

**CENTRAL ELECTRICITY REGULATORY COMMISSION**  
Ground Floor, Chanderlok Building, 36, Janpath, New Delhi-110001

**Engagement of Consultants to provide assistance in framing the “Terms and Conditions for Tariff determination from Renewable Energy Sources Regulations commencing from 1.4.2020” by Central Electricity Regulatory Commission**

**Terms of Reference (ToR)**

**1. Background**

1.1 The Central Electricity Regulatory Commission was constituted under erstwhile Electricity Regulatory Commissions Act, 1998 and subsequently recognized as the Central Electricity Regulatory Commission (hereinafter referred as “the Commission”) under the Electricity Act, 2003 (hereinafter referred as “the Act”). The Commission has been vested with the powers under clause (s) of Sub-section (2) of Section 178 of the Act to frame regulations on the Terms and Conditions for Tariff determination from Renewable Energy Sources.

1.2 Further, as per Clause (a) of Section 61 of the Act, Terms and Conditions for Tariff determination from Renewable Energy Sources Regulations(hereinafter referred as “RE Tariff Regulations”)specified by the Commission act as guiding principle for the State and Joint Electricity Regulatory Commissions. The Commission has also been vested with the responsibility of promoting market development in the power sector; to encourage competition; and induce efficiency improvement with the larger objective to extend the fruits of competition and efficiency to the electricity consumers.

1.3 The Commission has issued RE Tariff Regulations for the period 2009-12, 2012-17 and 2017-20. The current control period i.e. 2017-20 shall come to an end on 31<sup>st</sup> March, 2020. Considering the developments in the sector during the current control period, current and perceived challenges in the renewable energy sector and need for market development, the Commission is of the view that it is necessary to have a fresh look into the basis and assumptions of tariff determination from Renewable Energy Sources for the next control period beginning 1<sup>st</sup> April 2020.

1.4 It has been decided to engage a consulting agency to assist the Commission in the process leading to formulation of regulations in this regard.

**2. Objective**

2.1 To provide assistance to the Commission in reviewing the provisions of existing RE Tariff Regulations taking into account developments in the sector during the ongoing control period; analyzing the challenges in the renewable energy sector; considering various policy changes and emerging technologies; analyzing comments and suggestions received from stakeholders during various stages of consultation process; and undertaking relevant studies to facilitate framing of RE Tariff Regulations for the next control period commencing from 1<sup>st</sup> April 2020 to 31<sup>st</sup> March 2023 and Tariff Order for the first year of the control period.

### 3. Scope of work

3.1 The scope of the assignment is to provide assistance to the Commission on following aspects:-

- (a) Review of provisions of existing RE Tariff Regulations 2017-20;
- (b) Analysis and study on various alternatives and approaches for determining the tariff principles (financial, technical and operational), collection of relevant information including but not limited to capital cost, interest on loan, interest on working capital, return on equity, depreciation, sourcing and cost of fuel, land requirements and its cost, cost of equipment, operation and maintenance expenses, projects involving floating solar plants, hybrid projects (renewable-storage, renewable-renewable or renewable-conventional), comparison of competitive bids and tariff discovered for renewable energy projects at Central and State level, auxiliary consumption, fuel calorific value and other fuel related specifications for renewable projects;
- (c) Development of other regulatory options or alternatives duly supported by relevant and reliable analysis and documents;
- (d) Assisting drafting Terms and Conditions for Tariff Determination from Renewable Energy Sources Regulations 2020 (hereinafter referred as the "Draft Regulations") along with Explanatory Memorandum;
- (e) Analysis of the comments and suggestions received on the Draft Regulations; collection of additional information, if required;
- (f) Preparation of tariff models for each renewable technology and scenarios based on the Regulations.

3.2 The scope of the assignment also includes specific assistance on following aspects:

#### **(A) Operational/ performance parameters and financial norms**

3.2.1 Review of the existing operational/ performance parameters and financial norms including methodology and approach in respect of renewable energy technologies taking into account various inputs.

- (i) Study of Operation & Maintenance (O&M) expenditure norms for renewable generating stations based on annual O&M expenses for financial years 2012-13 to 2018-19 for projects which were awarded through competitive bidding route or were awarded on preferential/generic tariff basis at Central and State level.
- (ii) Consider the CUF/PLF/generation requirements mandated in the projects for the purpose of determining the CUF/PLF of various technologies.

(iii) Study and analysis of fuel being procured by existing biomass based/non fossil fuel based cogeneration, MSW/RDF based RE generating stations to take a view on bench marking of fuel cost, gross calorific value, gross station heat rate, specific fuel consumption for the purpose of working capital and plant operation.

(iv) Review of capital costs of various RE technologies like SHP, biomass based/non fossil fuel based cogeneration, biogas, biomass gasifier etc.

**(B) Study and Analysis**

3.2.2 Review of the existing tariff design for renewable generating stations taking into account the current market scenario including renewable energy penetration and emerging technologies including but not limited to floating solar plants, renewable-renewable hybrid projects, renewable-conventional hybrid projects, renewable-storage projects.

3.2.3 Review of the existing approach of return on investment taking into consideration domestic market including study of debt market and return on equity through various scientific methods such as Capital Asset Pricing Model.

3.2.4 Review of the existing approach for allowing depreciation and depreciation rate taking into account financial standards, Tariff Policy, Companies Act, 2013 and Income Tax Act, 1961 etc.

3.2.5 Review of the efficacy of the normative approach for allowing two part tariff for renewable generating stations.

3.2.6 Regulatory interventions required to incentivize renewable-storage, hybrid and floating solar generating projects.

3.2.7 Review of provisions in existing RE Tariff Regulations as regards determination of return on equity and interest on loan and working capital.

3.2.8 Review of provisions/principles of tariff design in use by other infrastructure sectors for determination of tariff including but not limited to financial, operational parameters.

3.3 While providing assistance in preparing the Draft Regulations and explanatory memorandum as mentioned in Para 3.1(d) above, the consultant shall keep in view the following.

(a) The Electricity Act, 2003, National Electricity Policy, Tariff Policy and rules and guidelines issued by Government of India (GoI) under the Electricity Act,2003;

(b) Various judgments pronounced by Appellate Tribunal for Electricity (APTEL), Hon'ble Supreme Court and other judicial pronouncements which may have a bearing on the new Regulations;

- (c) Deliberations during public hearings;
- (d) Comments and suggestions received on the Draft Regulations;
- (e) Data furnished by various stakeholders; and
- (f) Commission's viewpoint.

#### **4. Deliverables and duration of the Assignment**

4.1 The assignment shall comprise of the following items of work to be completed as per the timeframe indicated:

##### Duration of the contract

4.1.1 The entire assignment shall be completed within a period of **six months** from the date of signing of agreement. However, individual tasks should be completed in a phased manner simultaneously as per time line given in subsequent paragraphs.

##### Timeline of deliverables

4.1.2 The Consultant will be required to submit the inception report on the following study within 30 days from the date of signing of agreement.

(a) Various studies separately (either in presentation form or report format as required by CERC) with regard to operational & performance parameters, approach for return on investment in the renewable energy sector and other infrastructure sector, treatment of depreciation and review of the depreciation rate etc ;

(b) Analysis of Capital Costs parameters, O&M expenditure norms, technical norms and financial norms for the proposed Regulations;

(c) Analysis and study on various aspects as mentioned in Section 3, collection of relevant details and information, study of alternatives and approaches and back up analysis;

4.1.3 Analysis of the comments and suggestions received on the Draft Regulations and requisite studies/ analyses as per instructions of CERC ---- to be completed within **10 days** from date of public hearing on the Draft Regulations and in preparation of the Final Regulations and Statement of Objects and Reasons thereon;

4.1.4 Development of tariff models for each renewable technology and scenarios and preparation of draft Tariff Order for the first year of the control period as per instructions of CERC to be completed within **10 days** from date of notification of Final Regulations.

4.1.5 Analysis of the comments and suggestions received on the Draft Tariff Order and requisite analyses as per instructions of CERC to be completed within **10 days** from date of public hearing on the Draft Tariff Order and in preparation of the Final Tariff Order including Statement of Objects and Reasons thereon;

4.1.6 Preparation of final Tariff Order for the first year of the control period as per instructions of the CERC Secretariat to be completed within **10 days** from date of notification of Final Regulations.

4.1.7 Adhere to timelines in any other analysis or submission of report/ presentation, as per the instructions of Secretary, CERC or any other authorized representative, within the scope of the assignment.

4.2 The Consultant will be provided with following data:

(a) Comments and suggestions received on the Draft Regulations.

(b) Any additional information required, if already available with the Commission.

4.3 Information/ data required for the analysis of debt market, study of various methods for rate of return etc. are to be arranged by the consultant on their own.

4.4 The tariff models prepared by the Consultant shall be a property of the Commission after the completion of the assignment and accordingly, transfer of knowledge should be done.

## **5. Qualification Criteria**

5.1 At least five completed assignments in the last ten years which shall include:

(a) Assistance to SERC/JERC/CERC in the field of tariff determination in respect of thermal/hydro or renewable generation projects

Or

(b) Assistance to SERC/JERC/CERC/FOR/MNRE in preparation of Regulations related to renewable energy or advising on renewable energy issues

5.2 The applicant should have personnel with professional qualification having background of finance, engineering, economics and law along with relevant experience of tariff determination. The applicant should be a firm or a limited liability partnership or a company registered in India. Consortium of two companies may be considered however consortium of persons shall not be considered;

5.3 The Turnover and Net Worth of the Consultant/lead member of the consortium should be minimum of Rs.50 lakh.

5.4 The professionals deployed should have knowledge of relevant Acts, Policies, Regulations as well as operational and commercial aspects of renewable generating stations;

5.5 The applicant should have in-depth knowledge of CERCRE Tariff Regulations and practices followed by other regulators. The applicant should submit documentary evidence (eg. Completion Certificates etc.) of having handled similar projects, if any.

5.6 The applicant shall submit methodology for the proposed assignment and make presentations of the same before Consultancy Evaluation Committee (CEC) to be constituted by CERC.

## 6. Mode of payment

6.1 The consultant shall be paid as per the following schedule:

Sr. No.	Stage	%age 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 acceptance of inception report with reference to Para 4.1.2 (a), (b) and (c)	20
3.	On publication of the Draft Regulations along with explanatory memorandum	30
4.	On successful completion of assignment as at paragraph 4.1.3 i.e. the Final Regulations along with Statement of Objects and Reasons (including all intermediate reports/ analyses)	20
5.	On successful completion of the assignment and acceptance of all reports by the CERC*	20

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

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

7. Timelines for deliverables are to be strictly adhered to by the consultant. For any delay, except where extension is allowed by CERC, damages would be charged at the rate of 2% per week of delay for value of work executed after due date of completion subject to ceiling of 10% of contracted amount. In case of unreasonable delay, the assignment is liable to be cancelled and the CERC may engage alternate consultant to execute remaining work at the risk and the cost of the bidder.

## 8. Application and Evaluation Criteria

8.1 The bidders shall quote the rate in the financial bid exclusive of taxes.

8.2 Any conditional bid is liable to be rejected.

8.3 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) and one copy of Financial bid. The Consultant shall also submit a soft copy (including pdf and word format versions of the technical bid) in a USB pen drive.

8.4 Two separate sealed bids clearly marked as “Technical” and “Financial” are required to be submitted which shall be placed in one outer envelope clearly mentioning in bold letters on top of envelop “Engagement of consultants for undertaking various studies and providing assistance in framing Terms and Conditions for Tariff determination from Renewable Energy Sources Regulations commencing from 1.4.2020 to 31.3.2023 and Tariff Order for the first year of the control period”.

8.5 Technical and financial components will carry weightage of 70% and 30% respectively. The technical performance shall be evaluated based on the criteria given in table at para 8.7. Minimum qualifying marks shall be 70% for technical component. The “Financial” bid of only technically qualified bidders will be opened. While finalising the bid, the total score will be obtained by adding the scores for Technical and Financial components.

8.6 The bids of eligible bidders will be scrutinized by Consultancy Evaluation Committee (CEC) and shortlisted bidders will be called for interaction. The bidders shall be required to make a presentation on the proposed Approach and Methodology in not more than 6 slides .

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

<b>Technical Parameters</b>	<b>Weightage</b>
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 made before CEC	20%
<b>Total</b>	<b>100%</b>

8.8 Proposal with the lowest cost will be given score of 100 for financial component while other proposals will be given scores that are inversely proportional to prices quoted by them.

9. Termination of contract: The consultant shall abide by the performance and obligations agreed under contract as per Annexure-III and Annexure-IV. The assignment may be terminated as per clause 7 of the Contract Agreement enclosed at Annexure-III and Confidentiality Agreement at Annexure-IV.

10. CERC reserves the right to cancel the bid without assignment of any reason, whatsoever.

11. An undertaking to the effect that the applicant is not blacklisted or debarred by Government of India or State Government(s) or Public Sector Undertakings for such assignments needs to be submitted along with the application.

12. The applicant should have a valid PAN, TAN and GST number.

13 The address for submission of the proposal and seeking any clarification (within the due date of submission of the ToR i.e. upto **17.00 hrs on 29 November, 2019**) is given below:

**Advisor (Renewable Energy),**  
C/o Central Electricity Regulatory Commission,  
Ground Floor, Chanderlok Building,  
36, Janpath, New Delhi – 110001  
Ph: 91-11-23353503 Fax: 91-11-23753923

**DETAILED PROPOSAL FOR STUDY (TECHNICAL)**

Note: Two (2) copies of the proposal shall be submitted.

**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 (supported by Annual Statement of Accounts of Last Financial Year)

**II. TECHNICAL SPECIFICATIONS:**

6. 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
7. Brief review of the experience in the relevant field (National and International).
8. Detailed Approach & Methodology for undertaking the assignment.
9. Facilities available for the proposed work in the applicant's organization/ institution
10. Previous experience of the applicant in this or related field
11. Name and Designation of the Proposed Team (also indicate the man-hour committed for each member of the team)
12. Biographical sketch of the Study Team (for every team member)
  - (i) Name
  - (ii) Designation
  - (iii) Date of Birth
  - (iv) Academic qualifications and experience

a. Academic Qualifications

Degree	University	Field(s)/Specialisation	Year

b. Experience:

- Total Relevant Experience for the proposed assignment: .... Years
- Details of experience:

Institution	Topic of work done	Period

- Status of team member (Onrolls/Offrolls):
- Field of major interest:
- Additional information (if any)

13. Capacity to impart training/ transfer of knowledge

**Signature of Authorised Representative**

**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:

**II. Fee Proposed:**

6. Amount of Fee proposed for:

<b>Components</b>	<b>Consolidated Amount (in Rs.)</b>
Consultation Charges- Misc./ Others (if any)	
-----	-----
<b>Total</b>	

**(Amount in Words**

**Rupees \_\_\_\_\_)**

Note: The fees should not include other financial liabilities of the Consultant and applicable taxes. The taxes shall be reimbursed separately.

**Signature of Authorised Representative**

**(On Stamp Paper of Rs. 100/-)**

**AGREEMENT**

This **AGREEMENT** entered into on this day of----- 2019 [the date of the agreement] BETWEEN [give the Name and full address of the Consultant] hereinafter referred to as "the Consultant" or the party of the First part AND Central Electricity Regulatory Commission represented by its Secretary having its office at 3<sup>rd</sup> and 4<sup>th</sup> Floor, Chandralok Building, 36 Janpath, New Delhi -110001 (hereinafter called "CERC") or the party of the Other part.

WHEREAS

A. the CERC, on being satisfied that there is a need to engage consultants to undertake various studies and to provide assistance in framing the Terms and Conditions for Tariff Determination from Renewable Energy Sources Regulations, invited quotations vide notice-----dated --.

B. the Consultant responded to the above notice and submitted its quotation.

C. the CERC, on scrutiny of various quotations received in response to its above-mentioned notice ----- dated ----- including the one received from the Consultant has decided to engage the Consultant for the above said assignment under the provisions of the Central Electricity Regulatory Commission (Appointment of Consultants) Regulations, 2008 as amended from time to time

D. the Consultant has agreed, to take up the above-said assignment through unconditional acceptance vide Letter No.-----dated-----.

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 CERC 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.

(iii) "Member" means a member of the CERC including the Chairperson and the ex-officio member.

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

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

• **Nature of work:** The Consultant shall be engaged in the area of assignment as mentioned under (A) above in accordance with the Terms of Reference (vide CERC notice ----- dated -----) attached hereto which shall be deemed to be a part of this agreement for all intents and purposes.

3. **Commencement and duration of assignment:** The above assignment shall commence with effect from ----- and shall be valid for a period of six months. The assignment may be extended for a further period, if required, with mutual consent and on terms and conditions agreed therein.

#### **4. Obligations of the Consultant:**

(i) The Consultant shall adhere to the timelines specified in the Terms of Reference and submit the deliverables to the CERC.

(ii) The Consultant shall make presentations before the Commission or any other person or organization as required.

(iii) The Consultant shall ensure that the interim and final findings of the study and the contents of his interim and final reports to the CERC are confidential information and shall not disclose it to any person.

(iv) The Consultant shall provide all reports and calculations in report format as well as digital format as per requirements of the CERC.

#### **5. Entitlements of the Consultant:**

(i) The Consultant shall be entitled to payment of such sum of money as provided in offer letter of CERC;

(ii) The Consultant shall be paid as per Clause 6 of Terms of Reference;

(iii) In appropriate cases, part or full amount payable will be released only after approval of the deliverables by the competent authority authorized by the Commission;

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

(v) The Consultant will function from the office premises of CERC.

#### **6. Restrictive terms:**

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

(ii) The Consultant shall further undertake that there is no conflict of interest with any of the assignment and provides the undertaking in this context which will be abided by during the assignment.

(iii) The Consultant further affirms that he/ she/ it shall hold all business information including 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.

(iv) The 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.

(v) The Consultant, while functioning from CERC office premises, shall indemnify CERC for any damages at all times. The Consultant shall undertake the entire responsibility of their professionals, while executing their assignment from office premises. No compensation towards the expenses for their professionals is admissible.

(vi) The Consultant shall ensure that their professionals maintain office discipline, follow ethical professional practice while functioning from office premises of CERC.

## **7. Termination of contract:**

### At the option of the CERC:

(i) Without any notice: The assignment may be terminated by the CERC, at any time, with immediate effect, if it has come to notice that the Consultant has been convicted for an offence involving moral turpitude or/ unethical professional practices.

(ii) With one month notice: The assignment may be terminated by the CERC, under any of the following circumstance, by giving one month's notice and after providing an opportunity to the consultant to offer explanation:

(a) It has come to the notice of the CERC that the Consultant or its professionals have 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 Commission that there is a material change in the circumstances of the Consultant based on which the assignment was awarded such as fall in the net worth criteria if any fixed for the selection of the Consultant, cancellation of the practioner's license by the professional body forming the basis of the Consultant's eligibility.

(c) The Consultant has failed, without any valid justification, to adhere to the timeframe specified by the CERC in the assignment.

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

(e) The Consultant failed to provide deliverables within the timeline specified in the Terms of Reference on three consecutive occasions.

(i) At the option of either parties: Both the parties namely, the CERC and the Consultant have the option to terminate the assignment by giving a notice of three months or the equivalent remuneration in lieu thereof.

**Effect of termination:** On pre-mature termination of the assignment, the CERC shall pay the Consultant, part or full remuneration, as CERC deems fit, for the work performed by him/ her/ it till the date of termination of the Contract.

8. 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.

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

10. **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 arbitration through a sole arbitrator appointed by the CERC.

(ii) 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.

(iii) The Arbitration shall be in English language.

11. **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 of the day, month and year mentioned hereinabove.

Signed by, ..... [Consultant or his/ her/ it Authorised Signatory] in the presence of

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

1. Witness
2. Witness

**(On Stamp Paper of Rs. 100/-) CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

This Confidentiality and Non-Disclosure Agreement entered into on this day of --- ----, 2019 [here give the date of the agreement] BETWEEN [give the Name and full address of the Consultant] 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 3<sup>rd</sup> and 4 the Floor Chandralok Building, 36 Janpath, New Delhi -110001 (hereinafter called "CERC") or the party of the Other part:

A. Whereas CERC has undertaken a bidding process for selection of a Consultant for the assignment of providing inputs after analysis of tariff proposals for relevant tariff periods (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 9 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, data, 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 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.

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

d. “Secretary” means the Secretary of the Commission.

(e) “Effective Date” means the date from which this agreement is signed by the consultant;

## **2. The Consultant 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**

31. If the Consultant 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.

32 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, such copy shall be maintained in a safe and secure location by the 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 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 therefrom 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 2 years from date of final publication of Tariff Regulations and Tariff Order.

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 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 acknowledges and agrees 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:**

13.1 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 arbitration through a sole arbitrator to be appointed by CERC.

13.2 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 in 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] 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.