

**Infrastructure  
Investment  
Facilitation  
Center**

**IIFC STANDARD COMMERCIAL CONDITIONS OF SERVICE**

**ARTICLE 1 – DEFINITIONS.** The following terms shall have the meanings set forth below:

**“Advisory Fees”** means the fees payable to IIFC from a public or private sector Client, or a private sector beneficiary of IIFC services who may be an investor, a lender or a stakeholder in the project.

**“Agreement”** means either a Development Services Agreement (DSA) or a Technical Services Agreement (TSA) executed between IIFC and Client to carry out a project. The Agreement shall specify the scope of services to be provided by IIFC and other applicable terms and conditions.

**“Client”** means any public or private sector organisation with whom IIFC signs an Agreement.

**“IIFC”** means the Infrastructure Investment Facilitation Center, a 100% Government of the People’s Republic of Bangladesh (GOB) owned, infrastructure investment advisory facility.

**“Information”** means any information and project data received by IIFC or its authorized consultants from the Client which is not available in the public domain, and which may include but is not limited to consultant papers, reports, minutes of meeting, operational records, existing liabilities etc.

**ARTICLE 2 – ENGAGEMENT OF IIFC**

**2.1 Engagement.** The Client hereby engages IIFC to provide, and IIFC hereby agrees to use its best efforts to provide, those services as described in the Agreement.

**2.2 Relationship Between Parties and Limitation of Authority.** IIFC will act as an independent advisor to the Client under the terms of this Agreement. It will provide such services in the infrastructure sectors as mandated by GOB, and which is approved by IIFC’s Memorandum and Articles of Association. IIFC has no right or authority (a) to negotiate or enter into any contract as a shareholder in a project or (b) to assume or create any obligation of any kind, express or implied, on behalf of the Client.

**ARTICLE 3 – OBLIGATIONS**

**3.1 Personnel, Facilities and Expertise.** IIFC will always use qualified personnel, appropriate facilities and adequate resources in order to discharge its services to the Client in a timely, professional and efficient manner. These services may be carried out directly by IIFC staff or by the use of IIFC’s consultants.

**3.2 Information to be Provided by Client.** The Client shall provide to IIFC, free of cost, as soon as possible, all information available at Client’s disposal which may pertain to the services under the Agreement. These will typically include previous studies performed by consultants or by Client’s in-house resources.

**3.3 Delays.** The Client shall ensure that governmental approvals and decisions in connection with the project are given as early as possible, such that the time and effort in developing the project is minimised and success for both Client and IIFC is achieved quickly.

**3.4 Payment of Advisory Fees.** In instances where Advisory Fees are to be paid by parties other than a public sector Client (i.e. by private sector investors who are the ultimate beneficiaries of the IIFC assistance to a public sector Client), the Client shall assist IIFC in receiving the Advisory Fees, ensuring it contractually through the bid process or otherwise by agreement. As an option, public sector Clients may pay Advisory Fees directly to IIFC, as may be agreed in the Agreement. Private sector Clients shall pay Advisory Fees directly to IIFC.

**3.5 Investor’s Obligation for Due Diligence** As per terms of the Agreement, IIFC will provide services to the Client which may include the provision of feasibility study, information, costs, data etc. related to an investment project. IIFC shall not be liable for the commercial or technical performance or any performance whatsoever for any investment project or for implying any warranty. The private sector bidders and investors shall carry out their own feasibility studies and due diligence to their satisfaction, before they make any decision.

**ARTICLE 4 –ADVISORY FEES**

**4.1 Fees for Performing Services.** In order to move towards commercialization, IIFC is mandated by the GOB to recover its costs from the project for performing its obligations under this Agreement. The Advisory Fees related to its cost recovery or project development will be payable by the Client, or by one or more of the beneficiaries or stakeholders of the project. The amount, method and timing will be set out in the Agreement or as agreed separately between IIFC and the Client. To enable the Advisory Fees to be recovered from parties other than the Client, when such a Client is a Ministry or its agency, the Client will include appropriate conditions in the bidding documents to the effect that the cost recovery for IIFC services will be a part of the bid. The successful bidder and/or the short listed bidders will pay the Advisory Fees to IIFC in the manner as stated in the bidding documents and after the achievement of defined milestones. In situations of unsolicited bids, the cost recovery will be by agreement between IIFC and the Client or between IIFC and the private sector investor.

**ARTICLE 5 – RECORDS**

At all times during the term of this Agreement, IIFC shall maintain full, complete and accurate books of account and records with regard to its costs and activities under this Agreement.

## **ARTICLE 6 – NON-DISCLOSURE OF CONFIDENTIAL INFORMATION**

**6.1 Non-Disclosure Obligations.** During the term of this Agreement, the Client will disclose certain Information to IIFC to permit IIFC to perform its obligations under this Agreement. Without the prior authorization of the Client, IIFC shall not use or copy any Information for any purpose other than as specifically authorized by this Agreement, and shall not transfer or disclose any information to any person other than its staff and consultants directly involved in the project. IIFC shall take all steps necessary as appropriate to protect Information against unauthorized disclosure or use.

**6.2 Ownership of Materials.** All files, lists, records, documents, drawings, specifications and computer programs which incorporate, embody, or refer to all or a portion of the Information shall become the property of IIFC, unless it is returnable to the Client. The Client may request IIFC for copy of any portion of the Information.

**6.3 Exceptions.** The obligations set forth in this Article 6 shall not apply to the extent that any Information (a) is already known to IIFC, (b) becomes generally available to the public through no fault of IIFC, (c) is or has been disclosed to IIFC, directly or indirectly, by any person that is under no obligation of nondisclosure to the Client or (d) is required to be disclosed under any applicable law, rule, regulation or GOB order.

## **ARTICLE 7 – TERM AND TERMINATION**

**7.1 Term.** This Agreement shall remain valid for the entire period of the Agreement, unless terminated earlier in accordance with Article 7.2.

**7.2 Termination.** This Agreement may be terminated by either party, with or without cause, upon one (1) month's prior written notice of termination to the other party at any time.

## **ARTICLE 8 – RIGHTS AND OBLIGATIONS UPON TERMINATION**

**8.1 Payment of Advisory Fees** Upon termination of this Agreement, IIFC shall submit to the Client, within thirty (30) calendar days of such termination, a written report of all Advisory Fees owed prior to the termination date. The Client shall make payments or cause such payments to be made in accordance with the Agreement.

**8.2 Cessation of Rights.** Upon termination of this Agreement for any reason whatsoever, all rights and obligations of the parties hereunder shall cease; provided, however, that termination of this Agreement shall not relieve the parties hereto of any obligations accrued prior to said termination, including but not limited to, the Client's obligation to pay IIFC the Advisory Fees.

**8.3 Survival of Non-Disclosure Obligation.** Notwithstanding the termination of this Agreement, IIFC shall continue to abide by the terms of its non-disclosure obligations with respect to Information under Article 6 of this Agreement.

## **ARTICLE 9 – GENERAL PROVISIONS**

**9.1 Force Majeure.** Neither party shall be liable to the other party for any delay or omission in the performance of any obligation under this Agreement, other than the obligation to pay monies, where the delay or omission is due to any cause or condition beyond the reasonable control of the party obliged to perform, including but not limited to, strikes or other labour difficulties, acts of God, acts of government or delays caused by consultants or subcontractors.

**9.2 Indemnity.** The Client, private sector investor or any other person or stakeholder shall not make any claim against IIFC, its employees or consultants for any costs, losses or damages arising out of IIFC's services. The Client shall indemnify IIFC against all such claims to the extent that (a) where there is no Advisory Fees, the indemnity provided by the Client shall be full and (b) where IIFC has received Advisory Fees in part or full, the liability of IIFC for any act or omission and errors in data shall be limited to the amount of the Advisory Fees paid to IIFC. The time period for such liability shall be limited to 12 months from the provision of the services.

## **ARTICLE 10 – AMENDMENT AND ASSIGNMENT**

**10.1 Amendment.** The terms and conditions of the Agreement may be amended mutually by the parties, if agreed to in writing.

**10.2 Assignment.** The parties shall not assign any part of their obligations, benefit, right or interest to any third party without the written consent of the other party.

## **ARTICLE 11 – PROJECT OWNERSHIP STRUCTURE**

**11.1 Ownership of the Project.** IIFC in support of its Clients, will develop those projects that have a ownership of private sector or a group of private participants which total more than 51%. Lower level of ownership will require approval of the IIFC Board of Directors.

## **ARTICLE 12 – ARBITRATION**

**12.1 Arbitration.** In case of any dispute, controversy or claim arising out of or relating to the Agreement or its breach, termination or invalidity, the parties shall first try to resolve the matter amicably. If amicable settlement fails, then the same shall be finally settled by arbitration under the Arbitration Act, 2001. Any such dispute, controversy or claim shall be referred to the arbitration of two Arbitrators, each party nominating one and both the Arbitrators shall appoint an Umpire.

**12.2 Award.** The arbitral award shall be final and binding on both the parties.

**12.3 Place of Arbitration.** Unless otherwise agreed by the parties, the arbitration shall take place in Dhaka, Bangladesh.