

# **DRAFT CONTRACT AGREEMENT**

**Between**

**Punjab Infrastructure Development Board**

**SCO 89-90**

**Sector 34-A, Chandigarh**

**AND**

**M/s**

**For**

**Consultancy Services**

**for**

**Preparation of Detailed Project Reports**

**for**

**High Level Bridges**

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## **CONTRACT FOR CONSULTANTS' SERVICES**

This CONTRACT (hereinafter called the "Contract") is made on the \_\_\_\_\_ day of the month of \_\_\_\_\_ 2008, by and between,

**Punjab Infrastructure Development Board** incorporated under the Punjab Infrastructure (Development & Regulation) Act, 2002, acting through its Managing Director, hereinafter referred to as "**PIDB**" or "**Client**" (which expression shall unless the context otherwise requires include its successors and assigns)

### **And**

M/s \_\_\_\_\_, a Company incorporated under the Companies Act, 1956 and having its registered office at \_\_\_\_\_ (hereinafter referred to as the "**Consultant**" which expression shall, unless the context otherwise requires, include its successors and permitted assigns) through \_\_\_\_\_ who has been duly authorized by way of Resolution dated \_\_\_\_\_.

### **WHEREAS**

- A) Punjab Infrastructure Development Board on behalf of Government of Punjab (GoP), Public Works Department (Buildings & Roads Branch), through a transparent competitive single stage bid process, has appointed Consultant for providing Consultancy Services for preparation of Detailed Project Report for the Construction of High Level Bridges (hereinafter referred to as "Project") which at includes:
  - 1. High Level Bridge across river Sutlej at Makhu
  - 2. High Level Bridge across river Sutlej at Sarai Ka Pattan
  - 3. High Level Bridge across river Beas on road between Sultanpur Lodhi and Chola Sahib
- B) The Client has requested the Consultant to provide consulting services as defined in the Conditions attached to this Contract (hereinafter called the "Services");
- C) The Consultant, having represented to the Client that they have the required professional skills, personnel and technical resources and also, agreed to provide the Services on the terms and conditions set forth in this Contract;

NOW THEREFORE the parties hereto hereby agree as follows:

- 1. The following documents attached hereto shall be deemed to form an integral part of this Contract:
  - (a) The Conditions of Contract
  - (b) The following Appendices:
    - Appendix I:* Terms of reference containing, inter-alia, the Description of the Services and Reporting Requirements
    - Appendix II:* Consultants' Sub consultants, Key Personnel and Sub Professional Personnel, Task assignment, work programme, manning schedule, qualification requirements of key personnel and schedule for submission of various reports for each Bridge.
    - Appendix III:* Copy of Letter of Acceptance
    - Appendix IV:* Format of Bank Guarantee for Advance Payment
- 2. The mutual rights and obligations of the Client and the Consultant shall be as set forth in the Contract; in particular:
  - (a) the Consultant shall carry out the Services in accordance with the provisions of the Contract; and
  - (b) the Client shall make payments to the Consultant in accordance with the provisions of the Contract.

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

***FOR AND ON BEHALF OF***  
***(Punjab Infrastructure Development Board)***

***Witness***

By  
Authorized Representative

1.     Signature  
          Name  
          Address

2.     Signature  
          Name  
          Address

***FOR AND ON BEHALF OF***  
***(Consultant)***

***Witness***

By  
Authorized Representative

1.     Signature  
          Name  
          Address

2.     Signature  
          Name  
          Address

## **CONDITIONS OF CONTRACT**

### **1. GENERAL PROVISIONS**

#### ***1.1. Definitions***

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

- (a) **“Applicable Law”** means all laws which are applicable to the Project and/ or the Consultant extending to the State of Punjab, having been enacted or brought into force by Government of India or Government of Punjab including regulation and rules made thereunder and judgments, decree, injunction and order of any Court of record or may be in force and effective during the subsistence of this Agreement;
- (b) **“Consultant”** means M/s \_\_\_\_\_
- (c) **“Contract”** means the Contract signed by the Parties, to which these Conditions of Contract are attached, together with all the documents listed in the signed Contract;
- (d) **“Effective Date”** means the date on which this Contract comes into force and effect pursuant to Clause 2.1;
- (e) **“Government”** means the Government of Punjab;
- (f) **“Personnel”** means persons hired by the Consultant or by any Sub-consultant as employees and assigned to the performance of the Services or any part thereof;
- (g) **“Party”** means the Client or the Consultant, as the case may be, and Parties means both of them;
- (h) **“Services”** means the work to be performed by the Consultant pursuant to this Contract for the purposes of the Project, as described in Appendix I hereto;
- (i) **“Sub-consultant”** means any entity to which the Consultant subcontract any part of the Services;
- (j) **“Third Party”** means any person or entity other than the Government, the Client, the Consultant or a Sub-consultant.

#### ***1.2. Relation between the Parties***

Nothing contained herein shall be construed as establishing a relation of master and servant or of agent and principal as between the Client and the Consultant. The Consultant, subject to this Contract, have complete charge of Personnel performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder.

#### ***1.3. Law Governing the Contract***

This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Law.

#### ***1.4. Language***

This Contract has been executed in the English language, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

#### ***1.5. Headings***

The headings shall not limit, alter or affect the meaning of this Contract.

#### ***1.6. Notices***

- (a) Any notice, request or consent required or permitted to be given or made pursuant to this Contract shall be in writing. Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent by registered mail, telex, telegram or facsimile to such Party at the address specified in the Bid and notice will be deemed to be effective 24 hours following confirmed transmission.

- (b) A party may change its address for notice by giving the other Party notice of such change.

**1.7. Location**

The Services shall be performed at specific locations of proposed Bridges and approaches thereof including adjoining local road network and area of influence hereto.

**1.8 Taxes and Duties**

The Consultant, Sub-Consultants and their personnel shall pay such direct and indirect taxes, levies, duties, service tax, fees and other impositions levied under the Applicable Law the amount of which is deemed to be included in the Contract Price. The Client shall perform such duties in regard to the deductions of such taxes as may be lawfully imposed.

**2. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT**

**2.1. Effectiveness of Contract**

This Contract shall come into force and effect on the date of the Client's notice to the Consultants instructing the Consultants to begin carrying out the Services and, furnishing within 7 (seven ) days of receipt of notice, performance security for an amount equal to 10% (ten percent) of Contract Price in form of Demand draft or Term Deposit (interest accruing to the Consultant) in favour of Managing Director, Punjab Infrastructure Development Board valid for period of 180 (one hundred eighty) days beyond completion of services and upon signing of the Contract by both the parties. The Performance Security shall be released by the Client on successful completion of services

**2.2. Commencement and Completion of Services**

The Consultants shall begin carrying out the Services not later than Seven (7) days from the date of signing of contract and the services shall be completed within a period of **135** (one hundred and thirty five) days.

**2.3. Expiration of Contract**

Unless terminated earlier pursuant to Clause 2.6 hereof, this Contract shall expire when services have been completed and reports as submitted have been accepted by the Client.

**2.4. Force Majeure**

**2.4.1 Definition**

(a) For the purposes of this Contract, "Force Majeure" means an event which is beyond the reasonable control of a Party, and which makes a Party's performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), confiscation or any other action by government agencies.

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

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

#### **2.4.2 No Breach of Contract**

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

#### **2.4.3 Measures to be Taken**

- (a) A party affected by an event of Force Majeure shall take all reasonable measures to remove such Party's inability to fulfill its obligations hereunder with a minimum of delay.
- (b) A party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any event not later than ten (10) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible.
- (c) The Parties shall take all reasonable measures to minimize the consequences of any event of Force Majeure.

#### **2.4.4 Extension of Time**

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

#### **2.4.5 Payments**

During the period of their inability to perform the Services as a result of an event of Force Majeure, the Consultants shall be entitled to be reimbursed for additional costs reasonably and necessarily incurred by them during such period for the purposes of the Services and in reactivating the Services after the end of such period. The amount as decided by the Managing Director, Punjab Infrastructure Development Board shall be final and binding.

#### **2.4.6 Consultation**

Not later than twenty one (21) days after the Consultant, as the result of an event of Force Majeure, have become unable to perform a material portion of the Services, the Parties shall consult with each other with a view to agreeing on appropriate measures to be taken in the circumstances.

#### **2.5. *Suspension***

The Client may, by written notice of suspension to the Consultant, suspend all payments to the Consultant hereunder if the Consultant fail to perform any of their obligations under this Contract, including the carrying out of the Services, provided that such notice of suspension (i) shall specify the nature of the failure, and (ii) shall request the Consultants to remedy such failure within a period not exceeding fifteen (15) days after receipt by the Consultants of such notice of suspension.

#### **2.6. *Termination***

##### **2.6.1. By the Client**

The Client may, by not less than thirty (30) days' written notice of termination to the Consultant (except in the event listed in sub-paras (g) below, for which there shall be a written notice of not less than sixty (60) days), such notice to be given after the occurrence of any of the events specified in paragraphs (a) through (g) of this Clause 2.6.1, terminate this Contract:

- (a) if the Consultant fail to remedy a failure in the performance of their obligations hereunder, as specified in a notice of suspension pursuant to Clause 2.5 hereinabove,



within twenty one (21) days of receipt of such notice of suspension or within such further period as the Client may have subsequently approved in writing.

(b) if the Consultant become insolvent or bankrupt or enter into any agreements with their creditors for relief of debt or take advantage of any law for the benefit of debtors or go into liquidation or receivership whether compulsory or voluntary.

(c) if the Consultant fail to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause 8 hereof.

(d) if the Consultant submit to the Client a statement which has a material effect on the rights, obligations or interests of the Client and which the Consultant know to be false.

(e) if, as the result of Force Majeure, the Consultant are unable to perform a material portion of the Services for a period of not less than thirty (30) days.

(f) if the Consultant, in the judgment of the Client has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

(g) if the Client, in its sole discretion and for any reason whatsoever, decides to terminate this Contract.

#### **2.6.2. By the Consultant**

The Consultant may, by not less than thirty (30) day's written notice to the Client, such notice to be given after the occurrence of any of the events specified in paragraphs (a) to (d) of this Clause 2.6.2, terminate this Contract:

(a) if the Client fails to pay any money due to the Consultant pursuant to this Contract and not subject to dispute pursuant to Clause 8 hereof within forty five (45) days after receiving written notice from the Consultant that such payment is overdue;

(b) if the Client is in material breach of its obligations pursuant to this Contract and has not remedied the same within forty-five (45) days following the receipt by the Client of the Consultant's notice specifying such breach;

(c) if, as the result of Force Majeure, the Consultant are unable to perform a material portion of the Services for a period of not less than forty five (45) days; or

(d) if the Client fails to comply with any final decision reached as a result of arbitration pursuant to Clause 8 hereof.

#### **2.6.3. Cessation of Rights and Obligations**

Upon termination of this Contract pursuant to Clauses 2.6 hereof, or upon expiration of this Contract pursuant to Clause 2.3 hereof, all rights and obligations of the Parties hereunder shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, (ii) the obligation of confidentiality set forth in Clause 3.3 hereof, and (iii) any right which a Party may have under the Applicable Law.

#### **2.6.4. Cessation of Services**

Upon termination of this Contract by notice of either Party to the other pursuant to Clauses 2.6.1 or 2.6.2 hereof, the Consultant shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Consultants, the Consultants shall proceed as provided, respectively, by Clauses 3.7 hereof.

#### **2.6.5. Payment upon Termination**

Upon termination of this Contract pursuant to Clauses 2.6.1 or 2.6.2 hereof, the Client shall make the following payments to the Consultant (after offsetting against these payments any amount that may be due from the Consultant to the Client):

(i) remuneration pursuant to Clause 6 hereof for Services satisfactorily performed prior to the effective date of termination; and

- (ii) except in the case of termination pursuant to paragraphs (a) to (d) of Clause 2.6.1 hereof, reimbursement of any reasonable cost incident to the prompt and orderly termination of the Contract including the cost of the return travel of the Consultants' personnel.

#### **2.6.6. Disputes about Events of Termination**

If either Party disputes whether an event specified in paragraphs (a) through (e) of Clause 2.6.1 or in Clause 2.6.2 hereof has occurred, such Party may, within forty-five (45) days after receipt of notice of termination from the other Party, refer the matter to arbitration pursuant to Clause 8 hereof, and this Contract shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.

### **3. OBLIGATIONS OF THE CONSULTANT'S**

#### **3.1. *General***

##### **3.1.1. Standard of Performance**

The Consultant shall perform the Services and carry out their obligations hereunder with all due diligence, efficiency and economy, in accordance with generally accepted professional techniques and practices including complying to relevant Code of Practices and Standards/Special Publications of Indian Roads Congress, Circulars/guidelines and Specifications issued by Ministry of Shipping, Road Transport & Highways and shall observe sound management practices, and employ appropriate advanced technology and safe and effective equipment, methods and design aids/programmes. The Consultant shall always act, in respect of any matter relating to this Contract or to the Services, as faithful advisers to the Client, and shall at all times support and safeguard the Client's legitimate interests in any dealings with Sub-consultants or Third Parties.

##### **3.1.2. Law Governing Services**

The Consultant shall perform the Services in accordance with the Applicable Law and shall take all practicable steps to ensure that any Sub-consultants, as well as the Personnel and agents of the Consultants and any Sub-consultants, comply with the Applicable Law.

#### **3.2. *Conflict of Interests***

The Consultant shall hold the Client's interests paramount, without any consideration for future work, and strictly avoid conflict with other assignments or their own corporate interests.

##### **3.2.1. Consultants and Affiliates not to be otherwise interested in Project**

The Consultant agree that, during the term of this Contract and after its termination, the Consultant and any entity affiliated with the Consultant, as well as any Sub-consultants and any entity affiliated with such Sub-consultants, shall be disqualified from providing goods, works or services (other than the Services and any continuation thereof) resulting from or directly related to the Consultant's Services for the preparation or implementation of the Project.

#### **3.3. *Confidentiality***

The Consultant, their Sub-consultants and the Personnel of either of them shall not, either during the term or within three (3) years after the expiration of this Contract, disclose any proprietary or confidential information in relation to the Project, the Services, this Contract or the Client's business or operations without the prior written consent of the Client.

#### **3.4. *Insurance to be taken out by the Consultant***

The Consultant (i) shall take out and maintain, and shall cause any Sub-consultants to take out and maintain, at their (or the Sub-consultants', as the case may be) own cost insurance against the likely risks (e.g. Third Party liability insurance, workmen. compensation insurance etc.) and for the coverage, and (ii) at the Client's request, shall provide evidence

to the Client showing that such insurance has been taken out and maintained and that the current premiums thereof have been paid.

### **3.5 *Consultant's Actions requiring Client's prior Approval***

The Consultant shall obtain the Client's prior approval in writing before taking any of the following actions:

- (a) appointing such members of the Personnel as are not listed in Appendix II;
- (b) entering into a subcontract for the performance of any part of the Services, it being understood (i) that the selection of the Sub-consultants and the terms and conditions of the subcontract shall have been approved in writing by the Client prior to the execution of the subcontract, and (ii) that the Consultant shall remain fully liable for the performance of the Services by the Sub-consultants and its Personnel pursuant to this Contract;

### **3.6 *Reporting Obligations***

The Consultant shall submit to the Client the reports and documents specified in Appendix I hereto, in the form, in the numbers and within the time periods set forth in the said Appendix. Final Reports shall be delivered in CD ROM in addition to the hard copies (6 nos).

### **3.7 *Documents prepared by the Consultants to be the Property of the Client***

All plans, drawings, specifications, designs, reports and other documents prepared by the Consultant in performing the Services shall become and remain the property of the Client, and the Consultant shall, not later than upon termination or expiration of this Contract, deliver all such documents to the Client, together with a detailed inventory thereof.

## **4. CONSULTANTS' PERSONNEL**

### **4.1. *General***

The Consultants shall employ and provide such qualified and experienced Personnel as are required to carry out the Services.

### **4.2. *Description of Personnel***

The titles, agreed job descriptions, minimum qualifications and estimated periods of engagement in the carrying out of the Services of each of the Consultants' Key Professional / Sub Professional Personnel are described in Appendix II.

### **4.3. *Approval of Personnel***

The Key Personnel and Sub-consultants listed by title as well as by name in Appendix II are hereby approved by the Client. In respect of other Key Personnel which the Consultant propose to use in the carrying out of the Services, the Consultant shall submit to the Client for review and approval a copy of their biographical data. If the Client does not object in writing (stating the reasons for the objection) within twenty one (21) days from the date of receipt of such biographical data, such Key Personnel shall be deemed to have been approved by the Client.

### **4.4. *Removal and/or Replacement of Personnel***

(a) Except as the Client may otherwise agree, no changes shall be made in the Key Professional / Sub Professional Personnel. If, for any reason beyond the reasonable control of the Consultant, it becomes necessary to replace any of the Personnel, the Consultant shall forthwith provide as a replacement a person of equivalent or better qualifications. The upper limit of substitution on account of various reasons including on health ground shall not exceed 25% of the total key personnel as given in Appendix II.

(b) If the Client (i) finds that any of the Personnel has committed serious misconduct or has been charged with having committed a criminal action, or (ii) has reasonable cause to be dissatisfied with the performance of any of the Personnel, then the

Consultant shall, at the Client's written request specifying the grounds thereof, forthwith provide as a replacement a person with qualifications and experience acceptable to the Client.

(c) Any of the Personnel provided as a replacement under Clauses (a) and (b) above, no extra charges shall be payable by the Client on any account. Further for Key Professional Personnel replaced for the second time under clause (a) and (b), the Contract Price shall be reduced at a rate of two percent (2%) for each replacement.

#### **4.5. Team Leader**

The Team Leader shall be stationed at a location to be agreed by the Client and shall be available at all time for consultations and meetings with the Client and Engineer's of Public Works Department (Buildings and Roads Branch). The Team Leader shall work in close coordination with the concerned Engineer's of the Public Works Department (Buildings & Roads) Branch and shall arrange for authentication of all the field data, surveys, investigations and information from them.

### **5. OBLIGATIONS OF THE CLIENT**

#### **5.1. Assistance and Exemptions**

The Client shall use its best efforts to ensure that the Government shall:

- (a) provide the Consultants with the data, information and records as available with respective Departments of GoP;
- (b) issue to officials, agents and representatives of the Government all such instructions as may be necessary or appropriate for the prompt and effective implementation of the Services;

#### **5.2. Access to Land**

The Client on the execution of this Contract shall extend facility to the Consultant to access the Project sites for the limited purpose of carrying out of surveys, field studies, site investigations, soil tests, geotechnical investigations etc. As and where asked for by the Consultant, necessary assistance shall be provided by the Engineer's of Public Works Department (Buildings and Roads Branch).

The Consultant, their Sub-Consultants, and personnel of either of them will ensure that no damage is caused to any land, property and crops etc. under any circumstances during the performance of their services under the contract. For any such damage the Consultant shall be fully responsible and where required shall pay suitable compensation to the respective owners.

In the event the Consultant, their Sub-consultants and their personnel are obstructed from undertaking any surveys, field investigations etc. the Client if called upon by the Consultant shall provide necessary assistance.

#### **5.3. Change in the Applicable Law related to Taxes and Duties**

If, after the date of this Contract, there is any change in the Applicable Law with respect to taxes and duties which increases or decreases the cost incurred by the Consultants in performing the Services, then the remuneration payable to the Consultants under this Contract shall be increased or decreased accordingly by Agreement between the Parties hereto, and corresponding adjustments shall be made in the Contract Price.

### **6. PAYMENT TO THE CONSULTANTS**

#### **6.1. Lump-Sum Payment**

- (a) The total payment due to the Consultants shall not exceed the Agreed Lumpsum Amount (Contract Price) amounting to Rs.\_\_\_\_\_ (Rupees\_\_\_\_\_only) which

is an all inclusive fixed lump-sum covering all costs required to carry out the Services described in Appendix I.

- (b) The Contract Price shall be equally divided amongst three Bridges. However, if due to any unavoidable circumstances, PIDB /GoP passes an order of not carrying out further activities for any particular Bridge, the Contract Price shall be reduced accordingly.

## **6.2. Mode of Billing and Payment**

Billing and payments in respect of the Services shall be made as follows:-

- (a) The Client shall cause to be paid to the Consultant an advance payment/ mobilization advance for fifteen percent (15%) of Contract Price. The advance payment will be due after submission by the Consultant to the Client of a bank guarantee by a bank acceptable to the Client for the said amount, such bank guarantee (i) to remain effective until total payments under the contract reach fifty percent (50%) of the Contract Price, and (ii) in such form at Appendix IV.

### **(b) Payment Schedule**

The Consultant will be paid stage-wise as a percentage of the contract price as per the schedule given below subject to acceptance of reports/ proposals by the Client:

<b>Sr. No.</b>	<b>Activity / assignment as submitted</b>	<b>Percentage of agreed amount (%)</b>
i.	Mobilization Advance on signing of contract against irrevocable Bank Guarantee of same amount from Scheduled Bank in Punjab	15
ii.	Interim payment on submission of proposed site with complete hydraulic data, topographic survey and Geotechnical investigations	20
iii.	Interim payment on submission of General Arrangement drawings and approval in principle by Client, Traffic Data and Analysis	10
iv.	Interim payment on submission of Final layout, sections, designs, and structural drawings	15
v.	Interim payment on submission of Final Detailed Project Report (DPR)	20
vi.	On acceptance of Final Proposal with designs, drawings, Estimates	20
	<b>TOTAL</b>	<b>100</b>

- (c) No payment shall become eligible for the next stage till the Consultant completes to the satisfaction of the Client the work pertaining to the preceding stage.
- (d) The Client shall cause the payment of the Consultant in clause 6.3 (b) above as given in schedule of payment within twenty one (21) days after the receipt by the Client of bills.
- (e) The final payment under this Clause shall be made only after the final report have been submitted by the Consultants and approved as satisfactory by the Client. The services shall be deemed completed and finally accepted by the Client and the final report shall be deemed approved by the Client as satisfactory ninety (90) calendar days after receipt of the final report by the Client unless the Client, within such ninety (90) day

period, gives written notice to the Consultants specifying in detail deficiencies in the Services, the final report. The Consultants shall thereupon promptly make any necessary corrections, and upon completion of such corrections, the foregoing process shall be repeated. Any amount which the Client has paid or caused to be paid in accordance with this Clause in excess of the amounts actually payable in accordance with the provisions of this Contract shall be reimbursed by the Consultant to the Client within thirty (30) days after receipt by the Consultant of notice thereof.

## **7. RESPONSIBILITY FOR ACCURACY OF PROJECT DOCUMENTS**

### ***7.1. General***

- (1) The Consultant shall be responsible for accuracy of the data collected, by him directly or procured from other agencies/authorities, the designs, drawings, estimates and all other details prepared by him as part of these services. The Consultant will also be responsible for correcting, at his own cost and risk, the designs, drawings including any re-survey / investigations and correcting layout etc. if required during the execution of the Services.
- (2) The Consultant shall be fully responsible for the accuracy of design and drawings of the bridges and structures. All the designs and drawings for bridges and structures including all their components shall be fully checked by a Senior Bridge Engineer after completion of their designs.
- (3) The survey control points established by the Consultant shall be protected by the Consultants till the completion of the Consultancy Services.

### ***7.2. Retention Money***

An amount equivalent to 5% (Five percent) of the Contract Price shall be retained at the end of the contract for accuracy of design, drawings, quantities and estimates submitted and the same will be released after the completion of civil contract works.

### ***7.3. Penalty***

#### **7.3.1. Penalty for Error /Variation**

If variation in any of the main quantities of work of bridge work, road work on approaches, river training and protection works or overall project cost, found during execution is more than +/- 15% (fifteen percent), the penalty upto 5% (five percent) of the contract price shall be imposed. For this purpose amount shall be deducted from the retention money. This shall exclude any additional/deletion of items/works ordered during the execution.

#### **7.3.2. Penalty for delay**

In case of delay in completion of services, a penalty equal to 0.25% (zero point two five percent) of the Contract Price per day subject to a maximum five percent (5%) of the Contract Price will be imposed and shall be recovered from payments due/performance security furnished by the Consultant. However in case of delay due to reasons beyond the control of the Consultant, suitable extension of time will be granted.

## ***7.4. ACTION FOR DEFICIENCY IN SERVICES***

In addition to the penalty as mentioned in clause 7.3, warning may be issued to the erring Consultant for minor deficiencies. In the case of major deficiencies involving time and cost overrun and adverse effect on reputation of Punjab Infrastructure Development Board and Punjab Public Works Department (Buildings & Roads Branch), other penal action including debarring/black listing may also be initiated by Punjab Infrastructure Development Board and Public Works Department (Buildings & Roads Branch).

## **8. SETTLEMENT OF DISPUTES**

### **8.1. *Amicable Settlement***

The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or the interpretation thereof.

### **8.2. *Dispute Settlement***

Disputes shall be settled by arbitration in accordance with the following provisions:

- (i) Any dispute between the parties which cannot be settled by amicable settlement within thirty (30) days after receipt of by one party of the other party's request for such amicable settlement shall be submitted to arbitration by sole Arbitrator to be appointed by the Secretary to Govt. of Punjab, Public Works Department (Buildings and Roads Branch).
- (ii) The arbitration proceedings shall be conducted in accordance with procedure and provisions of the Arbitration & Conciliation Act, 1996.
- (iii) The arbitration proceedings shall be held at Chandigarh and the Courts at Chandigarh shall have the jurisdiction.
- (iv) The decision of the sole Arbitrator shall be final and binding and shall be enforceable in any court of competent jurisdiction, and the parties hereby waive any objections to or claims of immunity in respect of such enforcement.

*Appendix I*

**TERMS OF REFERENCE CONTAINING INTE ALIA, THE DESCRIPTION OF  
SERVICES AND REPORTING REQUIREMENTS**



*Appendix II*

**CONSULTANTS' SUB-CONSULTANTS', KEY PERSONNEL AND SUB-  
PROFESSIONAL PERSONNEL**

***Appendix III***

**COPY OF LETTER OF ACCEPTANCE**

**LETTER OF ACCEPTANCE**

\_\_\_\_\_ (Date)

To

\_\_\_\_\_ [Name and address of the Consultant]

\_\_\_\_\_

\_\_\_\_\_

Dear Sirs,

This is to notify you that your Bid dated \_\_\_\_\_ for the Consultancy Services for Preparation of Detailed Project Report for construction of High Level Bridges for the Contract Price of Rs. \_\_\_\_\_ ( Rupees \_\_\_\_\_ only), in accordance with the Financial Proposal is hereby accepted.

You are hereby requested to furnish Performance Security, in the form of Demand draft /Term Deposit in favour of Managing Director, Punjab Infrastructure Development Board, Chandigarh for an amount of Rs. \_\_\_\_\_ within seven (7) days of the receipt of this letter of acceptance valid up to 180 (one hundred and eighty) days beyond the completion of Services provided under the Contract and sign the Contract for the Services.

Yours faithfully,

Authorized Signature

Name of title of Signatory

#### ***Appendix IV***

#### **FORMAT FOR BANK GUARANTEE FOR ADVANCE PAYMENT**

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#### **UNCONDITIONAL AND IRREVOCABLE BANK GUARANTEE**

Bank Guarantee No. \_\_\_\_\_

Dated \_\_\_\_\_

Issuer of Bank Guarantee :

\_\_\_\_\_  
(Name of the Bank)

\_\_\_\_\_

\_\_\_\_\_

(hereinafter referred to as the “Bank”)

Beneficiary of Bank Guarantee:

\_\_\_\_\_

on behalf of

Managing Director,

Punjab Infrastructure Development Board,

Chandigarh.

Context of Bank Guarantee:

Security for Advance Payment in pursuance of Clause 6.3(b) of the Contract Agreement dated \_\_\_\_\_ (hereinafter referred to as the “Agreement”), executed between the Managing Director, Punjab Infrastructure Development Board, Chandigarh acting through \_\_\_\_\_ (hereinafter referred to as the “Client”) and \_\_\_\_\_ (hereinafter referred to as the “Consultant”) for Consultancy Services for Preparation of Detailed Project Report for Construction of High Level Bridges (hereinafter referred to as the “Work and services”), provided however, such context of the Bank Guarantee or reference to the Agreement in this Bank Guarantee shall in no manner be relied upon at any stage to adversely affect or dilute the unconditional and irrevocable nature of this Bank Guarantee. The title of this Guarantee i.e. “Advance Payment Bank Guarantee” shall in no manner and at no stage be relied upon to adversely affect or dilute the unconditional and irrevocable nature of this Bank Guarantee.

Operative part of the Bank Guarantee:

At the request of the Consultant, we \_\_\_\_\_, \_\_\_\_\_ (name and address of the bank), (hereinafter referred to as the “Bank”), do hereby unconditionally and irrevocably affirm and undertake that we are the Guarantor and are responsible to the Client i.e. the beneficiary on behalf of the Consultant, upto a total sum of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only), such sum being payable by us to the Client immediately upon receipt of first written demand from the Client.

We unconditionally and irrevocably undertake to pay to the Client on an immediate basis, upon receipt of first written demand from the Client and without any cavil or argument or delaying tactics or reference by us to Consultant and without any need for the Client to convey to us any reasons for invocation of the Guarantee or to prove the failure to perform the Services as per requirements on the part of the Consultant or to show grounds or

reasons for the demand or the sum specified therein, the entire sum or sums within the limits of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only)

We hereby waive the necessity of the Client demanding the said amount from Consultant prior to serving the Demand Notice upon us.

We further agree and affirm that no change or addition to or other modification to the terms of the Agreement, shall in any way release us from any liability under this unconditional and irrevocable Guarantee and we hereby waive notice of any such change, addition or modification. We further agree with the Client that the Client shall be the sole and the exclusive judge to determine that whether or not any sum or sums are due and payable to him by Consultant, which are recoverable by the Client by invocation of this Guarantee.

This Guarantee will not be discharged due to the change in constitution of the Bank or the Consultant. We undertake not to withdraw or revoke this Guarantee during its currency/ validity period, except with the previous written consent of the Client ( \_\_\_\_\_ on behalf of Managing Director, Punjab Infrastructure Development Board, Chandigarh).

We unconditionally and irrevocably undertake to pay to the Client ( \_\_\_\_\_ on behalf of Managing Director, Punjab Infrastructure Development Board, Chandigarh) any amount so demanded not exceeding Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) notwithstanding any dispute or disputes raised by Consultant or anyone else in any suit or proceedings before any arbitrator, court, tribunal or other authority, our liability under this Guarantee being absolute, unconditional and unequivocal. The payment so made by us under this Guarantee to the Client, shall be a valid discharge of our liability for payment under this Guarantee and the Consultant shall have no claim against us for making such payment.

This unconditional and irrevocable Guarantee shall remain in full force and effect and shall remain valid until \_\_\_\_\_

Notwithstanding anything contained herein:

Our liability under this Bank Guarantee shall not exceed Indian Rs. \_\_\_\_\_ lakhs (Rupees \_\_\_\_\_ Lakhs Only).

This unconditional and irrevocable Bank Guarantee shall be valid w.e.f . \_\_\_\_\_ to \_\_\_\_\_.

We are liable to pay the guaranteed amount or any part thereof under this unconditional and irrevocable Bank Guarantee only and only if the Client (i.e. \_\_\_\_\_ on behalf of Managing Director, Punjab Infrastructure Development Board, Chandigarh) serves upon us a written claim or demand on or before \_\_\_\_\_.

\_\_\_\_\_  
Authorized Signatory For Bank