (as applicable) in force at such date, and for the remainder of the Term (using where applicable the principles contained in Part 3 of this Schedule 19) shall be as agreed between the Parties (acting reasonably), taking into account the condition of the Project Network Part at the Accrual Date or De-Accrual Date;
\[
\text{AnnuityFactor} = \frac{1}{(1 + r)^n r}
\]

Where:

\[r = \text{the Treasury Discount Rate of 3.5}\%\]

\[n = 25 \text{ – Contract Year in which Project Network Part is to be Accrued}\]

(see “Accrual Value”), and such Accrual Value or Accrual Values shall be used for the purposes of calculating the Accrual Adjustment in respect of the Month in which the Accrual Date occurs in accordance with paragraph 4 of Schedule 4 (Payment Mechanism);

5.1.2 where pursuant to paragraph 3.1.3.1(c) or paragraph 3.1.3.1(d) (b) there is no applicable Accrual Calculation Value or Accrual Calculation Values then for the purposes of calculating the Accrual Adjustment in respect of the Month in which the Accrual Date occurs, in accordance with paragraph 4 of Schedule 4 (Payment Mechanism), the Service Provider shall, as soon as reasonably practicable and acting reasonably, notify the Authority of:

5.1.2.1 the Service Provider's proposed additional Accrual Calculation Value(s) (as applicable), having regard to all relevant factors, including the existing Accrual Calculation Value(s) (as applicable) in relation to analogous Project Network Part(s) or as agreed pursuant to paragraph 2 or paragraph 3 of this Schedule T(Accrual and De-Accrual of Project Network Parts);

5.1.2.2 details of and a commentary on pricing assumptions, including costs of labour, actual costs of materials, overheads and any other relevant pricing assumptions to support the information provided pursuant to paragraph 5.1.2.1,

and the Authority shall consider the Service Provider's proposal for the additional relevant Accrual Calculation Value(s) (as applicable) and the Parties shall (acting reasonably) endeavour to agree the proposed additional Accrual Calculation Value(s) (as applicable) to be used for calculating the Accrual Value(s), and, upon agreement between the Parties, to be used for the
Accrual Adjustment in respect of the Month in which the Accrual Date occurs in accordance with paragraph 4 of the Payment Mechanism, and if the Parties fail to agree additional Accrual Calculation Value(s) (as applicable) within ten (10) Business Days of the date of the Project Network Part Compliance Notice then the provisions of Clause 82 (Dispute Resolution) shall apply.

5.2 With effect from the De-Accrual Date, an Accrual Adjustment shall be made to the Quarterly Annuity Charge. The Accrual Adjustment in respect of De-Accrued Project Network Part(s) shall include the sum of the De-Accrual Values for each of the Project Network Parts to be De-Accrued and shall be determined as follows:

5.2.1 the De-Accrual Value shall be calculated by adding the Operational Maintenance Value to the Programmed Maintenance De-Accrual Value, where the following formula shall be used to calculate the Programmed Maintenance De-Accrual Value:

$$\sum \text{NPV of De-Accrual Unit Cost of Intervention}$$

\[ \text{Annuity Factor} \]

Where:

NPV of De-Accrual Unit Cost of Intervention is the net present value of the De-Accrual Unit Cost of Intervention, discounted from the Year of De-Accrual Intervention to the De-Accrual Date using the Treasury Discount Rate of 3.5%;

De-Accrual Unit Cost of Intervention is the value as contained in the column titled “De-Accrual Unit Cost of Intervention” of the Table in Part 4 of this Schedule T of the unit cost of the appropriate Intervention;

I is each appropriate Intervention that would have been required for the Project Network Part;
agreed or determined that an Intervention would have been carried out to the De-Accrued Project Network Part;

$$1 - \frac{1}{(1 + r)^n}$$

AnnuityFactor = \( \frac{1}{r} \)}
Where:

\[ r = \text{the Treasury Discount Rate of 3.5\%} \]

\[ n = 25 – \text{Contract Year in which Project Network Part is to be De-Accrued} \]

(‘the \textbf{De-Accrual Value}’) and such De-Accrual Value or De-Accrual Values shall be used for the purposes of calculating the Accrual Adjustment in respect of the Month in which the De-Accrual Date occurs in accordance with paragraph 4 of Schedule 4 (\textit{Payment Mechanism});

5.2.2 where pursuant to paragraph 4.3.3 there is no applicable De-Accrual Calculation Value or De-Accrual Calculation Values then, for the purposes of calculating the Accrual Adjustment in respect of the Month in which the De-Accrual Date occurs, in accordance with paragraph 4 of Schedule 4 (\textit{Payment Mechanism}), the Service Provider shall, as soon as reasonably practicable and acting reasonably, notify the Authority of:

5.2.2.1 the Service Provider's proposed additional De-Accrual Calculation Value(s) (as applicable), having regard to all relevant factors, including the existing De-Accrual Calculation Value(s) (as applicable) in relation to analogous Project Network Part(s) or as agreed pursuant to paragraph 2 or paragraph 4 of this Schedule T (\textit{Accrual and De-Accrual of Project Network Parts});

5.2.2.2 details of and a commentary on pricing assumptions, including costs of labour, actual costs of materials, overheads and any other relevant pricing assumptions to support the information provided pursuant to paragraph 5.2.2.1,

and the Authority shall consider the Service Provider's proposal for the additional relevant De-Accrual Calculation Value(s) (as applicable) and the Parties shall (acting reasonably) endeavour to agree the proposed additional De-Accrual Calculation Value(s) (as applicable) to be used for calculating the De-Accrual Value(s), and, upon agreement between the Parties, to be used for the Accrual Adjustment in respect of the Month in which the De-Accrual Date occurs in accordance with paragraph 4 of the Payment Mechanism, and if the Parties fail to agree additional De-Accrual Calculation Value(s) (as applicable) within ten (10) Business Days of the date of the Project Network Part Compliance Notice then the provisions of Clause 82 (\textit{Dispute Resolution}) shall apply.

5.3 The Parties acknowledge and agree that:

5.3.1 the Programmed Maintenance Accrual Value represents the anticipated
Schedules to Project Agreement

5.3.1 the cost of Programmed Maintenance to be carried out to a Project Network Part during the remainder of the Term from the Accrual Date;

5.3.2 the Programmed Maintenance De-Accrual Value represents the anticipated cost saving of Programmed Maintenance that will no longer be required to be carried out to a Project Network Part during the remainder of the Term from the De-Accrual Date; and

5.3.3 the Operational Maintenance Value represents the cost for the performance of all other Services that would be required to be carried out to a Project Network Part during the remainder of the Term from the Accrual Date or De-Accrual Date.

5.4 For the avoidance of doubt, any dispute between the Parties in respect of compliance with the standards and specifications referred to in the Authority Notice of Accrual and in respect of the appropriate Accrual Value or De-Accrual Value shall not prevent the Accrual of the Project Network Part or Scheme pursuant to paragraph 3 on the Accrual Date or the De-Accrual of the Project Network Part or Scheme pursuant to paragraph 4 on the De-Accrual Date.

5.5 Notwithstanding any of the other provisions of this paragraph 5, the parties agree that the Authority shall be entitled to set off any Accrual Adjustment for the relevant Month against the Accrual Provision.

5.6 Within five (5) Business Days of the end of each Contract Year the Service Provider will identify to the Authority if in any Month or Months of the relevant Contract Year the Accrual Adjustment was less than the Accrual Provision. For any Month where the Accrual Adjustment was less than the Accrual Provision the difference between these amounts shall be refunded to the Authority by way of a one off Sundry Adjustment of all such amounts at the end of each Contract Year. The Service Provider shall include this amount in the next Draft Monthly Payment Report submitted to the Authority pursuant to Clause 56.4 (Draft Monthly Payment Report) following the end of each Contract Year.

6. LIMITATION ON THE LEVELS OF ACCRUALS AND DE-ACCRUALS

6.1 The Authority shall not be permitted, subject to paragraph 7, to Accrue or De-Accrue any Project Network Part which shall result in:

6.1.1 the net increase in the aggregate number of Project Network Parts which have been Accrued gives rise to a positive Accrual Adjustment equivalent to more than [ ] percent ([%]) of the Annuity (the “Accrual Cap”), or

6.1.2 the net decrease in the aggregate number of Project Network Parts which have been De-Accrued gives rise to a negative Accrual Adjustment equivalent to more than [ ]% of the Annuity (“De-Accrual Cap”);

then any further Accruals or De-Accruals in excess of the Accrual Cap or De-Accrual Cap (as the case may be) shall not be treated as an Accrual or De-Accrual but be dealt with as an Authority Change pursuant to Schedule 18 (Change Protocol).

6.2 If the Accrual Cap and/or the De-Accrual Cap is reached but the Parties
7. REVIEW OF THE ACCRUAL AND DE-ACCRUAL PROCEDURE

7.1 The Service Provider shall notify the Authority, when it considers (acting reasonably), that the Accrual Cap and/or De Accrual Cap will be reached within the following three (3) Months of the date of such notification.

7.2 If the Authority receives notification from the Service Provider pursuant to Clause 7.1, or in the event that the Accrual Cap and/or De-Accrual Cap is reached:

7.2.1 the Parties (acting reasonably) shall meet and may endeavour to agree a revised Accrual Cap and/or revised De-Accrual Cap and revised Accrual Values and/or De-Accrual Values as soon as reasonable practicable; or

7.2.2 the Authority may in its absolute discretion (as applicable), subject to the Accrual Caps and De-Accrual Caps:

7.2.2.1 De-Accrue any such number of Project Network Parts; or

7.2.2.2 Accrue any such number of Project Network Parts,

so as to enable the Authority to continue Accruing and De-Accruing Project Networks Parts pursuant to the provisions of this Schedule T(Accrual and De-Accrual of Project Network Parts).

7.3 If the Parties fail to agree a revised Accrual Cap, revised De-Accrual Cap and revised Accrual Values and/or De-Accrual Values, the Authority may issue a High Value Change pursuant to Schedule 18 (Change Protocol) and the revised Accrual Cap, De-Accrual Cap, and revised Accrual Values and/or de-Accrual Values shall be determined pursuant to Part 3 of Schedule 18 (Change Protocol) and paragraph 6 to this Schedule T(Accrual and De-Accrual of Project Network Parts) and Parts 2, 3 and 4 shall be amended accordingly.

8. UPDATING ACCRUAL VALUES AND DE-ACCRUAL VALUES

8.1 The Parties acknowledge and agree that the prices set out in the table in Parts 2, 3 and 4 of this Schedule T shall apply for the Term and shall be Indexed.

8.2 If, pursuant to the provisions of this Schedule 19, additional Accrual Values and De-Accrual Values are agreed, the Parties shall update the table set out in Parts 2, 3 and 4 of this Schedule T (Accrual and De-Accrual of Project Network Parts) to include such additional Accrual
9. **MAINTENANCE COSTS DURING DISPUTE**

9.1 The provisions of paragraphs 9.2 to 9.8 shall apply where the Service Provider refers a Dispute in respect of (i) the information provided by the Authority pursuant to paragraph 3.1.1.14 or (ii) the matters referred to in paragraph 5 to Dispute Resolution Procedure and the Service Provider considers (acting reasonably) that the relevant Accrual Value(s) and/or De-Accrual Value(s), and/or the Accrual Adjustment, proposed by the Authority (the “Authority’s Proposal”) are insufficient and provided that, subject to paragraph 2.10, the Service Provider shall not be entitled to refer any Dispute in relation to the application of paragraph 2 to the extent the Service Provider has failed to comply with its obligations thereunder.

9.2 The Service Provider shall act reasonably in determining whether to refer a Dispute of the nature described in paragraph 9.1 to the Dispute Resolution Procedure and shall not refer such Disputes to the Dispute Resolution Procedure vexatiously.

9.3 On the date the Service Provider refers the matters described in paragraph 9.1 to the Dispute Resolution Procedure, the Service Provider shall also provide the Authority with written commentary and supporting evidence as to the matter(s) in Dispute, including the relevant Accrual Value(s) and/or De-Accrual Value(s), and/or the Accrual Adjustment, proposed by the Service Provider (the “Service Provider’s Proposal”).

9.4 The Authority may request any additional information it may reasonably require from the Service Provider within five (5) Business Days of the receipt of the written commentary provided by the Service Provider pursuant to paragraph 9.3.

9.5 The Service Provider shall provide any additional information requested by the Authority pursuant to paragraph 9.4 within five (5) Business Days of the receipt of such request.

9.6 The Authority shall, with effect from the relevant Accrual Date, make payments to the Service Provider in accordance with the Authority’s Proposal (for these purposes, adjusted by the Authority (acting reasonably) having regard to the Service Provider’s Proposal and the likely duration of any Dispute) until the outcome of the Dispute.

9.7 If the resolution or determination of the Dispute that is the subject of this paragraph 9 finds the relevant Accrual Value(s) and/or De-Accrual Value(s), and/or the Accrual Adjustment are such that the amount which has been paid by the Authority to the Service Provider pursuant to paragraph 9.5 is greater than it would have been had the amount so resolved or determined been paid throughout the relevant period (the “Determined Amount”), the difference between the amount so paid by the Authority and the Determined Amount shall be deemed to be an overpayment and the next Monthly Payment shall be adjusted by an amount equal to such overpayment plus interest on such overpayment from the date that such overpayment was made to the Service Provider until the date of such adjustment at a rate equal to two per cent (2%) above the Bank of England
9.8 Subject to paragraphs 9.1 to 9.6 (inclusive), the Parties shall continue to perform all their respective obligations under this Contract notwithstanding the referral of a Dispute under such paragraphs to the Dispute Resolution Procedure and nothing in this paragraph shall limit or reduce any remedies or recourse of the Authority pursuant to Schedule 4 (Payment Mechanism).
Part 2

Operational Maintenance Values table
Part

3

Accrual Values table – Programmed Maintenance
Unit Cost of De-Accrual Interventions table – Programmed Maintenance
Service Provider's Assumptions