

CENTRAL ELECTRICITY REGULATORY COMMISSION
3rd Floor, Chanderlok Building, 36, Janpath
New Delhi-110001

No. RA-14013(11)/4/2018-CERC

Dated, the 01st October 2018

Engagement of Consultants for
“Preparation of database of Orders issued by Central Electricity Regulatory
Commission”

1. Background

1.1 The Central Electricity Regulatory Commission (hereinafter referred to as ‘CERC/Commission’) was established under Section 3 of the Electricity Regulatory Commissions Act, 1998 (since repealed) and is presently functioning as such under Section 76 of the Electricity Act, 2003 (hereinafter referred to as “the 2003 Act”). The functions of CERC as defined in Section 79 of the Act are extracted herein under for reference:

- a. to regulate the tariff of generating companies owned or controlled by the Central Government;
- b. to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in Clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one state;
- c. to regulate the inter-state transmission of electricity;
- d. to determine tariff for inter-state transmission of electricity;
- e. to issue licenses to persons to function as transmission licensee and electricity trader with respect to their inter-state operations;
- f. to adjudicate upon disputes involving generating companies or transmission licensee in regard to matters connected with clauses (a) to (d) above and to refer any dispute to arbitration;
- g. to levy fees for the purpose of this Act;
- h. to specify Grid Code having regard to Grid Standards;
- i. to specify and enforce the standards with respect to quality, continuity and reliability of service by licensees;
- j. to fix the trading margin in the inter-state trading of electricity, if considered necessary;
- k. to discharge such other functions as may be assigned under this Act

Under Section 178 of the Act, the Central Commission is empowered to make regulations by notification in the Official Gazette to carry out the purposes of the Act.

1.2 The Commission, since inception, has disposed of a number of Petitions through its various orders, on all matters falling within its jurisdiction, in terms of the provisions of the 2003 Act. There has been a manifold increase in the number of orders issued by the Commission over the years on various topics/issues and hence in order to institutionalise them, it has been proposed to engage ‘Consultants/Professional Experts’ (referred to as ‘Consultants’) for the assignment of ‘Preparation of database of all Orders (both interim/final) issued by Commission, from time to time’ since inception, on various topics/heads and interlink the same with the internal portal of the Commission.

2. Objective

2.1 To prepare and maintain a database of all the orders issued by the Commission, since inception, under different Heads/Categories (as detailed under the scope of work) for the purpose of building institutional memory for the purpose of reference and retrieval to assist the Commission in discharge of its functions under the 2003 Act.

3.0 Scope of Work of Consultants:

3.1 The estimated number of the orders of the Commission would be 1200 with a margin of $\pm 20\%$.

3.2 The Scope of Work under the said assignment shall include, but is not limited to, the following:-

(a) Study all Orders issued by the Commission since inception (i.e 1998) and to broadly categorize them under the 'Headings' namely

A. Tariff orders comprising of

- (i) Generation
- (ii) Transmission
- (iii) Renewable Energy
- (iv) Adoption (under Section 63) and
- (v) Tariff related matters

B. Non-Tariff orders comprising of

- (i) Adjudication matters
- (ii) Contractual disputes
- (iii) Grid related disputes
- (iv) Open Access
- (v) Market Development
- (vi) Licensing
- (vii) Penalty proceedings and
- (viii) Other Regulatory decisions' etc.

C. Review Petitions

D. Appeals (APTEL/HC/SC)

E. Remand matters

(b) To prepare the summary of the orders under each hearing containing the following:

- (i) Petition No(s)
- (ii) Names of Parties (Petitioner/Respondents /Consumer Groups & Objectors)
- (iii) Coram
- (iv) Date of Order
- (v) Name of Advocates
- (vi) Brief facts of the case
- (vii) Key issues framed by the Commission
- (viii) Decision on such issues (both on maintainability and merits)
- (ix) Reasons for such decision
- (x) Judgments of higher Courts/forums relied upon/referred to by Commission

- (xi) Review Petition, if any, filed against the order and decision thereon
- (xii) Appeals, if any, filed against the order and decision thereon
- (xiii) Order of the Commission, on remand by higher courts, wherever applicable

(c) Classification of the said datas under the following 'Fields' for the purpose of interlinking with the internal portal/INTRANET system of Commission:

- (i) Subject-wise/ Issue-wise/ Party-wise/ Section-wise/ Regulation-wise;
- (ii) Sections of Act, Rules & Regulations referred along with relevant para numbers;
- (iii) Judgments of Courts with Citations referred to in the Orders;

The consultant will also build in a mechanism for the internal users to access the database through INTRANET /internal portal

(d) A provision for identification of key issues for 'advance search' and 'search within search AND provision for Integration of all Orders to be pronounced by the Commission, in future.

(e) The database of orders shall be hyperlinked with the website of CERC/APTEL/High Courts and Supreme Court to facilitate the retrieval of the said Orders/Judgments referred.

(f) The Consultants may if need be, undertake discussions with the officials of the MIS division of CERC and officials of NIC, Govt of India for purposes of interlinking the database with the internal portal of CERC.

4.0 Deliverables and duration of the Assignment:

4.1 The assignment shall be completed by the Consultants within a period of 240 days from the date of signing of the agreement;

4.2 The Consultants shall provide the summary in the given format within the time frame as mentioned in 4.1 above;

4.3 The Consultants shall submit the first 50 Summary Reports by the end of 30 days of signing of agreement and obtain feedback of CERC;

4.4 Taking into consideration the feedback of the CERC, the Consultant shall submit a minimum of 150 additional Summary Reports every 30 days thereafter;

4.5 The Consultants shall complete the final assignment within 240 days from the date of signing of agreement;

4.6 Integration of the said database with the software by the end of 240 days from the date of signing of the agreement;

4.7 The timelines for deliverables shall be strictly adhered to. In case of any delay, the penalty/ liquidated damages as per clause 8 of the Agreement will be made applicable on the Consultants;

4.8 Time is essence of the contract and extension of time shall not be granted under any circumstances. In case of any delay on part of the Consultants, the Commission may, if need be, get the work done through an alternate source, at the cost of the bidder.

5. Qualification Criteria

5.1 The Consultants should have completed at least 5 (five) assignments in the last 10 (ten) years involving the Study and analysis of Orders and judgments of judicial/quasi-judicial authorities/forums, Preparation of summary, briefs or Head notes, editing of legal journals, etc., ;

5.2 The Consultants shall deploy team members having Professional qualifications in Law, Finance, Engineering, and Economics along with adequate experience of atleast five years in these areas. It is desirable that the team members deployed should have additional experience in the areas of documentation of Cases/Orders/Judgments.

5.3 The Consultants to be engaged for the said assignment shall either be a firm or a limited liability Partnership or a Company registered in India. However, Consortium of Companies shall not be considered;

5.4 The Consultants deployed should also have in-depth knowledge of Electricity Act, the Rules prescribed by State and Central Governments in Electricity matters, the Regulations framed by Central and State Commissions on the said subject, the Judgments of the Appellate Tribunal for Electricity and various High Courts and Supreme Court. The Consultants should have good understanding of the tariff and non tariff issues, the regulatory aspects including operational & commercial aspects of the thermal generating stations, hydro generating stations, renewable generating station and transmission systems;

5.5 The Consultants shall submit documentary evidences of having handled similar projects and tie-ups, if any;

5.6 The Consultants shall submit the methodology to be adopted for the proposed assignment.

6. Mode of payment

6.1 The Consultants shall be paid for the said assignment as per the following schedules:

Sr. No.	Stage	Percent of agreed amount
1.	Advance of the total fee of the study at the time of signing agreement/ acceptance of the offer, subject to production of Bank guarantee for equal amount to be valid till successful completion of work**	10%
2.	On completion and acceptance of first 150 Summary Reports	10%
3.	On completion and acceptance of subsequent 800 Summary reports	30%
4.	On completion and acceptance of all summary reports	20%
5.	On successful integration of the database with knowledge sharing sessions with staff of CERC, the software and acceptance of the same by the CERC*	30%

* Certificate will be issued by Secretary, CERC for successful completion

**Bank guarantee shall be released after successful completion of work.

7. Application and Evaluation Criteria:

7.1 The bidders shall quote the rate exclusive of taxes which shall be over and above the quoted rates;

7.2 Any conditional bid is liable to be rejected;

7.3 The Consultants should have a valid registered PAN, TAN and GST number.

7.4 The format of application is at Annexure-I (for Technical bid) and Annexure-II (for Financial bid). The Consultant is required to submit two (2) copies of Technical bid (each of which will be treated as original) alongwith the soft copy (in word format) and one copy of Financial bid;

7.5 The Consultant/ bidder should not have been blacklisted or debarred by Government of India/ State Government/ Public Sector Undertakings for taking such assignment and shall submit a 'Declaration' form as per Annexure-III and a [Certificate (as per Appendix-A)

7.6 Only successful bidder would be communicated the award of consultancy assignment; The Consultants who has become successful in the bid shall enter into an Agreement (as per Annexure-IV) and a Confidentiality/Non-Disclosure agreement (as per Annexure-V) prior to taking over the assignment and shall abide by the terms and conditions contained therein.

7.7 Two separate sealed bids clearly marked as "Technical Bid" and "Financial Bid" are required to be submitted which shall be placed in one outer envelope clearly mentioning in bold letters on top of envelope "Preparation of database for Orders pronounced by Central Electricity Regulatory Commission";

7.8 Technical component will carry 70% weightage and financial component 30% weightage;

7.9 The bids of the eligible bidders as per Clause 5 will be scrutinized by Consultancy Evaluation Committee (CEC) and shortlisted bidders will be called for interaction with the CEC. The bidders shall be required to make a presentation before consultancy Evaluation Committee (CEC) on the proposed Approach and Methodology. The total score will be obtained by adding the Technical and Financial component;

7.10 The technical performance shall be evaluated based on the following criteria:

<i>Technical Parameters</i>	<i>Weights</i>
The bidders relevant experience for the assignment	30%
The quality of the methodology proposed	10%
The qualifications and experience of the key staff proposed	40%
Quality of presentation	20%
Total	100%

7.11 The minimum qualifying score shall be 70% of the total score for technical component. Only those bidders, who qualify technically, would be considered for Financial Evaluation. The "Financial" bid of only technically qualified bidders will be opened;

7.12 Weight for Financial parameters: Proposal with the lowest cost will be given a financial score of 100 and other proposals given financial scores that are inversely proportional to their prices;

7.13 CERC shall have the right to cancel any bid and /or reject any or all bids without assigning any reason thereof;

7.14 No requests for extension of date for submission of bids will be entertained unless decided so by CERC;

8. Termination of contract:

The Consultants shall abide by the terms and conditions agreed to under the Agreements (Annexure-IV and V) entered into by them. In case of non-performance or any breach/violation of any of the terms and conditions of any of the said agreement, CERC shall have the right to terminate the said agreement, in addition to the right of CERC to impose any penalty/liquidated damages.

9. The address for submission of the bid/proposal and seeking any clarification (within the due date of submission of the TOR i.e upto 15.00 hrs on 21st October, 2018) is given below:

The Secretary,
Central Electricity Regulatory Commission,
3rd Floor, Chanderlok Building,
36, Janpath, New Delhi - 110001
Ph: 91-11-23353503 Fax: 91-11-23753923

Sd/- xxxxxx
(Sanjeev Tinjan)
Assistant Chief (RA)
Tele: 23353503

DETAILED PROPOSAL FOR ASSIGNMENT
(TECHNICAL)

Note: Two (2) copies of the proposal shall be submitted to Secretary, CERC.

I. GENERAL INFORMATION :

1. Title of the Proposed Assignment :
2. Name and address of the Organization/ Institution :
3. Name & Designation of the Key Person :
4. Contact address of the Key Person :
 - a. Address :
 - b. e-mail :
 - c. Telephone :
 - d. Fax :
 - e. Mobile No. :
5. Net-worth/Turnover of the Organization/ Institution (To be supported by Annual Statement of Accounts of Last Financial Year) :
6. Registered PAN/TAN and GST number of: the Organization

II. TECHNICAL SPECIFICATIONS:

7. i. Department(s) of the organization/Institution(s) where the study will be carried out.
 - ii. Other department(s), if any, which will collaborate in this study.
8. Brief review of the experience in the relevant field (National and International).
9. Detailed Approach & Methodology for undertaking the assignment.
 10. Facilities available for the proposed work in the applicant's organization/ institution
11. Previous experience of the proposer in this or related field
12. Biographical sketch of the Study Team (for every team member)
 - (i) Name
 - (ii) Designation
 - (iii) Date of Birth
 - (iv) Education and Experience
 - (v) Man days to be spent on this assignment

a. Academic Qualifications

Degree	University	Field(s)/Specialisation	Year

b. Experience

- (1) Total Relevant Experience for the proposed assignment: Years
(2) Detailed Experience:

Institution	Topic of work done	Period

- (3) Field of major interest
(4) Additional information (if any)

13. Capacity to impart training/transfer of knowledge

14. Whether blacklisted/debarred for conducting studies or consultancy services, by any Government/semi-government/quasi-judicial agency, if so the details thereof:

[Undertaking to be given as per Annexure-III]

DETAILED PROPOSAL FOR ASSIGNMENT
(FINANCIAL)

I. GENERAL INFORMATION:

1. Title of the Proposed Assignment :
2. Name and address of the Organization/Institution :
3. Name & Designation of the Key Person :
4. Contact address of the Key Person :
(e-mail/fax/telephone)
5. Certificate of authorization in case of Institutes/other organizations (Format enclosed at Appendix-‘A’).

II. Fee Proposed:

07. Amount of Fee proposed for:

Components	Basis	Amount (in Rs.)
I. Consultant Charges		
II. Misc./Others (if any)		
Total		

(The amount quoted is exclusive of statutory levies and taxes etc.)

(RUPEES _____)

Signature of the Principal Investigator /
Head of the Study Team

Declaration/Certification

To
The Secretary
Central Electricity Regulatory Commission,
3rd Floor, Chanderlok Building,
36, Janpath, New Delhi - 110001
Ph: 91-11-23353503 Fax: 91-11-23753923

Sir

I have carefully gone through the Terms & Conditions contained in the Terms of Reference (TOR) regarding study on "Preparation of database for Orders pronounced by Central Electricity Regulatory Commission". I hereby declare that my firm has not been debarred/blacklisted by any reputed Government/Semi Government Organizations from conducting Studies or consultancy services within last three years nor is there any pending dispute in this regard. I further certify that I am an authorized signatory of my company/firm and therefore competent to make this declaration.

Yours sincerely

Name: _____
Designation: _____
Company/firm: _____
Address: _____

/ Appendix-'A' /

CERTIFICATE

The undersigned agree to abide by the conditions of the grants and certify that available facilities for proposed work shall be extended to the investigator/study team.

Signature of Executive Authority Investigator/of the Organisation	Signature of the Principal Head of the Study Team
Name and Designation Date	Name and Designation Date
Signature of Co-investigator Name and Designation Date	Official stamp of Organization/Institution

On 100 Rs Stamp Paper

AGREEMENT

This AGREEMENT entered into on this _____ day of 2018 [here give the date of the agreement] BETWEEN _____ [give Name and full address of the Consultants who enters into agreement on behalf of the firm/company] hereinafter referred to as “the Consultants” or the party of the **First Part** (which term shall wherever the context permit include its successors and assigns) **AND** Central Electricity Regulatory Commission (herein after called “CERC”) or the party of the ‘**Other Part**’ (which term shall wherever the context permit include its successors and assigns) and represented by (name and designation of the Officer signing this agreement) having its office at 3rd Floor Chanderlok Building, 36 Janpath, New Delhi -110001

WHEREAS

A. CERC, on being satisfied that there is a need to engage a [Corporate Consultant or Professional Expert] for the assignment of “Preparation of database of all Orders passed by CERC since inception’ has invited quotations vide its notice [give here the details with date of the NIT/notice]

B. On scrutiny of all the quotations received in response to the above NIT dated [____], the quotation submitted by the Consultant [____] vide Letter [give details with date of the quotation] emerged successful and accordingly, CERC has decided to engage the Consultant [____] for the above said assignment in terms of the provisions of the Central Electricity Regulatory Commission (Appointment of Consultants) Regulations, 2008 as amended from time to time.

D. The Consultant [____] has by letter dated _____ (details of letter with date) unconditionally agreed to take up the above said assignment. The parties have therefore decided to put forward the terms of agreement in writing as stated below:

NOW THIS AGREEMENT WITNESSETH AS UNDER:

That the Parties to this Agreement have agreed to terms and conditions mentioned below:

1. Definitions:

- i. “Commission” means the Chairperson and the Members of the Commission, including the Ex-officio member.
- ii. “Confidential information” means any and all information but not limited to the information communicated to the consultant by the CERC duly marked so and as defined under the Confidentiality and Non Disclosure Agreement.
- iii. “Person” shall include any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person;
- iv. “Secretary” means the Secretary of the Commission.

2. Scope of work:

3. The scope of work assigned to the Consultant shall be as specified under clause 3 of the TOR

(or to be written in full)

The consultant/professional expert shall be engaged as [Corporate Consultant or Professional Expert] for the assignment of “Preparation of database of all Orders (both interim/final) issued by Commission, from time to time’ since inception, on various topics/heads and to interlink the same with the internal portal of the Commission. The Scope of Work under the said assignment shall include, but is not limited to, the following:-

(a) Study all Orders issued by the Commission since inception (i.e 1998) and to broadly categorize them under the ‘Headings’ namely

A. Tariff orders comprising of

- (i) Generation
- (ii) Transmission
- (iii) Renewable Energy
- (iv) Adoption (under Section 63) and
- (v) Tariff related matters

B. Non-Tariff orders comprising of

- (i) Adjudication matters
- (ii) Contractual disputes
- (iii) Grid related disputes
- (iv) Open Access
- (v) Market Development
- (vi) Licensing
- (vii) Penalty proceedings and
- (viii) Other Regulatory decisions’ etc.

C. Review Petitions

D. Appeals (APTEL/HC/SC)

E. Remand matters

(b) To prepare the summary of the orders under each hearing containing the following:

- (i) Petition No(s)
- (ii) Names of Parties (Petitioner/Respondents /Consumer Groups & Objectors)
- (iii) Coram
- (iv) Date of Order
- (v) Name of Advocates
- (vi) Brief facts of the case
- (vii) Key issues framed by the Commission
- (viii) Decision on such issues (both on maintainability and merits)
- (ix) Reasons for such decision
- (x) Judgments of higher Courts/forums relied upon/referred to by Commission
- (xi) Review Petition, if any, filed against the order and decision thereon
- (xii) Appeals, if any, filed against the order and decision thereon
- (xiii) Order of the Commission, on remand by higher courts, wherever applicable

(c) Classification of the said datas under the following 'Fields' for the purpose of interlinking with the internal portal/INTRANET system of Commission:

- (i) Subject-wise/ Issue-wise/ Party-wise/ Section-wise/ Regulation-wise;
- (ii) Sections of Act, Rules & Regulations referred along with relevant para numbers;
- (iii) Judgments of Courts with Citations referred to in the Orders;

The consultant will also build in a mechanism for the internal users to access the database through INTRANET /internal portal

(d) A provision for identification of key issues for 'advance search' and 'search within search AND provision for Integration of all Orders to be pronounced by the Commission, in future.

(e) The database of orders shall be hyperlinked with the website of CERC/APTEL/High Courts and Supreme Court to facilitate the retrieval of the said Orders/Judgments referred.

(f) The Consultants may if need be, undertake discussions with the officials of the MIS division of CERC and officials of NIC, Govt of India for purposes of interlinking the database with the internal portal of CERC.

4. Commencement and duration of assignment:

The above assignment shall commence with effect from [the date of this agreement (or) specify the date] and shall be valid for a period of [here give the duration of the contract]

5. Obligations of the Consultant:

(i) The Consultant shall adhere to the time-frame as specified in the Terms of Reference and shall submit the deliverables to the Secretary of the Commission.

(ii) The Consultant shall make the presentations before the Commission as required by the Secretary.

(iii) The Consultant shall ensure that the contents of the said assignment are strictly confidential and shall not be disclosed to any other authorities or person. The provisions of the confidentiality and nondisclosure agreement are applicable to these information.

[Here give any other responsibility to be discharged by the consultant].

(iv) The Consultant shall provide the all reports and calculations in the report format as well as digital format as the CERC desires.(not clear)

6. Entitlements of the Consultants:

(i) The Consultants shall be entitled to Rs. _____[Here give the amount payable and the schedule of payment and any other provision such as TDS, etc.];

(ii) The mode of payment to the Consultant shall be as per Clause 6 of the Terms of Reference. If advance amount is not requested by the Consultant, 10% of the fee can be claimed at the end of the contract period on submission of the final report.

(iii) The Consultant shall not be entitled to any other remuneration or reimbursement of perquisites or facilities.

7. Restrictive terms:

(i) The Consultant further affirms and confirms that the current assignment is not and shall not be, in conflict with any of its present obligations to any party with whom he/she/it has association.

(ii) The Consultant further affirms and confirms that he/she/it shall hold all Confidential Information in confidence and with the same degree of care he/she/it uses to keep his/her/its own similar information confidential, but in no event shall it use less than a reasonable degree of care; and shall not, without the prior written consent of CERC, disclose such information to any person for any reason at any time;

(iii) CERC shall be entitled to, without prejudice to any other right for civil or criminal proceedings, receive from the Consultant [____] a compensation for the damages for violation by him/her/it of any of the terms of the agreement which shall be limited to the total fee of the assignment.

8. Performance Guarantee:

The Consultant shall furnish an irrevocable Performance Bank Guarantee amounting to 10% of the value of _____(assignment?) amount at the time of signing the agreement and the same shall be kept valid for 3(three) month after expiry of the agreement or completion of work whichever is later. In the event of extension of Assignment/Contract, the Performance Bank Guarantee furnished shall be suitably extended by the Consultant. The Performance Bank Guarantee and/or the extended Bank Guarantee shall be kept as security for performance of the contract work and shall if need be, invoked for breach of any of any of the terms of this Agreement and/or for non-performance of the terms of the contract.

9. Liquidated Damages:

The timelines for deliverables as per clause 5 above shall be strictly adhered to by the Consultant. The assignment shall be completed in a phased manner and overlapping of one or more study shall not be a constraint for adherence to the timelines specified. In case of any delay in adhering to the timelines for completion of the assignment or in case of any error/variation in the assignment submitted, liquidated damages shall be levied in the following manner.

9.1 Liquidated Damages for delay and for error/variation in the assignment report.

In case of delay in the deliverables/schedule as per clause 5 and in case any error or variation is found in the assignment submitted to CERC by the Consultant and if such error or variation is found to be the result of negligence or lack of due diligence on the part of the Consultant, liquidated damages not exceeding an amount equal to 0.5% (zero point five per cent) per day of the agreement value, shall be imposed on the Consultant, from the payments to be made as per schedule, subject to a maximum of 10% (ten per cent) of the Agreement Value. However, in case of delay due to reasons beyond the control of the Consultant, suitable extension of time with no additional financial commitment shall be considered.

Prior to imposition of LD in case of error/variation, the Consultant may be issued notices to rectify the error/deficiencies as pointed out by CERC.

In the case of non-completion of the said assignment either in full or in case the assignment is partly completed, within the stipulated time or the extended time, CERC shall have the right to get the assignment (in full or in part) completed by another

agency, at the risk and cost of the Consultants, in addition to the LD imposed as above.

In case significant deficiencies are noticed in services of the Consultant and in case these deficiencies cause or likely to cause adverse effect on the assignment or on the reputation of CERC, appropriate legal action, including debarring the Consultants for a specific period may be considered.

10. Termination of contract:

In addition to the imposition of LD as above, CERC has the right to terminate the agreement on account of non-performance or breach of the terms and conditions of the said agreement.

(i) **Without any notice:** The assignment may be terminated by CERC, any time, with immediate effect, under following circumstances.

(a) It has come to notice that the consultant/professional expert has been convicted for an offence involving moral turpitude or unethical professional practices. In such an event, the Performance Bank Guarantee shall be invoked in addition to any further legal remedy against the Consultant.

(ii) **With one-month notice:** The assignment may be terminated by CERC, under any of the following circumstances, by giving one month's notice and after providing an opportunity to the consultant/professional expert to offer explanation. In case the explanation is not satisfactory, the Performance Bank Guarantee amount shall be invoked/ encashed:

(a) It has come to the notice of the CERC that the consultant/professional has resorted to fraud or suppression of material information or submission of false information or unethical means to secure the assignment.

(b) It has come to the notice of the CERC that there is a material change in the circumstances of the Consultant based on which the assignment was awarded to the consultant/professional expert.

(c) The Consultant has failed to perform the assignment as per terms and conditions of the agreement; and

(d) The Consultant has violated or breached any of the provisions of the agreement.

(iii) The CERC and the Consultant shall have the option to terminate the agreement on 'mutual consent' by giving notice of one month to the other. This is however subject to adjustment of Liquidated Damages imposed if any, for any error/variation in the assignment or for delay in completion of the work as per deliverables/schedule in this agreement.

11. Effect of termination:

On pre-mature termination of the assignment at any time under circumstances other than those mentioned above, CERC shall pay the Consultants, the remuneration only for the work performed by them till the date of such termination, subject to adjustment of any liquidated damages imposed by CERC as per terms of this agreement.

Provided that in case of any dispute as to what is the entitled remuneration for the work, the matter shall be referred to arbitration under the provisions of this agreement.

12. Notice:

Any notice between the parties shall be in writing and posted to the other party to the last known address.

13. Arbitration:

i) Any difference, dispute, claims which may arise between the parties hereto as to the construction or true intent and meaning of any of the terms and conditions herein contained or as to any payment to be made in pursuance hereof or as to any other matter arising out or as to any other matter arising out of or connected with or incidental to these presents or as to the rights, duties and obligations of any of the parties, such difference, dispute or claim shall be mutually settled amicably by the parties failing which the parties may resort by arbitration in terms of the Arbitration and Conciliation Act 1996 as amended from time to time. In the event of arbitration, CERC shall appoint sole arbitrator which shall be binding on the Consultant.

ii) The venue of the arbitration will be Delhi/New Delhi and the language shall be English.

14. JURISDICTION:

In respect of any legal proceedings arising as a result of or relating to or incidental to this agreement, the courts in New Delhi alone shall have exclusive jurisdiction.

IN WITNESS WHEREOF, the Parties above named have executed this Agreement of the day, month and year mentioned hereinabove.

Signed by:

Signed by:

.....
.....

.....
.....

[The consultant/Professional party or on his behalf of]

[on behalf of the CERC]

in the presence of [witness]

the presence of [witness]

Signature.....
Name.....

Signature.....
Name.....

On 100 Rs Stamp Paper

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT entered into on this _____day of, 2018 [here give the date of the agreement] BETWEEN [give the Name and full address of the Consultant or Professional Expert] hereinafter referred to as “the Consultant” or the party of the First part AND Central Electricity Regulatory Commission represented by _____(name and designation of the Officer) having its office at 3rd and 4 the Floor Chanderlok Building, 36 Janpath, New Delhi -110001 (herein after called "CERC") or the party of the Other part:

A) Whereas CERC has undertaken a bidding process for selection of a Consultant/Professional expert for the assignment of “Preparation of database for Orders pronounced by Central Electricity Regulatory Commission”(hereinafter called “the assignment”) in accordance with the provisions of the Central Electricity Regulatory Commission (Appointment of Consultants) Regulations, 2008 and its amendments thereof;

B) Whereas, CERC, after evaluation of bids, decided to engage [name of Consultant] as the Consultant for the said assignment and the said Consultant has agreed to take up the above said assignment and has entered into an contract agreement on [Insert date] for undertaking the said assignment;

C) Whereas, CERC, desires to share business information which inter-alia include CERC information or business information of confidential or non confidential nature to the Consultant for the purpose of the assignment for which the consultant agreed to enter into a confidential and non-disclosure agreement;

D) Whereas, the said Consultant has agreed to enter into a confidential and non-disclosure agreement in accordance with clause 8 of the Terms of Reference and Clause 6 of the Contract Agreement dated (Insert Date of Contract Agreement);

E) Whereas, CERC intends to lay down in writing the obligations of the Consultant with respect to the handling and disclosure of the business Information shared with or made known to the said Consultant by in connection with the said assignment.

NOW THIS AGREEMENT WITNESSETH AS UNDER:

In consideration of the mutual covenants and conditions set forth herein, the consultant, is legally bound and agrees as follows:

1. Definitions :

(a) “CERC Information or Business Information” includes, but is not limited to, information relating to tariff petitions, intellectual property, reply affidavits / rejoinders/objections, written submissions, technical and financial information, sources of information, strategic decisions and discussions, plans, datas, methods and approach, personnel and business relationships in respect of the functioning of CERC etc.

(b) “Commission” means the Chairperson and the members of the CERC including the Ex-officio member.

(c) "Confidential information" includes, but is not limited to business information and includes all and any information communicated to the said Consultant in writing or orally by CERC:

Explanation: The Confidential Information shall not include any information which (i) was already known to the consultant/professional prior to the time of disclosure by CERC as evidenced by written records, (ii) or is available or becomes available to the public, through any other source, other than through a breach of this Agreement by the Consultant /professional.

(d) "Person" shall include any company or body corporate or association or body of individuals, whether incorporated or not, or an artificial juridical person;

(e) "Secretary" means the Secretary of the Commission.

(f) "Effective Date" means the date from which this agreement is signed by the consultant/professional;

2. The Consultant/Professional expert agrees that:

(a) It shall use the business information including confidential information or non confidential Information for the assignment and for no other purpose whatsoever;

(b) It shall take all necessary and appropriate steps to keep the business information including confidential and shall protect the confidential Information including: (i) restricting access to all confidential Information received, to those employees who have a "need to know" and advising such employees of their obligations to handle the Confidential Information with the highest degree of care and prudence to prevent any violation of this Agreement; and (ii) not using, disclosing, or allowing access to such Confidential Information by any third party, except as authorized by CERC in writing.

(c) It shall be liable for any breach of this agreement by any of its employees, employees of its affiliates or subsidiaries and by any Consultant, agent, or other third party to whom it has communicated the said business information including confidential Information.

3. Disclosure of information

3.1 If the Consultant/professional expert becomes legally required to disclose business information including confidential Information, or any part thereof, the Consultant will give CERC prompt notice of such requirement. Upon such notice or request, CERC shall either waive compliance to any of the terms of this agreement or if CERC is unable to obtain any order prohibiting disclosure of such business Information and made known to the consultant, only then the Consultant shall disclose that portion of the Confidential Information, which are necessary to ensure compliance of such legal requirement.

3.2 Any business information including confidential Information that is disclosed pursuant to a legal obligation as above shall maintain its confidential or restrictive access character if the disclosure does not result in the information becoming generally known or available to third parties, without restrictions on further disclosure. The Consultant shall have the responsibility to show that the information remains confidential based on the foregoing exceptions and must inform CERC within forty eight hours from the date /time of disclosure upon such exceptions.

4. Rights on Information

4.1 The Consultant agrees that business information including confidential Information is and will remain the property of CERC and all such Information in tangible form and copies thereof will be returned promptly to CERC upon request of officer in charge or at the end of the assignment. In case, the consultant is required to hold on to the confidential information in furtherance of the assignment, then such copy shall be maintained in a safe and secure location by the said consultant. No use of such business information including confidential Information is permitted except as provided in this agreement, and the Consultant agrees not to rely upon, in any manner, the said confidential Information, except as authorized by this agreement. No grant of any of the CERC's intellectual property rights, including any license implied or otherwise, is given or intended to be given.

4.2 Any additional information provided by CERC to the Consultant for its evaluation, together with the tariff petitions and the information obtained by the Consultant/professional expert as a result of the scrutiny and examination thereof shall also be deemed to be confidential Information and is subject to this agreement. The interim report or analysis or deliverables made there from shall be returned or disposed of as directed by CERC.

5. Effective date and termination of the Agreement:

5.1 This Agreement will be effective as on the Effective date of (Insert Date) and will cover all the business information including Confidential Information disclosed to the Consultant by CERC subsequent to such date. This agreement shall remain valid for 10 years from and after the effective date of this agreement and from the termination of the agreement dated (Insert Date) unless extended by CERC in relation to the said assignment/Permitted Purpose.

5.2 The expiry of the agreement dated (Insert Date) does not give liberty to Consultant to disclose any information shared/disclosed by CERC and available with the consultant and/or their employees and the Consultant shall indemnify CERC to the extent of the breach of confidentiality and affecting the interests of CERC.

6. The Consultant acknowledges and agrees that the unauthorized disclosure or any other violation, or any perceived violation of this agreement by the Consultant will cause irreparable damage to CERC. The Consultant agrees that CERC has the authority to prohibit the Consultant/professional expert from any such disclosure, attempted disclosure, violation or perceived violation without the necessity of proving damage of its interests. The Consultant hereby agrees and indemnifies and holds the CERC harmless from and against all or any damage, losses and costs (including reasonable attorneys' fees) resulting from any such actual, attempted or threatened disclosure or perceived violation.

7. Neither this agreement nor anything disclosed or provided pursuant to this agreement shall create or should be construed to create, in any manner, any obligation to enter into any contract or business arrangement nor does it obligate either Party to purchase any service or item from the other or offer for sale any products using or incorporating Confidential Information.

8. The Consultant agrees and acknowledges that neither CERC nor its officers, employees, assigns or advisors make any representation or warranty (express or implied) as to the accuracy and completeness of Confidential Information except as may be expressly represented or warranted in any subsequent agreement concluded between the Parties.

9. This Agreement may not be amended or modified, nor may any right or remedy of any Party be waived, except in writing and signed by such Party. The waiver by any Party of the breach of any term or provision hereof by any other Party will not be construed as a waiver of any other subsequent breach.

10. The rights and obligations of the parties pursuant to this Agreement shall be in addition to and shall not derogate from either party's obligations under any other agreement between them. In the event of any conflict between any provision(s) of this Agreement and those of any other agreement between them, the more restrictive provision(s) shall apply and the interpretation of CERC in this regard shall be final.

11. The Consultant affirms that the individual(s) executing this agreement on behalf of the said consultant has the authority to bind the Consultant to the terms hereof.

12. The consultant acknowledge and agree that each and every term of this agreement is of the essence. If any one or more of the provisions contained in this agreement should be declared invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained in this Agreement shall not in any way be affected or impaired thereby so long as the commercial, economic and legal substance of the transaction contemplated hereby are not affected in any manner materially adverse to any Party. Upon such a declaration, the Parties shall modify this Agreement so as to carry out the original intent of the Parties as closely as possible in an acceptable manner so that the purposes contemplated hereby are consummated as originally contemplated to the fullest extent possible. However, the decision of CERC shall be final.

13. Arbitration:

(a) Any difference, dispute, claims which may arise between the parties hereto as to the construction or true intent and meaning of any of the terms and conditions herein contained or as to any payment to be made in pursuance hereof or as to any other matter arising out of or connected with or incidental to these presents or as to the rights, duties and obligations of any of the parties, such difference, dispute or claim shall be mutually settled amicably by arbitration through a sole arbitrator to be appointed by CERC.

(b) The Arbitration shall be conducted in accordance with the Arbitration and Conciliation Act, 1996 or any statutory amendments thereof. The venue of such arbitration will be Delhi/New Delhi. Arbitration shall be subject to English language.

14. Jurisdiction:

In respect of any legal proceedings arising as a result of or relating to or incidental to this agreement, the courts in Delhi/New Delhi alone shall have exclusive jurisdiction

IN WITNESS WHEREOF, the Parties above named have executed this Agreement on the day and month of the year mentioned hereinabove.

Signed by, [the consultant/Professional expert] for on behalf of] in the presence of

Witness

1.

2.

Signed by,for on behalf of CERC in the presence of

Witness

1.

2.

(Note: The CERC may review the above after pre-bid conference meeting to align with TOR, if required)