

THIS DOCUMENT HAS BEEN PREPARED FOR THE PURPOSES OF THE  
**PPP IN INFRASTRUCTURE RESOURCE CENTER FOR CONTRACTS, LAWS AND REGULATIONS.**  
IT IS FOR GENERAL GUIDANCE PURPOSES ONLY AND SHOULD NOT BE USED AS A SUBSTITUTE  
FOR SPECIFIC LEGAL ADVICE FOR A PROJECT.

## SAMPLE TERMS OF REFERENCE

### Review and Redrafting of Model Toll Road Documentation

[BRIEF BACKGROUND OF PROJECT]

#### 1. Scope of work

[ADVISOR] will be acting for [GOVERNMENT].

Instructions will come from [GOVERNMENT BODY] and [apart from information to be provided by World Bank officials] [ADVISOR] is to disregard purported instructions from anyone else, including other government agencies.

The scope of work has the following components.

1. Review and redraft the form of concession agreement used by the Government of [ ]. The objective is to establish an international standard, bankable standard form agreement for use in new toll road transactions throughout [COUNTRY]. This component will comprise:

- (a) a revised text in English: technical schedules are not required but where particular issues (eg foreign exchange risk, traffic flow risk, KPI, penalties) are dealt with in various ways in international practice, sample alternative clauses should be provided,
- (b) a commentary explaining the changes from the existing text, and
- (c) a supporting document (the nature of this document is to be determined) in [LOCAL LANGUAGE].

Schedule: [NUMBER OF DAYS AND DATES]

2. Review and redraft the toll road bidding documents used by the Government of [ ]. The objective is to develop documents of an international standard for use in relation to new toll road projects throughout [COUNTRY].

This component will comprise:

- (a) a revised text in English,
- (b) a commentary explaining the changes from the existing text, and
- (c) a supporting document (the nature of this document is also to be determined) in [LOCAL LANGUAGE].

Schedule: [NUMBER OF DAYS AND DATES]

3. Participation in discussion meetings in [COUNTRY] with [GOVERNMENT] and World Bank officials, to explain the proposed changes, receive feedback and final drafting instructions.

Schedule: [NUMBER OF DAYS AND DATES]

4. Preparation of final versions of the documents.

Schedule: by [DATE]

The scope of work may expand beyond this at the request of [ ] and with approval of [ ], and the fee estimate given below will be adjusted in that case.

## Terms of Reference – Review and Redrafting of Model Toll Road Concession Agreement

### 2. The team.

The team for this project will comprise:

[LIST ANY SPECIFIC EXPERTS or QUALIFICATIONS OF EXPERTS THAT ARE TO BE WORKING ON THE PROJECT]

[may wish to specify how much of the total time or specific elements of the scope of work that they should be involved with – for instance, attending meetings]

Where appropriate, the firm may arrange for other lawyers with appropriate skills and experience to work on the project, provided that they are supervised by the experts listed above.

### 3. Fees

#### ALTERNATIVE FEE STRUCTURES

3.1 If Fixed Fee (preferable as more likely to meet procurement guidelines and easier to assess different bids): -

Is this to be paid as a lump sum at the end of the project or instalment following completion of a section of the scope of work?

The various items that the fixed fee is intended to cover should be specified, including whether : -

- travel costs are included – if not, TORs should specify grade of travel and accommodation, who is to procure travel (GOVERNMENT or ADVISOR), how many are to travel, whether hours spent travelling are included,
- communications and photocopying costs are included – if not, TORs should specify cost of photocopies per sheet and cost of phone calls. If included, likely that will not cover printing or the cost of copying documents for broad distribution, or vat.

The advisor will typically include a number of assumptions for a fixed fee, such as: -

- (a) the time schedules and dates described in scope of work are maintained,
- (b) the scope of work does not change from that described in part 1,
- (c) [date of receipt of documents and instructions to review],
- (d) advisor will not be required to take proposals from, consult with or brief any organisation other than [XXXX] and the World Bank, except in the meetings proposed for the week of [ ] and in that respect , regardless of those discussions, instructions in relation to the final documents (part 4 of the scope described in part 1) will come from [XXXX]
- (e) the meetings during the week of [ ] will not exceed [ ] days and advisors will not be required to produce any materials for those meetings except as described in parts 1 and 2 of the scope,
- (f) fees will be paid in full by [DATE],
- (g) [XXXX] will bear all responsibility for VAT and will provide such documentation in relation to that as may be required by [COUNTRY] tax authorities,
- (h) [IF FOREIGN ADVISOR] there will be no withholding against [ADVISOR] in respect of [COUNTRY] tax,

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### Changes to scope

In event that [XXX] wishes to change the scope of work as set out herein/ advisor considers that any of the assumptions set out above have been breached and that the fee should therefore be increased, then that party should notify the other party of such change/ breach as soon as possible and the parties will discuss in good faith how this affects the scope of work/ fixed fee.

### 3.2 If hourly rate – this should include caps

Similar to (a) – need to specify what the cap includes, what assumptions are being made and process for re-negotiation of caps

Also need to include assumptions as to how many capped hours are to be provided by the key experts.

### 3.3 SUCCESS FEE

[This is traditionally how fee for transaction manager is structured. A hybrid of a fixed fee and success fee might be appropriate for a legal advisor.]

If the fee is based on a success fee then the milestone that needs to be met to trigger the success fee will need to be carefully identified and the method for determining whether that milestone has been met clearly set out.

## 4. Conflicts of Interest

ADVISORS WILL WANT TO HAVE INCLUDED – AND GOVERNMENT WILL NEED TO DECIDE WHETHER APPROPRIATE TO INCLUDE A PROVISION SIMILAR TO THAT SET OUT BELOW REGARDING CONFLICTS OF INTEREST

So far as [GOVERNMENT] and the World Bank are concerned, the conduct of this work will not prevent [ADVISOR] accepting instructions from any bidder, sponsor, contractor, bank or other entity in relation to any future toll road or other infrastructure project in [COUNTRY], and that such rights as might exist or arise in respect of actual or perceived conflicts of interest in respect of such future projects are waived. THE ADVISOR relies on that waiver.

## 5. Terms of engagement

[World Bank] or [GOVERNMENT] engagement letter + these terms of reference will form the contract between [GOVERNMENT] AND [ADVISOR]