

Request for Proposal (RFP) Document

Empanelment of Transaction Advisor

by

Punjab Infrastructure Development Board (PIDB)

for

Undertaking Projects

under

Public Private Partnership (PPP) format

(7th May 2012)

PUNJAB INFRASTRUCTURE DEVELOPMENT BOARD
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DISCLAIMER

The information contained in this Request for Proposal (RFP) document or subsequently provided to the transaction advisors ("Transaction Advisors"), whether verbally or in documentary form by or on behalf of Punjab Infrastructure Development Board ("Client" / "PIDB") or any of its employees or advisors, is provided to the Transaction Advisors on the terms and conditions set out in this RFP document and any other terms and conditions subject to which such information is provided.

This RFP document is not an offer or invitation to any other party. The purpose of this RFP document is to provide the Transaction Advisors, to whom it is issued, with information to assist the formulation of their Proposal submission. This RFP document does not purport to contain all the information each Transaction Advisor may require. This RFP document may not be appropriate for all persons and it is not possible for Client and their employees to consider the objectives, financial situation and particular needs of each Transaction Advisor. Client and their employees make no representation or warranty and shall incur no liability under the Law of Contract, Tort, the Principles of Restitution or unjust enrichment or otherwise for any loss, expense or damage, which may arise from or be incurred or suffered in connection with anything contained in this RFP document or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFP document and any assessment, assumption, statement or information contained therein or any matter deemed to form part of this RFP document, the award of the Project and any other information supplied by or on behalf of Client or their employees arising in any way from the empanelment process. Client may in its absolute discretion, but without being under any obligation to do so, amend or supplement the information in this RFP document. The information that Client is in a position to furnish is limited to this RFP document and the information available at the contact addresses given in Project Data Sheet.

This RFP document and the information contained herein are confidential and for use only by the person to whom it is issued. It may not be copied or distributed by the recipient to third parties (other than, in confidence to the recipient's professional advisor). In the event that the recipient does not continue with the involvement in the empanelment process in accordance with this RFP document, the information contained in the RFP document shall not be divulged to any other party. The information contained in the RFP document must be kept confidential.

Mere submission of a responsive Proposal does not ensure selection of the Transaction Advisor as Successful Transaction Advisor(s). The Client reserves the right to reject all or any of the Transaction Advisors or Proposals without assigning any reason whatsoever. The Client reserves all the rights to cancel, terminate, change or modify this selection process and/or requirements of bidding stated in the RFP document, at any time without assigning any reason or providing any notice and without accepting any liability for the same.

1. INVITATION FOR PROPOSALS

1.1 Introduction

- 1.1.1 Punjab Infrastructure Development Board hereinafter referred to as “Client” or “PIDB” intends to empanel 1 (one) more Transaction Advisor for creation of panel of 5 (five) Transaction Advisors, from panel of Transaction Advisors as approved and notified by the Department of Economics Affairs, Government of India including panel for ADB assisted projects (**except** Feedback Ventures Pvt. Ltd., IL&FS, Ernst & Young and PWC, as they have already been empanelled by PIDB)
- 1.1.2 This Request for Proposal (RFP) is for the Empanelment of maximum 1 (one), Transaction Advisor on Client’s panel of advisors for undertaking projects under Public Private Partnership (PPP) format (hereinafter referred as the “Project”).
- 1.1.3 Separate Memorandum of Agreements (MOA) shall be entered into by and between the Client and the respective successful Transaction Advisor (“The Memorandum of Agreement”). A draft MOA is appended as Annexure-1.
- 1.1.4 A “Single Stage” bidding process is being followed for determining the Successful Transaction Advisor, wherein the Transaction Advisors would submit their Proposals on/ before the Proposal Due Date as mentioned in the Proposal Data Sheet. The Transaction Advisors shall submit the detailed Technical Proposals for the Empanelment on the Client’s panel as set out in this RFP document.
- 1.1.5 This RFP document contains information about the process of empanelment, bidding process, proposal submission qualification, evaluation process and Client.
- 1.1.6 A level of service as specified in this RFP document would be maintained, during the empanelment period, by the successful Transaction Advisor.
- 1.1.7 Transaction Advisors would be required to submit Technical Proposals as per format given in Clause 9 (Technical Formats) of this RFP document. The Technical Proposal will be examined for substantive compliance or responsiveness to the Proposal requirements. The Client would evaluate the Technical Proposals as per the empanelment criteria mentioned in Clause 3 of the RFP Document. The one (1) Transaction Advisor who score the highest marks in the Technical Proposal Evaluation shall be empanelled by the Client.
- 1.1.8 The complete Proposals should be submitted on or before the Proposal Due Date as specified in Proposal Data Sheet, in the manner specified in the RFP document. The Client shall not be responsible for any delay in receiving the Proposal and reserves the right to reject any or all Proposals without assigning any reason thereof.

2. BACKGROUND

2.1 Introduction

Punjab Infrastructure Development Board (PIDB) is a nodal agency set up by Government of Punjab through the Punjab Infrastructure (Development & Regulation) Act, 2002 and shall be responsible for implementation and development of infrastructure projects under Public Private Partnership (PPP) format.

Through PIDB, the Government of Punjab (GoP) places high priority on Infrastructure Development in and for the State. PIDB encourage the private sector to supplement its efforts in developing the infrastructure facilities by participating in the financing and/or development, operation and management thereof. The private sector, both domestic and foreign, has shown considerable keenness to participate in infrastructure development.

PIDB has been mandated to act as an apex body in the State for overall planning, financing for development of infrastructure sectors & projects defined in Schedule –I (Infrastructure Sectors) of Punjab Infrastructure Development and Regulation Act, 2002 (Appended as Annexure 2). The specific objectives of the board are as detailed below:

- To develop and upgrade infrastructure and infrastructure facilities in the State of Punjab having direct benefit to the economy of the State of Punjab. In this context, Infrastructure Development means “creation and addition” of new infrastructure facilities, replacement of existing facilities and strengthening and augmenting of existing facilities. Moreover, it shall be specifically in existing following sectors and other sectors as may be notified by government from time to time:-
 1. Information Technology related infrastructure.
 2. Transportation – Roads, bridges, road transport and related areas, for the benefit of public including agricultural community.
 3. Urban /Rural infrastructure including,-
 - (i) water supply;
 - (ii) sewerage and waste water drainage, disposal and treatment;
 - (iii) internal roads, streets and street lighting;
 - (iv) solid waste management;
 - (v) parks and grounds; and
 - (vi) urban mass transit system;
 - (vii) public parking related facilities/multilevel parking; and
 - (viii) sports and recreational infrastructure
 4. Industrial estates, Industrial parks, Modern Industrial Townships and Special Economic Zones.
 5. Irrigation drainage and flood control infrastructure.
 6. Other agricultural infrastructure, including post-harvest facilities like warehousing facilities, cold chains, grading processing and marketing.
 7. Medical and health care facilities and Medical Research and Education facilities.
 8. Tourism related facilities and infrastructure including cultural, historic, heritage and museum facilities.
 9. Energy including generation, transmission and distribution infrastructure, fuels, new and renewable sources of energy.
 10. Education infrastructure including technical education.
 11. Environment and pollution control infrastructure including effluent treatment plants.
 12. Omitted
 13. Civil Aviation including airports, flying clubs, aviation training institutes, airport city side development, airport aviation & non-aviation facilities.
 14. Social reform infrastructure including:-

- (a) social reform infrastructure including prisons. Juvenile Homes, Social Reformatory institute and other Correctional Facilities;
 - (b) social service infrastructure including better/IT enabled administration of birth and death certificates, registration of marriages, vehicle registration, driving licenses, pensions, rehabilitation of widows and aged persons, utility bills, ration cards & identification cards and other public services; and
 - (c) other social infrastructure on Public Private Partnership mode including slum rehabilitation, Economically weaker sections housing facilities, old age homes, orphanages and day care facilities
15. Omitted
16. Governances infrastructure including judicial / administrative building and housing facilities.

The Transaction Advisor, to be selected, shall assist PIDB and Public Infrastructure Agencies in executing the projects with the requisite speed and quality.

2.2 Request for Proposal

The Client invites Proposals (the “**Proposals**”) for selection of one (1) Transaction Advisor (the “**Transaction Advisor**”) to be empanelled on the panel of PIDB to carry out various assignments assigned and agreed upon by Client and Transaction Advisors over a period of time. The Client intends to select the Transaction Advisor in accordance with the procedure set out herein.

2.3 Validity of the Proposal

The Proposal shall be valid for a period of not less than 180 days from the Proposal Due Date, or any extensions thereof as specified by the Client from time to time.

2.4 Brief description of the Selection Process

The Client has adopted a Single stage selection process (collectively the “Selection Process”) in evaluating the Proposals. A technical evaluation will be carried out as specified in Clause 5. Based on this technical evaluation, a panel of short-listed Transaction Advisors shall be prepared. The top ranked Transaction Advisor shall be empanelled on the panel of the Client (the “Successful Transaction Advisor”).

2.5 Scope of Work

The successful Transaction Advisor shall be required to carry out the work as per the Terms of Reference (TOR) laid down in Clause 10 of the RFP document.

2.6 Payment

The Payments Terms have been elaborated in the Terms of Reference (TOR) laid down in Clause 10 of the RFP document.

All payments to the Transaction Advisor shall be made in INR in accordance with the fee quoted by them and agreed upon between the Client and the Transaction Advisor, during the currency of the Memorandum of Agreement. The Transaction Advisor(s) may convert Rupees into any foreign currency as per Applicable Laws and the exchange risk, if any, shall be borne by the Transaction Advisor.

2.7 Schedule of Selection Process

The Client would endeavour to adhere to the schedule as mentioned in the Proposal Data Sheet.

2.8 Communications

The Proposal and any clarifications (as sought by the Client) should be addressed to the appropriate officials mentioned in the Proposal Data Sheet. The relevant information and documents related to the selection of Transaction Adviser like RFP, notices regarding bidding process, etc shall be uploaded on the Client’s website www.pidb.org for information and downloading.

3. General Terms and Conditions for Evaluation

3.1 Empanelment Criteria

This invitation to submit Proposals to the RFP document is open to only those Transaction Advisors who have been empanelled by the Department of Economic Affairs, Government of India (as a Consortium)

The Transaction Advisors shall be required to provide the following, in order to be empanelled by PIDB:

The maximum number of projects handled by them, which should include the process of project structuring, preparation of RFP document /contract documents and bid process management including providing financial and legal advisory services.

Note: Bidders failing to submit the requisite supporting proof as specified in Clause 9 of this RFP document are liable to be rejected during the Technical Evaluation.

3.2 Conflict of Interest

Client requires that Transaction Advisor(s) provide professional services and impartial advice and at all times hold the Client's interests paramount, strictly avoid conflicts with other Projects or their own corporate interests and act without any consideration for future work. Without limitation on the generality of the foregoing, Transaction Advisors, and any of their affiliates, shall be considered to have a conflict of interest and shall not be recruited, under any of the circumstances set forth below.

3.3 Number of Proposals

A Transaction Advisor is eligible to submit only one Proposal. A Transaction Advisor applying individually or as a member of a consortium shall not be entitled to submit another proposal either individually or as a member of any consortium, as the case may be.

3.4 Cost of Proposal

The Transaction Advisor shall be responsible for all of the costs associated with the preparation of their Proposals and their participation in the Selection Process. The Client will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Selection Process.

3.5 Acknowledgement by Transaction Advisor

It shall be deemed that by submitting the Proposal, the Transaction Advisor has:

- (a) made a complete and careful examination of the RFP document;
- (b) received all relevant information requested from the Client;
- (c) acknowledged and accepted the risk of inadequacy, error or mistake in the information provided in the RFP document or furnished by or on behalf of the Client or relating to any of the matters referred above;
- (d) satisfied itself about all matters, things and information, including matters referred herein above, necessary and required for submitting an informed Application and performance of all of its obligations thereunder;
- (e) acknowledged that it does not have a Conflict of Interest; and
- (f) agreed to be bound by the undertaking provided by it under and in terms hereof.

The Client shall not be liable for any omission, mistake or error on the part of the Transaction Advisor in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to the RFP document or the Selection Process, including any error or mistake therein or in any information or data given by the Client.

3.6 Right to reject any or all Proposals

Notwithstanding anything contained in this RFP document, the Client reserves the right to accept or reject any Proposal and to annul the Selection Process and reject all Proposals, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof.

3.6.1 The Client reserves the right to reject any Proposal if:

- (a) at any time, a material misrepresentation made by the Transaction Advisor is uncovered or comes to the knowledge of the Client or
- (b) the Transaction Advisor does not provide, within the time specified by the Client, the supplemental information sought by the Client for evaluation of the Proposal.

3.6.2 Such misrepresentation/ improper response may lead to the disqualification of the Transaction Advisor. If such disqualification / rejection occurs after the Proposals have been opened and the highest ranking Transaction Advisor gets disqualified / rejected, then the Client reserves the right to take any other measure as may be deemed fit in the sole discretion of the Client, including annulment of the Selection Process.

3.7 Amendment of RFP document

- 3.7.1 At any time prior to the deadline for submission of Proposal, the Client may, for any reason, at its own initiative, modify the RFP document by the issuance of Addendum/ Amendment.
- 3.7.2 All such addenda/amendments will be provided through post and uploaded on the website along with the revised RFP document containing the amendments and will be binding on all Transaction Advisors.
- 3.7.3 In order to afford the Transaction Advisors a reasonable time for taking an amendment into account, or for any other reason, the Client may, in its sole discretion, extend the Proposal Due Date.

3.8 Language

The Proposal and all related correspondence and documents shall be written in English language. If any supporting document attached to the Proposal is in any other language, the same will be supported by an English translation (duly authenticated/ attested from Indian Embassy in respective countries) and in case of any ambiguity the translation (original as translated by PIDB) shall prevail.

3.9 Format and signing of Proposal

- 3.9.1 The interested Transaction Advisor(s) shall provide all the information sought under this RFP document. The Client would evaluate only those Proposals that are received in the specified forms and are complete in all respects.
- 3.9.2 The interested Transaction Advisor(s) shall prepare one original set of the Proposal (together with Documents required to be submitted along therewith pursuant to this RFP) and clearly marked "ORIGINAL".
- 3.9.3 The Proposal shall be typed or written in indelible ink and signed by the authorized signatory of the Transaction Advisor who shall initial each page, in blue/ black ink. In case of printed and published Documents, only the cover shall be initiated. All the alterations, omissions, additions, or any other amendments made to the Proposal shall be initialed by the person(s) signing the Proposal. The Proposals must be properly signed as detailed below:
 - (i) by the proprietor, in case of a proprietary firm;
 - (ii) by the partner holding the Power of Attorney, in case of a partnership firm;
 - (iii) by a duly authorised person holding the Power of Attorney (the "Authorised Representative"), in case of a Limited Company or a corporation;or

- (iv) by the Authorised Representative of the Lead Member, in case of a consortium.

A copy of the Power of Attorney certified under the hands of a partner or director of the Transaction Advisor or a notary public on the specified form, shall accompany the Proposal.

- 3.9.4 Transaction Advisors should note the Proposal Due Date, as specified in Proposal Data Sheet, for submission of Proposals. Transaction Advisors are reminded that no supplementary material will be entertained by the Client, and that evaluation will be carried out only on the basis of Documents received by the closing time of Proposal Due Date as specified in Proposal Data Sheet. Transaction Advisors will ordinarily not be asked to provide additional material information or documents subsequent to the date of submission, and unsolicited material if submitted will be summarily rejected.

3.10 Technical Proposal

- 3.10.1 Transaction Advisors shall submit the technical proposal in the formats at Clause 9 (the "Technical Proposal").
- 3.10.2 Failure to comply with the requirements spelt out in this Clause shall make the Proposal liable to be rejected. If a Transaction Advisor makes an averment regarding his qualification, experience or other particulars and it turns out to be false, or his/ her commitment regarding availability for the Project is not fulfilled at any stage after signing of the Memorandum of Agreement, he/ she shall be debarred from participation in any future Project of the Client for a period of two years. The award of this Project to the Transaction Advisor may also be liable to cancellation in such an event.
- 3.10.3 The Client reserves the right to verify all statements, information and documents, submitted by the Transaction Advisor in response to the RFP document. Failure of the Client to undertake such verification shall not relieve the Transaction Advisor of its obligations or liabilities hereunder nor will it affect any rights of the Client thereunder.
- 3.10.4 In case it is found during the evaluation or at any time before signing of the Memorandum of Agreement or after its execution and during the period of subsistence thereof, that the Transaction Advisor(s) has made a material misrepresentation or has given any materially incorrect or false information, the Transaction Advisor(s) shall be disqualified forthwith, if not yet appointed as the Transaction Advisor(s) either by issue of the Award Letter or entering into the Memorandum of Agreement, and if the Transaction Advisor has already been issued the Award Letter or has entered into the Memorandum of Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP document, be liable to be terminated, by a communication in writing by the Client, without the Client being liable in any manner, whatsoever, to the Transaction Advisor(s), as the case may be.

3.11 Submission of Proposals

3.11.1 Sealing and Marking of Proposal

The Transaction Advisors shall prepare and submit:

- a. One (1) Original of the Technical Proposal in "Envelope-Technical Proposal" duly marking "Original". The envelope containing the Technical Proposal shall be labeled as:
Envelope –"Technical Proposal": TECHNICAL PROPOSAL for "Selection of Transaction Advisors for Empanelment on PIDB Panel"

**Contents of Envelope-"Technical Proposal" shall be as follows:
(Technical Proposal in Original)**

- Appendix 1: Covering Letter along with processing fee of Rs. 10,000/- (Rupees Ten Thousand only)
- Appendix 2: Power of Attorney for Authorized Signatory
- Appendix 3: Letter of Undertaking
- Appendix 4: Number of projects handled by them (in the specified format)

The envelopes shall indicate the complete name, address, telephone numbers (with city code) and facsimile number of the Transaction Advisor(s).

Envelope containing the Proposal shall be addressed to the Client as mentioned in the Proposal Data Sheet.

3.12 Proposal Due Date

3.12.1 Proposal should be submitted on the Proposal Due Date specified in the Proposal Data Sheet, at the address provided in Proposal Data Sheet in the manner and form as detailed in this RFP document.

3.12.2 The Client may, in its sole discretion, extend the Proposal Due Date by issuing an Addendum in accordance with provisions of this RFP uniformly for all Transaction Advisors.

3.13 Late Proposals:

Any Proposal received by Client after 1500 hours on the Proposal Due Date will not be accepted.

4. EVALUATION PROCESS

4.1 Evaluation of Proposals

4.1.1 The Client shall open the Proposals at a time, date and venue specified in the Proposal Data Sheet and in the presence of the Transaction Advisors who choose to attend. The envelopes marked "Technical Proposal" shall be opened.

4.1.2 Proposals for which a notice of withdrawal has been submitted in accordance with the provisions of the RFP document will not be opened.

4.1.3 Prior to evaluation of Proposals, the Client will determine whether each Proposal is responsive to the requirements of the RFP. A Proposal shall be considered responsive only if:

- (a) it is received in the form specified at Clause 3.11 (Technical Proposal);
- (b) it is received by the Proposal Due Date including any extension thereof pursuant to Clause 3.12;
- (d) it is signed, sealed, bound and marked as stipulated in Clause 3.11;
- (e) it contains all the information (complete in all respects) as requested in the RFP document;
- (f) it does not contain any condition or qualification; and
- (g) it is not non-responsive in terms hereof.

4.1.4 The Client reserves the right to reject any Proposal which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Client in respect of such Proposals.

4.1.5 The Client would subsequently examine and evaluate Proposals in accordance with the Selection Process specified in this RFP and the criteria set out in this RFP.

4.1.6 After the technical evaluation, the Client would prepare a list of shortlisted Transaction Advisors. A date, time and venue will be notified to all Transaction Advisors for announcing the result of Technical evaluation and the list of shortlisted Transaction Advisors along with their Technical Score will be read out. The final ranking of the Proposals would be carried out in terms of Clause 5 and Appendix 4 under clause 9 and the top One (1) Transaction Advisor scoring the highest marks in the Technical Evaluation shall be empanelled by the Client.

4.1.7 Transaction Advisors are advised that Selection will be entirely at the discretion of the Client. Transaction Advisors will be deemed to have understood and agreed that no explanation or justification on any aspect of the Selection Process or Selection will be given by the Client.

4.1.8 Any information contained in the Proposal shall not in any way be construed as binding on the Client, its agents, successors or assigns, but shall be binding

against the Transaction Advisors if the Consultancy is subsequently awarded to it.

4.2 Confidentiality:

Information relating to the examination, clarification, evaluation and recommendation for the short-listed Bidders shall not be disclosed to any person not officially concerned with the process. PIDB will treat all information submitted as part of all Proposals in confidence and will insist that all who have access to such material will also treat it in confidence. PIDB will not divulge any such information unless it is ordered to do so by any Government authority that has the power under law to require its disclosure or due to statutory compliances.

4.3 Clarifications

- 4.3.1 To facilitate evaluation of Proposals, the Client may, at its sole discretion, seek clarifications from any Transaction Advisor(s) regarding its Proposal and such clarification(s) shall be provided within the time specified by the Client for this purpose. Any request for clarification(s) and all clarification(s) in response thereto shall be in writing.
- 4.3.2 If a Transaction Advisor does not provide clarifications sought under Sub-Clause 4.3.1 above within the specified time, its Proposal shall be liable to be rejected. In case the Proposal is not rejected, the Client may proceed to evaluate the Proposal by construing the particulars requiring clarification to the best of its understanding, and the Transaction Advisor shall be barred from subsequently questioning such interpretation of the Client.

4.4 Award of Consultancy

After selection, an Award Letter shall be issued, in duplicate, by the Client to the Selected Transaction Advisor and the Selected Transaction Advisor shall, within 7 (seven) days of the receipt of the Award Letter, sign and return the duplicate copy of the Award Letter in acknowledgement thereof. In the event the duplicate copy of the Award Letter duly signed by the any of the Selected Transaction Advisor is not received by the stipulated date, the Client may, unless it consents to extension of time for submission thereof, cancel the Award Letter issued to it.

4.5 Execution of Memorandum of Agreement

After acknowledgement of the Award Letter as aforesaid by the Selected Transaction Advisor, it shall execute the Memorandum of Agreement within the period prescribed in the Proposal Data Sheet. The selected Transaction Advisor shall not be entitled to seek any deviation in the Memorandum of Agreement.

5. CRITERIA FOR EVALUATION:

Evaluation of Technical Proposals

The Technical Proposal will be evaluated on the basis of empanelment criteria mentioned at Clause 3.1. The proposals of the Transaction Advisors shall be ranked according to the number of projects handled by them, wherein their scope of the advisory services includes the process of (i) project structuring, (ii) Financial advisory service, (iii) Legal Advisory services and (iv) Bid process management, as a whole or any one or more of the services. Each activity will carry weightage of 0.25 work. The agencies will be ranked accordingly.

6. FRAUD AND CORRUPT PRACTICES

- 6.1 The Transaction Advisors and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Selection Process. Notwithstanding anything to the contrary contained in this RFP, the Client shall reject a Proposal without being liable in any manner whatsoever to the Transaction Advisors, if it determines that the Transaction Advisors has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice (collectively

- the “Prohibited Practices”) in the Selection Process, then the Client shall disqualify the Transaction Advisor from this Selection Process.
- 6.2 Without prejudice to the rights of the Client under Clause 6.1 hereinabove and the rights and remedies which the Client may have under the Award Letter or the Memorandum of Agreement, if an Transaction Advisor(s) is found by the Client to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Selection Process, or after the issue of the Award Letter or the execution of the Memorandum of Agreement, such Transaction Advisors shall not be eligible to participate in any tender or RFP document issued by the Client during a period of 2 (two) years from the date on which such Transaction Advisor is found by the Client to have directly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as the case may be.
- 6.3 For the purposes of this Clause, the following terms shall have the meaning hereinafter respectively assigned to them:
- (a) “corrupt practice” means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of any person connected with the Selection Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Client who is or has been associated in any manner, directly or indirectly with the Selection Process or the Award Letter or has dealt with matters concerning the Agreement or arising there from, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Client, shall be deemed to constitute influencing the actions of a person connected with the Selection Process; or (ii) engaging in any manner whatsoever, whether during the Selection Process or after the issue of the Award Letter or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Project or the Award Letter or the Agreement, who at any time has been or is a legal, financial or technical Transaction Advisor/ adviser of the Client in relation to any matter concerning the Project;
 - (b) “fraudulent practice” means a misrepresentation or omission of facts or disclosure of incomplete facts, in order to influence the Selection Process;
 - (c) “coercive practice” means impairing or harming or threatening to impair or harm, directly or indirectly, any persons or property to influence any person’s participation or action in the Selection Process;
 - (d) “undesirable practice” means (i) establishing contact with any person connected with or employed or engaged by the Client with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Selection Process; or (ii) having a Conflict of Interest; and
 - (e) “restrictive practice” means forming a cartel or arriving at any understanding or arrangement with other Applicants with the objective of restricting or manipulating a full and fair competition in the Selection Process.

7. MISCELLANEOUS

- 7.1 The Selection Process shall be governed by, and construed in accordance with, the laws of India and the Courts at Chandigarh shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with the Selection Process.
- 7.2 The Client , in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to:
- (a) suspend and/or cancel the Selection Process and/or amend and/or supplement the Selection Process or modify the dates or other terms and

- conditions relating thereto;
- (b) consult with any Transaction Advisor in order to receive clarification or further information;
- (c) retain any information and/or evidence submitted to the Client by, on behalf of and/or in relation to any Transaction Advisor; and/or
- (d) independently verify, disqualify, reject and/or accept any and all submissions or other information and/or evidence submitted by or on behalf of any Transaction Advisor.

7.3 It shall be deemed that by submitting the Proposal, the Transaction Advisor agrees and releases the Client, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/or performance of any obligations hereunder, pursuant hereto and/or in connection herewith and waives any and all rights and/or claims it may have in this respect, whether actual or contingent, whether present or future.

8. PROPOSAL DATA SHEET

Name of the Project	Selection of Transaction Advisor for Empanelment on PIDB Panel"
Name of the Client	Punjab Infrastructure Development Board (PIDB).
Name and Address for submission of Proposals	Managing Director, Punjab Infrastructure Development Board (PIDB) SCO 33-34-35, Sector 34- A, Chandigarh. www.pidb.org
Name and Address for Correspondence with Clients	Managing Director, Punjab Infrastructure Development Board (PIDB) SCO 33-34-35, Sector 34- A, Chandigarh. www.pidb.org
Processing Fee	Processing Fee of Rs. 10,000/- (Rupees Ten Thousand only) is to be submitted along with the bid.
Period of Proposal Validity	180 days from Proposal Due Date or any extension thereof, sought by the Client
Bidding Parameter	The Transaction Advisor scoring the maximum marks in the evaluation of Technical Proposal submitted according to the formulae mentioned in Clause 3
Submission of Queries	Queries are to be submitted in writing either through registered post or through email at mdpidb@gmail.com , gmpidb2010@gmail.com , gmpf.pidb@gmail.com or pidbmp@gmail.com on or before 17.05.2012 by 1500 hours
Pre-bid meeting	Pre-bid meeting will be held on <u>21.05.2012 at 12:30 Noon</u> in the Committee Room, Ground Floor, PIDB office.
Proposal Due Date	The Proposal Due Date is <u>29.05.2012 by 1500 hours</u>
Opening of Proposals	<u>29.05.2012 at 1530</u> hours in the office of PIDB
Issue of Award Letter (AWARD LETTER)	Within 15 days from the date of Declaration of Empanelment List or any extension specified by Client.
Signing of Memorandum of Agreement	Within 15 days from the date of receipt of acknowledgement of the Award Letter.

9. TECHNICAL FORMATS

APPENDIX1: COVERING LETTER

Date:

To

**Managing Director
Punjab Infrastructure Development Board (PIDB)
SCO 33-34-35,
Sector 34- A
Chandigarh.**

Subject: Selection of Transaction Advisor for Empanelment on PIDB Panel.

Dear Sir,

1. With reference to the RFP Document for the captioned Project, I/we, having examined all relevant documents and understood their contents, hereby submit our Proposal for selection as Transaction Advisor for the same. The Proposal is unconditional and unqualified.
2. Processing Fee of Rs. 10,000/- (Rupees Ten Thousand only) is attached in the form of Demand Draft no. _____, dated _____ drawn on _____ in favour of Punjab Infrastructure Development Board payable at Chandigarh.
3. All information provided in the Proposal is true and correct and all documents accompanying such Proposal are true copies of their respective originals.
4. This statement is made for the express purpose of appointment as the Transaction Advisor for the aforesaid Project.
5. I/We shall make available to the Client any additional information it may deem necessary or require for supplementing or authenticating the Proposal.
6. I/We acknowledge the right of the Client to reject our application without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.
7. I/We certify that in the last three years, we/ any of the consortium members have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial Client or a judicial pronouncement or arbitration award against the Transaction Advisor, nor have been expelled from any project or contract nor have had any contract terminated for breach on our part.
8. I/We declare that:
 - (a) I/We have examined and have no reservations to the RFP Documents, including any Addendum thereto, issued by the Client;
 - (b) I/We do not have any conflict of interest in accordance with provisions of the RFP Document;
 - (c) I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in the RFP document, in respect of any tender or request for proposal issued by or any agreement entered into with the Client or any other public sector enterprise or any government, Central or State; and
 - (d) I/We hereby certify that we have taken steps to ensure that in conformity with the provisions of the RFP, no person acting for us or on our behalf will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
 - (e) I/We hereby declare that if appointed as the Selected Transaction Advisor, all the members of our Consortium shall be jointly and severally

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liable to fulfil all the obligations enumerated in this RFP document and Agreement.

9. I/We understand that you may cancel the Selection Process at any time and that you are neither bound to accept any Proposal that you may receive nor to select the Transaction Advisor, without incurring any liability to the Transaction Advisors in accordance with the provisions of RFP document.
10. I/We declare that we/any member of the consortium, are/is not a Member of a/any other Consortium applying for Selection as a Transaction Advisor.
11. I/We certify that we have not been convicted by a Court of Law or indicted or otherwise have adverse orders passed against us by a regulatory Authority which would cast a doubt on our ability to undertake the Consultancy for the Project or which relates to a grave offence that outrages the moral sense of the community.
12. I/We further certify that in regard to matters relating to security and integrity of the country, we have not been charge-sheeted by any agency of the Government or convicted by a Court of Law for any offence committed by us or by any of our Associates.
13. I/We further certify that no investigation by a regulatory Authority is pending either against us or against our Associates or against our CEO or any of our Directors/Managers/employees.
14. I/We hereby irrevocably waive any right or remedy, which we may have at any stage at law or howsoever otherwise, arising to challenge or question any decision taken by PIDB, in connection with the selection of Transaction Advisor or in connection with the Selection Process itself in respect of the above mentioned Project.
15. I/We agree and understand that the proposal is subject to the provisions of the RFP document. In no case, shall I/we have any claim or right of whatsoever nature if the Consultancy for the Project is not awarded to me/us or our proposal is not opened or rejected.
16. I/We agree to keep this offer valid for a period of 180(One Hundred and Eighty) days or for a longer period on any further extension being sought by the Client, from the Proposal Due Date specified in the RFP.
17. In the event of my/our firm/ consortium being selected as the Transaction Advisor, I/we agree to enter into an Agreement in accordance with the provisions of the RFP. We agree not to seek any changes in the aforesaid form and agree to abide by the same.
18. I/We have studied the RFP and all other documents carefully and also surveyed the Project site. We understand that except to the extent as expressly set forth in the Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Client or in respect of any matter arising out of or concerning or relating to the Selection Process including the award of Consultancy.
19. I/We agree and undertake to abide by all the terms and conditions of the RFP Document. In witness thereof, I/we submit this Proposal under and in accordance with the terms of the RFP Document.

Yours faithfully,

(Signature, name and designation of the Authorised Signatory)

(Name and seal of the Transaction Advisor / Lead Member)

Appendix2: Power of Attorney for Authorised Signatory

(On a Stamp Paper of relevant value)

POWER OF ATTORNEY

Know all men by these presents, we _____ (name and address of the registered office) do hereby constitute, appoint and authorize Mr. /Ms. _____ (name and address of residence) who is presently employed with us and holding the position of _____ as our attorney, to do in our name and on our behalf, all such acts, deeds and things necessary in connection with or incidental to our Proposal for the Project.

We hereby agree to ratify all acts, deeds and things lawfully done by our said attorney pursuant to this Power of Attorney and that all acts deeds and things done by our aforesaid attorney shall and shall always be deemed to have been done by us.

Executant
Signature of Attorney
(Name, Title and Address of the Attorney)

Attested

Executant

Notes:

1. To be executed by the sole Bidder.
2. The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executants (s) and when it is so required the same should be under common seal affixed in accordance with the required procedure.
3. Also, where required, the executants(s) should submit for verification the extract of the charter documents and documents such as a resolution / power of attorney in favour of the Person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.

APPENDIX3: Letter of Undertaking

Date:

To

**Managing Director
Punjab Infrastructure Development Board (PIDB)
SCO 33-34-35,
Sector 34- A
Chandigarh.**

Subject: Selection of Transaction Advisor for Empanelment on PIDB Panel.

We hereby agree and undertake as under:

- (i) That, notwithstanding any conditions, whether implied or mentioned in our Technical Proposal, we agree to the terms and conditions as contained in the RFP document provided to us.
- (ii) That if empanelled and for the specific project (s) mandated to us, we/our affiliates/ consortium members will not bid for the same project (s) and / or rate the proposed project (s).

We hereby represent and confirm that our proposal is unconditional.

Dated this..... Day of..... 2012

Name of the Transaction Advisor

Signature of the Authorized Person

Name of the Authorized Person

APPENDIX 4 : Experience of Transaction Advisory Services

Sr. No.	Name of the Project	Certificate Attached	Infrastructure Sector	Infrastructure Sector as per Schedule I of PIDB Act	Status of Advisory services either Completed or Ongoing
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					

1. Client Certificate must be provided for experience, wherein it should be clearly stated the scope of the advisory services i.e the bidder was involved in the process of (i) project structuring, (ii) Financial advisory service, (iii) Legal Advisory services and (iv) Bid process management, as in clause 5. Self Certification by the Transaction Advisor shall not be admissible.
2. Bidder shall give adequate number of projects wherein they have provided the advisory services i.e (i) Project structuring, (ii) Financial advisory services, (iii) Legal Advisory services and (iv) Bid process management, as a whole or any one or more of the services.
3. The four activities as given above, i.e (i) Project structuring, (ii) Financial advisory services, (iii) Legal Advisory services and (iv) Bid process management, will carry weightage of 0.25 work per activity. Accordingly, the bidder ranking higher marks will be empanelled by PIDB.
4. Additional paper may be used for more projects.
5. Applicants are advised to give details of the completed transaction advisory of all the projects handled by them. The Transaction Advisors will be ranked on the basis of cumulative number of projects handled by them.

10. TERMS OF REFERENCE (TOR)

I. Role of Transaction Advisor

The Transaction Advisor shall:

- i. Contribute the requisite technical, financial, legal and managerial resources to undertake project identification, development and implementation. Project identification, development and implementation activities of various projects shall be carried out in consonance with the provisions of PIDRA, 2002 and would comprise activities (ii) to (xii) below.
- ii. Coordinate with PIDB and various Public Infrastructure Agencies of Government of Punjab to identify and develop projects in the infrastructure sectors concerning such Public Infrastructure Agencies.
- iii. Help structure projects to enable recovery of the investments made in such projects through innovative business and commercial practices such as commercial sale of real estate, levy of user charges/ fee/ toll, facilitating financial contribution under the various schemes of Government of India and exploitation of development rights/ concessions etc., as appropriate under the applicable laws.
- iv. Proactively market the structured projects to potential investors, both domestic and foreign, at appropriate stages.
- v. Structure and market the projects in such a manner that various forms of aid, grant etc. from the Government of India, national and international institutions etc. can flow into the projects.
- vi. Assist in providing all services including inter alia, selection of technical consultants, concessionaires, independent engineers etc. and preparation, scrutiny, legal vetting & certification of essential documents including bid documents, contracts, bank guarantees etc..
- vii. Propose institutional structures required for implementation of projects and operation & maintenance thereof with private sector financing and recommend a suitable project management agency for the purpose of ensuring that the project is structured and executed in line with the specifications as stipulated in the Detailed Feasibility and Investment Banking Report (DFIBR) and / Techno Economic Feasibility Report (TEFR) or other appropriate report.
- viii. Assist PIDB and Public Infrastructure Agencies of Government of Punjab in establishing eligibility, if possible, of the projects for financial assistance of World Bank/Asian Development Bank/ other multilateral and bilateral agencies.
- ix. Project monitoring activities and related consultancy services during the execution/ construction period of the project.
- x. Establish an office in Chandigarh, by making available essential office equipment including computers, fax, telephone, documents, data and other essential resources and posting personnel having appropriate qualifications to man the office. The minimum number, qualifications and experience of the described personnel to be posted in the office has been described in Annexure A of the MOA. Such office shall be used by the Transaction Advisor as its common platform for rendering services in respect of all the projects which may eventually become a subject matter of the

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Memorandum of Agreement, to be signed between PIDB and the successful Transaction Advisor.

- xi. If desired by PIDB, mobilize financial resources for the projects on behalf of the operator/ contractor/ State Government or a Special Purpose Vehicle established for the project. The terms and conditions for this role of Transaction Advisor shall be finalized separately.
- xii. The Transaction Advisor will prepare the Terms of Reference (TOR) of the projects for which the bids will be called from the panel of Transaction Advisors of PIDB. The Transaction Advisor will have to prepare the TOR on rotation basis. However, where PIDB feels that the preparation of TOR by any of the empanelled Transaction Advisors gives advantageous position, PIDB will prepare the TOR on its own.

II. Minimum number of Personnel to be posted by the Transaction Advisor in the Chandigarh office –

Sr.No.	Description	Qualifications	Experience
1	Three professionally qualified persons	Preferably having qualification/ specialisation in three separate functional areas like engineering, finance, law etc., which are relevant for project development work.	Atleast 5 years of relevant work experience for the team leader and atleast 3 years of relevant work experience for the other two persons.
2	Appropriate support staff to the satisfaction of PIDB	--	--

(or appropriate substitutes with the consent of PIDB)

III. Allocation of Projects amongst the panel of Transaction Advisors

For the allocation of projects, amongst the panel of transaction advisors, project specific terms of reference shall be prepared by PIDB and provided to the empanelled transaction advisors. PIDB shall carryout Cost Based Selection (CBS) i.e. on the basis of the laid down terms and conditions, the transaction advisors shall submit its financial proposal and the transaction advisor quoting the lowest financial quote will be selected for the project. Fee will be released as per the payment schedule defined in the project specific Terms of Reference (TOR).

However, it is being clarified here that in the project allocation process, the "First Right of Refusal" shall be given to the Transaction Advisor who has identified the project. However, if the difference in the financial bid of the Transaction Advisor who has identified the project and the L1 bidder is more than 25%, the project will be mandated to the L1 bidder.

IV. Technical Consultants

The parties to this MoA may decide to engage external technical consultants having expertise/ specialization in various areas/ subjects and for carrying out the detailed feasibility studies, preparation of Detailed Project Report/s etc., which may be considered essential during the course of development and implementation of projects. The Transaction Advisor will assist PIDB in selection and appointment of the External Technical Consultant(s). Project specific Technical Consultant/s, will be hired through open and competitive bidding process. In pursuance of mutual

decision taken under this provision, PIDB shall enter into appropriate contractual arrangement with such consultants in terms of Sections 20(4)(v), 23(5) and 31 of the Act and directly make payments to such consultants. PIDB shall not be under any obligation to route the payments of consultants through the Transaction Advisor and PIDB shall be at liberty to follow its applicable rules and procedures for the selection of consultants.

V. Fees and payment structure

Towards consideration for the role performed by it in pursuance of clause 1 (i) to (xii) of the TOR above, the Transaction Advisor shall be entitled to receive from PIDB, professional fees on the following basis:

(a) Monthly Retainership fees

(i) Monthly Retainership Fees at the rate of Rs. 1 lakh (Rupees one Lakh) per month will be paid by PIDB to the Transaction Advisor for performing its role. With this Retainership Fee, the Transaction Advisor is required to establish an office in Chandigarh and continuously carry out project identification and development activities by deploying dedicated man power. The monthly retainership fees shall become payable at the first instance from the date of signing of this MoA and shall be continuously paid till the expiry/ early termination of this MoA.

(b) **Project Development Fees** The Project Development Fees shall be as per the financial proposal submitted by the Transaction Advisor for particular project (s) and as per payment schedule defined in the project specific ToR.

(c) Success Fees

- i. The Success Fee will be paid to the Transaction Advisor for any private sector investment, which could either be in the form of equity, debt or any other form of private investment brought into the project. Further the Success Fee shall not be paid on Viability Gap Funding or Grant payable by the State or Central Government.
- ii. The Success Fee shall be paid to the Transaction Advisor as percentage of private sector investment/ finance attracted into any particular infrastructure project, on the following slab rates:

For investment upto Rs 10 Crores	:1%
For investment above Rs 10 Crores & upto Rs 50 Crores	: 0.50%
For investment above Rs 50 Crores & upto Rs 100 Crores	: 0.20%
For investment above Rs 100 Crores & upto Rs 200 Crores	: 0.15%
For investment above Rs 200 Crores & upto Rs 500 Crores	: 0.10%
For investment above Rs 500 Crores	: 0.05%

Illustrative Examples:-

S.No.	Project and Private Investment	Project and Private Investments	
1	For a project involving of Rs. 9 crore as private investments	Rs. 9 lakhs @ 1%	
2	For a project involving of Rs. 40 crores as private investments	i. For first 10 crores @ 1% : ii. For remaining 30 crores @ 0.5%: Total:	Rs. 10 Lakhs Rs. 15 Lakhs Rs. 25 Lakhs
3	For a project involving of Rs. 80 crores as private investments	i. For first 10 crores @ 1% : ii. For 10 to 50 crores @ 0.5% iii. For remaining 30 crores @ 0.2%: Total:	Rs. 10 Lakhs Rs. 20 Lakhs Rs. 06 Lakhs Rs. 36 Lakhs
4	For a project involving of Rs. 190 crores as private investments	i. For first 10 crores @ 1% : ii. For 10 to 50 crores @ 0.5% iii. For 50 to 100 crores @ 0.2%: iv. For remaining 90 crores @ 0.15%: Total:	Rs. 10 Lakhs Rs. 20 Lakhs Rs. 10 Lakhs Rs. 13.50 Lakhs Rs. 53.50 Lakhs
5	For a project involving of Rs. 450 crores as private investments	i. For first 10 crores @ 1% : ii. For 10 to 50 crores @ 0.5% iii. For 50 to 100 crores @ 0.2%: iv. For 100 to 200 crores @ 0.15%: v. For remaining 250 crores @ 0.10%: Total:	Rs. 10 Lakhs Rs. 20 Lakhs Rs. 10 Lakhs Rs. 15 Lakhs Rs. 25 Lakhs Rs. 80 Lakhs
6	For a project involving of Rs. 700 crores as private investments	i. For first 10 crores @ 1% : ii. For 10 to 50 crores @ 0.5% iii. For 50 to 100 crores @ 0.2%: iv. For 100 to 200 crores @ 0.15%: v. For 200 to 500 crores @ 0.10%: vi. For remaining 200 crores @ 0.05%: Total:	Rs. 10 Lakhs Rs. 20 Lakhs Rs. 10 Lakhs Rs. 15 Lakhs Rs. 30 Lakhs Rs. 10 Lakhs Rs. 95 Lakhs

Success Fee shall be paid as per the following schedule:

Milestone	%age of Success Fee to be paid
Upon issuance of Notice of Award/ Letter of Intent :	25%
Upon signing of the Concession Agreement :	50%
Upon achieving Financial Closure :	10%
Upon start of construction :	10%
Upon construction completion of the project :	5%

VI. Validity of the Panel

The Panel of Transaction Advisor shall be valid for a period of 2 (two) years, but the same can also be terminated earlier by either party without disclosing any reason, by giving one months' prior written notice to the other party.

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (MoA) executed on this _____ **(To be filled)** ___ day of **(To be filled)**, 2012 at Chandigarh.

Between

The Punjab Infrastructure Development Board, a statutory body incorporated in pursuance of the provisions of the Punjab Infrastructure (Development & Regulation) Act, 2002 hereinafter referred to as “**PIDB**”, which expression shall unless repugnant to the context thereof, include its successors and assigns of the first part.

And

(To be filled) _____, a company registered under the Companies Act, 1956, having its Registered Office at _____ **(To be filled)** _____, hereinafter referred to as “**Transaction Advisor**”, which expression shall unless repugnant to the context thereof, include its successors and assigns of the second part. Here, the term “**Transaction Advisor**” means the consortium empanelled by the DEA, Government of India.

WHEREAS

- A. PIDB is the nodal agency of the Government of Punjab (GoP) for co-coordinating all efforts of GoP regarding the development of infrastructure projects, involving private participation in its various forms and funding from sources other than those provided by the State budget.
- B. The Transaction Advisor has been empanelled with an objective, inter alia, of developing infrastructure projects on Public Private Partnership (PPP) basis with funding from private sector. The Transaction Advisor is in a position to identify infrastructure projects in the State of Punjab which can be viably funded by the private sector and undertake project development process for selecting prospective concessionaires for implementing and financing such infrastructure projects.
- C. PIDB is in the process of creating conducive framework in the State of Punjab for attracting private sector investments in infrastructure projects. Further, PIDB is desirous of developing and augmenting its competencies in the area of project identification, development and implementation, to create state-of-the art infrastructure projects by attracting and facilitating private sector financing.
- D. The Transaction Advisor has offered to provide and PIDB in pursuance of the decision taken by the Executive Committee of PIDB has agreed to engage the Transaction Advisor in terms of Section 20(4)(v) of the Punjab Infrastructure (Development & Regulation) Act, 2002 (hereinafter referred as the “Act”) for making available its support and services to PIDB and various Public Infrastructure Agencies of Punjab, as defined in the Act for undertaking identification, development and implementation of various infrastructure projects in the State by private sector financing.

Now therefore, PIDB has entered into this MoA with the Transaction Advisor to facilitate the process of project identification, development and implementation by private sector financing.

1. Role of Transaction Advisor

The Transaction Advisor shall:

- i. Contribute the requisite technical, financial, legal and managerial resources to undertake project identification, development and implementation. Project identification, development and implementation activities of various projects shall be carried out in consonance with the provisions of PIDRA, 2002 and would comprise activities (ii) to (xii) below.
- ii. Coordinate with PIDB and various Public Infrastructure Agencies of Government of Punjab to identify and develop projects in the infrastructure sectors concerning such Public Infrastructure Agencies.
- iii. Help structure projects to enable recovery of the investments made in such projects through innovative business and commercial practices such as commercial sale of real estate, levy of user charges/ fee/ toll, facilitating financial contribution under the various schemes of Government of India and exploitation of development rights/ concessions etc., as appropriate under the applicable laws.
- iv. Proactively market the structured projects to potential investors, both domestic and foreign, at appropriate stages.
- v. Structure and market the projects in such a manner that various forms of aid, grant etc. from the Government of India, national and international institutions etc. can flow into the projects.
- vi. Assist in providing all services including inter alia, selection of technical consultants, concessionaires, independent engineers etc. and preparation, scrutiny, legal vetting & certification of essential documents including bid documents, contracts, bank guarantees etc..
- vii. Propose institutional structures required for implementation of projects and operation & maintenance thereof with private sector financing and recommend a suitable project management agency for the purpose of ensuring that the project is structured and executed in line with the specifications as stipulated in the Detailed Feasibility and Investment Banking Report (DFIBR) and / Techno Economic Feasibility Report (TEFR) or other appropriate report.
- viii. Assist PIDB and Public Infrastructure Agencies of Government of Punjab in establishing eligibility, if possible, of the projects for financial assistance of World Bank/Asian Development Bank/ other multilateral and bilateral agencies.
- ix. Project monitoring activities and related consultancy services during the execution/ construction period of the project.
- x. Establish an office in Chandigarh, by making available essential office equipment including computers, fax, telephone, documents, data and other essential resources and posting personnel having appropriate qualifications to man the office. The minimum number, qualifications and experience of the described personnel to be posted in the office has been described in Annexure A of the MOA. Such office shall be used by the Transaction Advisor as its common platform for rendering services in respect of all the projects which may eventually become a subject matter of the Memorandum of Agreement, to be signed between PIDB and the successful Transaction Advisor.

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- xi. If desired by PIDB, mobilize financial resources for the projects on behalf of the operator/ contractor/ State Government or a Special Purpose Vehicle established for the project. The terms and conditions for this role of Transaction Advisor shall be finalized separately.
- xii. The Transaction Advisor will prepare the Terms of Reference (TOR) of the projects for which the bids will be called from the panel of Transaction Advisors of PIDB. The Transaction Advisor will have to prepare the TOR on rotation basis. However, where PIDB feels that the preparation of TOR by any of the empanelled Transaction Advisors gives advantageous position, PIDB will prepare the TOR on its own.

2. Role of PIDB

- i. Coordinate with GoP, its departments, agencies and Public Infrastructure Agencies for specific project development work undertaken by the Transaction Advisor and to facilitate the decisions and approvals from GoP on issues such as project clearances, project agreements and fiscal concessions, if required.
- ii. Contribute the skills and resources of its Project Management Team, in-house professional and other manpower available with the Public Infrastructure Agencies of Punjab, as required for specific projects.
- iii. Compensate the Transaction Advisor in accordance with the terms and conditions of this MoA.
- iv. To invite the representatives of the Transaction Advisor as “special invitee” for enabling them to express their views and take note of the discussions/ decisions pertaining to the projects which are a subject matter of this MoA, in the meetings of the Board, Executive Committee, Technical Committee, Sectoral Sub-Committee, Project Implementation Sub-Committee etc., as may be constituted by the Board in terms of the provisions of the Act.
- v. To provide requisite information to the Transaction Advisor, as may be required by it from time to time, provided the same is available with PIDB or any Public Infrastructure Agency of Punjab.
- vi. PIDB shall not be bound to call for financial bids only from the empanelled transaction advisors. In case of some specialized project, PIDB will be free to invite offers for transaction advisory through open bidding from the complete list of transaction advisors of DEA.

3A. Allocation of Projects amongst the Panel of Transaction Advisors

For the allocation of projects, amongst the panel of transaction advisors, project specific terms of reference shall be prepared by PIDB and provided to the empanelled transaction advisors. PIDB shall carryout Cost Based Selection (CBS) i.e. on the basis of the laid down terms and conditions, the transaction advisors shall submit its financial proposal and the transaction advisor quoting the lowest financial quote will be selected for the project. Fee will be released as per the payment schedule defined in the project specific Terms of Reference (TOR).

However, it is being clarified here that in the project allocation process, the “**First Right of Refusal**” shall be given to the Transaction Advisor who has identified the project. However, if the difference in the financial bid of the Transaction Advisor who has identified the project and the L1 bidder is more than 25%, the project will be mandated to the L1 bidder.

3B. Fees and payment structure

Towards consideration for the role performed by it in pursuance of clause 1 (i) to (xii) of the MOA above, the Transaction Advisor shall be entitled to receive from PIDB, professional fees on the following basis:

(b) Monthly professional fees

(i) Monthly Retainership Fees at the rate of Rs. 1 lakh (Rupees one Lakh) per month will be paid by PIDB to the Transaction Advisor for performing its role. With this Retainership Fee, the Transaction Advisor is required to establish an office in Chandigarh and continuously carry out project identification and development activities by deploying dedicated man power. The monthly retainership fees shall become payable at the first instance from the date of signing of this MoA and shall be continuously paid till the expiry/ early termination of this MoA.

(b) Project Development Fees The Project Development Fees shall be as per the financial proposal submitted by the Transaction Advisor for particular project (s) and as per payment schedule defined in the project specific ToR.

(c) Success Fees

- i. The Success Fee will be paid to the Transaction Advisors for any private sector investment, which could either be in the form of equity, debt or any other form of private investment brought into the project. Further the Success Fee shall not be paid on Viability Gap Funding or Grant payable by the State or Central Government.
- ii. The Success Fee shall be paid to the Transaction Advisors as percentage of private sector investment/ finance attracted into any particular infrastructure project, on the following slab rates:
 - (a) For investment upto Rs 10 Crores :1%
 - (b) For investment above Rs 10 Crores & upto Rs 50 Crores : 0.50%
 - (c) For investment above Rs 50 Crores & upto Rs 100 Crores : 0.20%
 - (d) For investment above Rs 100 Crores & upto Rs 200 Crores : 0.15%
 - (e) For investment above Rs 200 Crores & upto Rs 500 Crores : 0.10%
 - (f) For investment above Rs 500 Crores : 0.05%

Illustrative Examples:-

S.No.	Project and Private Investment	Project and Private Investments	
1	For a project involving of Rs. 9 crore as private investments	Rs. 9 lakhs @ 1%	
2	For a project involving of Rs. 40 crores as private investments	i. For first 10 crores @ 1% : ii. For remaining 30 crores @ 0.5%: Total:	Rs. 10 Lakhs Rs. 15 Lakhs Rs. 25 Lakhs
3	For a project involving of Rs. 80 crores as private investments	i. For first 10 crores @ 1% : ii. For 10 to 50 crores @ 0.5% iii. For remaining 30 crores @ 0.2%: Total:	Rs. 10 Lakhs Rs. 20 Lakhs Rs. 06 Lakhs Rs. 36 Lakhs

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4	For a project involving of Rs. 190 crores as private investments	i. For first 10 crores @ 1% : ii. For 10 to 50 crores @ 0.5% iii. For 50 to 100 crores @ 0.2%: iv. For remaining 90 crores @ 0.15%: Total:	Rs. 10 Lakhs Rs. 20 Lakhs Rs. 10 Lakhs Rs. 13.50 Lakhs Rs. 53.50 Lakhs
5	For a project involving of Rs. 450 crores as private investments	i. For first 10 crores @ 1% : ii. For 10 to 50 crores @ 0.5% iii. For 50 to 100 crores @ 0.2%: iv. For 100 to 200 crores @ 0.15%: v. For remaining 250 crores @ 0.10%: Total:	Rs. 10 Lakhs Rs. 20 Lakhs Rs. 10 Lakhs Rs. 15 Lakhs Rs. 25 Lakhs Rs. 80 Lakhs
6	For a project involving of Rs. 700 crores as private investments	i. For first 10 crores @ 1% : ii. For 10 to 50 crores @ 0.5% iii. For 50 to 100 crores @ 0.2%: iv. For 100 to 200 crores @ 0.15%: v. For 200 to 500 crores @ 0.10%: vi. For remaining 200 crores @ 0.05%: Total:	Rs. 10 Lakhs Rs. 20 Lakhs Rs. 10 Lakhs Rs. 15 Lakhs Rs. 30 Lakhs Rs. 10 Lakhs Rs. 95 Lakhs

Success Fee shall be paid as per the following schedule:

Milestone	%age of Success Fee to be paid
Upon issuance of Notice of Award/ Letter of Intent :	25%
Upon signing of the Concession Agreement :	50%
Upon achieving Financial Closure :	10%
Upon start of construction :	10%
Upon construction completion of the project :	5%

It has been agreed between the parties to this MoA that the financial liability of PIDB on account of any fees payable to the Transaction Advisor in pursuance of this MoA shall be limited to the maximum extent of the amounts or percentages specified in Clause 3 above. However, it has been specifically agreed between the parties that the Monthly Retainership Fee and Success Fee shall be exclusive of Service Tax. It has been further agreed between the parties that PIDB shall not pay or reimburse any amount to the Transaction Advisor towards any out of pocket expenses or costs incurred by it on stationary, communication, traveling to any destination within India and such expenses/ costs shall be met by the Transaction Advisor out of its monthly professional fee. All payments to the Transaction Advisor shall be made by PIDB after deducting income tax at source, at the rate(s) prevailing from time to time.

4. Technical Consultants

The parties to this MoA may decide to engage external technical consultants having expertise/ specialization in various areas/ subjects and for carrying out the detailed feasibility studies, preparation of Detailed Project Report/s etc., which may be considered essential during the course of development and implementation of projects. The Transaction Adviser will assist PIDB in selection and appointment of the External Technical Consultant(s). Project specific Technical Consultant/s, will be hired through open and competitive bidding process. In pursuance of mutual decision taken under this provision, PIDB shall enter into appropriate contractual arrangement with such consultants in terms of Sections 20(4)(v), 23(5) and 31 of the Act and directly make payments to such consultants. PIDB shall not be under any obligation to route the payments of consultants through the Transaction Advisor and PIDB shall be at liberty to follow its applicable rules and procedures for the selection of consultants.

5. Validity

This MoA is valid for a period of two years from the date of signing, but the same can also be terminated earlier by either party without disclosing any reason, by giving one months' prior written notice to the other party, of its intention to terminate the MoA. During the validity of the MoA, PIDB and the Transaction Advisor will take effective steps for the implementation of the provisions of this MoA. Any act on the part of PIDB and the Transaction Advisor after termination of this MoA by way of communication, correspondence etc., shall not be construed as an extension or revival of validity of this MoA. In the event of early termination of this MoA for any reason, only such amount(s) of monthly retainership fee, monthly project development fee and the success fee at the agreed rates as per this MOA, shall be paid by PIDB to the Transaction Advisor, which have become payable to the Transaction Advisor till the date of termination of MoA.

6. Non-Exclusive Arrangement

- i. The understanding or the arrangement contained in this MoA is on a non-exclusive basis. Irrespective of the signing of this MoA, PIDB shall be free to enter into similar arrangements with other Transaction Advisors or Consultants in respect of projects which are not a subject matter of this MoA. In the event of termination of this MoA, PIDB may engage some other Transaction Advisor to carry forward the work for the development and implementation of the project(s), which might have been left incomplete by the Transaction Advisor engaged in pursuance of this MoA.
- ii. The Transaction Advisor shall be free to pursue any of its interests in other States. The Transaction Advisor shall also be free to pursue its interests in the State of Punjab and for this purpose to enter into other agreements for specific projects, provided however that such projects are not capable of being brought within the purview of the present MoA.

7. Intellectual Property

All intellectual property rights in the documents, designs, drawings, contracts etc. generated in relation to the projects forming a subject matter of this MoA, shall be transferred by the Transaction Advisor to PIDB. PIDB or the concerned Public Infrastructure Agencies of Punjab shall be free to use such intellectual property for any of their projects.

8. Amendment/ Waiver

No amendment, modification or waiver of any provision of this MoA shall in any event be effective unless the same has been made in writing and signed by a duly authorized officer of each of the parties, and approved in writing by other and any waiver or consent shall be effective only in the specific instance and for the specified purpose for which it is given.

9. Notices

Except as otherwise expressly provided in this MoA, all notices or other communications which are required or permitted hereunder shall be in writing and shall be sufficient if delivered personally or by registered post or courier as follows:

If to PIDB : Managing Director, PIDB
SCO 33-34-35, Sector 34-A, Chandigarh – 160022

If to Transaction Advisor : (To be filled)

10. Entire Agreement

This MoA contains the entire understanding between the parties. Any prior understanding between the parties, verbal discussions, correspondence, minutes of meetings or other documents would not affect or modify the understanding of the parties as recorded in this MoA.

11. Governing Law

This MoA shall be governed and construed in accordance with the substantive laws of India. The project identification, development and implementation activities in pursuance of this MoA shall be carried out in consonance with the provisions of the Punjab Infrastructure (Development & Regulation) Act, 2002.

12. Interpretation

The various headings appearing in this MoA are only for the sake of convenience and shall not affect the interpretation of the subject matter of various clauses of this MoA.

13. Dispute Resolution

- i. If any dispute or difference of any kind whatsoever arises between the parties in connection with or arising out of or relating to or under this MoA, the parties shall promptly and in good faith negotiate with a view to its amicable resolution and settlement. In the event no amicable resolution or settlement is reached within a period of thirty (30) days from the date on which the above-mentioned dispute or difference arose, such dispute or difference shall be finally settled by arbitration. The arbitral tribunal shall consist of a sole arbitrator appointed by mutual agreement of the parties. In case of failure of the parties to mutually agree on the name of a sole arbitrator, the arbitral tribunal shall consist of three arbitrators. Each party shall appoint one arbitrator and the two arbitrators so appointed shall jointly appoint the third arbitrator. The seat of arbitration shall be Chandigarh and the arbitration shall be conducted in the English language. The Arbitration and Conciliation Act, 1996 shall govern the arbitral proceedings. The arbitral tribunal shall render its award within a period of 45 days from the date of commencement of arbitration proceedings and the award rendered by the arbitral tribunal shall be final and binding on the parties.
- ii. Any unresolved dispute or difference or the initiation or continuance of the arbitral proceedings shall not be a cause for postponing or delaying the performance by the parties of their respective obligations under or pursuant to this MoA. Further, this MoA shall remain subsisting and operative during the arbitral proceedings and no payment due and payable to the Transaction Advisor shall be withheld, except the payment in dispute, if any.

14. Miscellaneous

- i. At all times after the date hereof, the parties shall execute all such documents, enter into additional writings and do such acts and things as may reasonably be required for the purpose of giving full effect to this MoA.
- ii. Each party shall indemnify and keep indemnified the other party from and against all consequences and liabilities arising out of or in any way connected with the indemnifying party's negligence, fault, nuisance, breach of this MoA and failure to perform its obligations under this MoA, except to the extent that the same is attributable to a negligent or willful act or omission of the party seeking to be indemnified.

Empanelment of Transaction Advisor for undertaking Projects under PPP format

- iii. If any provision of this MoA is declared to be invalid, unenforceable or illegal by any competent arbitral tribunal or court, such invalidity, non-enforceability or illegality shall not prejudice or affect the remaining provisions of this MoA and the same shall continue in full force and effect.

IN WITNESS WHEREOF the parties hereto have put their respective hands on the day and date first above mentioned

Signed, sealed and delivered by

Signed, sealed and delivered by

(Managing Director)

For and on behalf of PIDB

For and on behalf of Transaction
Advisor

Place: Chandigarh

Date: **(To be filled)** _

Witnesses:-

- 1.
- 2.

ANNEXURE A of MOA

Personnel to be posted by the Transaction Advisor in the Chandigarh office

Sr.No.	Description	Qualifications	Experience
1.	Three professionally qualified persons	Preferably having qualification/ specialisation in three separate functional areas like engineering, finance, law etc., which are relevant for project development work.	Atleast 5 years of relevant work experience for the team leader and atleast 3 years of relevant work experience for the other two persons.
2.	Appropriate support staff to the satisfaction of PIDB	--	--

(or appropriate substitutes with the consent of PIDB)

**PUNJAB GOVT.GAZ.(EXTRA), JULY 9, 2002
(ASAR 18, 1924 SAKA)**

Schedule I: Infrastructure Sectors

[See section 2(15)]

1. Information Technology related infrastructure.
2. Transportation – Roads, bridges, road transport and related areas, for the benefit of public including agricultural community.
3. Urban /Rural infrastructure including*:-
 - (i) water supply and sewerage;
 - (ii) sewerage and waste water drainage, disposal and treatment;
 - (iii) internal roads, streets and street lighting;
 - (iv) solid waste management;
 - (v) parks and grounds; and
 - (vi) urban mass transit system;
 - (vii) public parking related facilities/multilevel parking; and
 - (viii) sports and recreational infrastructure
4. Industrial estates, Industrial parks, Modern Industrial Townships and Special Economic Zones.
5. Irrigation drainage and flood control infrastructure.
6. Other agricultural infrastructure, including post-harvest facilities like warehousing facilities, cold chains, grading processing and marketing.
7. Medical and health care facilities and Medical Research and Education facilities.
8. Tourism related facilities and infrastructure including cultural, historic, heritage and museum facilities.
9. Energy including generation, transmission and distribution infrastructure, fuels, new and renewable sources of energy.
10. Education infrastructure including technical education.
11. Environment and pollution control infrastructure including effluent treatment plants.
12. Omitted*
13. Civil Aviation including airports, flying clubs, aviation training institutes, airport city side development, airport aviation & non-aviation facilities.
14. Social reform infrastructure including*:-
 - (a) social reform infrastructure including prisons. Juvenile Homes, Social Reformatory institute and other Correctional Facilities;
 - (b) social service infrastructure including better/IT enabled administration of birth and death certificates, registration of marriages, vehicle registration, driving licenses, pensions, rehabilitation of widows and aged persons, utility bills, ration cards & identification cards and other public services; and
 - (c) other social infrastructure on Public Private Partnership mode including slum rehabilitation, Economically weaker sections housing facilities, old age homes, orphanages and day care facilities
15. Omitted*
16. Governances infrastructure including judicial / administrative building and housing facilities.

* *In terms of amendments vide Govt. notification no. S.O. 14/P.A. 8/2002.Ss 2 and 53/2011 dated 21.02.2011 published in the official gazette on 22.02.2011*