

**UNDERTAKING (on affidavit)**

**(In terms of Clause 6 of the Contract Agreement read with Clause 7 of the Terms of Reference)**

The Consultant /Professional expert (name or organisation) hereby certifies that

- (i) the Consultant /Professional expert has not undertaken any consultancy service or assignment or given any advice, either directly or indirectly to those organisations whose tariff petitions are part of the said assignment.
- (ii) to the knowledge and belief, there are no present interests (financial, contractual, organizational, or otherwise) relating to the assignment for providing input for tariff determination for relevant control period awarded by CERC by Letter No.\_\_\_\_dated \_\_\_\_and to be performed under the terms agreement dated \_\_\_\_\_, that would create any actual or foreseeable conflict of interest (or apparent conflicts of interest), (including conflicts of interest for immediate family members, spouses, parents, children) that would impinge on its ability to render impartial assistance or advice or result in it being given an unfair advantage.
- (iii) the Consultant /Professional expert will continue to exercise due diligence in identifying and removing or mitigating, to the satisfaction of CERC, such conflicts of Interest (or apparent conflicts of interest).
- (iv) the Consultant /Professional expert shall notify the CERC of any possible or potential conflict of interest which may result from his other activities, and shall commence such other activities only after written approval of the CERC.
- (v) CERC may terminate the assignment/agreement, in whole or in part, if it deems such termination necessary to avoid the appearance of a conflict of interest. Also, if the Consultant /professional expert was aware of a potential conflict of interest prior to award of the said assignment or discovered an actual or potential conflict after award of the assignment and did not disclose or misrepresented relevant information to the CERC, then the CERC may terminate the contract for default, or pursue such other remedies as may be permitted by law or under the agreement.

Consultant /Professional expert Name /Organisation (with seal)\_\_\_\_\_

Signature  
Name of Authorised Signatory  
Date

In Witness of :

- 1.
- 2.

Annexure IV

On 50 Rs Stamp Paper

AGREEMENT

This **AGREEMENT** entered into on this \_\_\_\_\_ day of September, 2015 [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 Secretary (name and designation of the Officer) having its office at 3<sup>rd</sup> and 4 the Floor Chanderlok Building, 36 Janpath, New Delhi -110001 (herein after called "CERC") or the party of the Other part.

WHEREAS

- (A) the CERC, on being satisfied that there is a need to appoint a [**Corporate consultant**] in the area of [here give the area of assignment: e.g. providing inputs for determination of tariff by Central Electricity Regulatory Commission in accordance with relevant Tariff Regulations]. invited quotations vide notice [here give the No and date of the notice]
- (B) the [consultant/Professional Expert] responded to the above notice and submitted his quotations vide his letter [here give the No and date of the quotation of the consultant]
- (C) the CERC, on scrutiny of the responses received in response to its above mentioned notice dated [here give the date of the notice inviting quotations] including the one received from the [consultant] has decided to engage the consultant for the above said assignment under the provisions the Central Electricity Regulatory Commission (Appointment of Consultants) Regulations, 2008 and subsequent amendment thereto.
- (D) the consultant has agreed, to take up the above said assignment through unconditional acceptance of Letter of Intent dated (Insert date).

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" mean 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) "Member" means the 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.

2. **Nature of work:** The consultant/professional expert shall be engaged as **[Corporate]** in the area of [here give the area of assignment as mentioned under (A) above] in accordance with the Terms of Reference (**Annexure-I**) attached hereto and 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 [the date of this agreement (or) specify the date] and shall be valid for a period of [here give the duration of the contract]

**Provided that [here give any special provision** e.g. the consultant may have to analyse the report for the period falling within the duration of the contract even if the report is received late on a date falling after the above mentioned date]

Provided that for any delay after taking into account extension granted, 1% penalty per week will be levied for value of work executed after due date of completion of work subject to ceiling limit of 10% of contracted amount.

4. **Obligations of the consultant:**

- (i) The consultant shall adhere to the time-frame specified in the Terms of Reference and submit the deliverables to the Secretary.
- (ii) The consultant shall make the presentations before the CERC as required by the Secretary.
- (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 be disclosed to any person. The provision of Confidentiality and Non disclosure Agreement shall apply to these information. .
- (iv) [Here give any other responsibility to be discharged by the consultant]
- (v) The Consultant shall provide the all reports and calculations in the report format as well as digital format as the CERC desires.

**5. Entitlements of the Consultant:**

- (i) The consultant shall be entitled to ₹ [Here give the amount payable and the schedule of payment and any other provision such as TDS, etc.];
- (ii) The consultant shall be paid as per Clause 6 of Terms of Reference (**Annexure-I**);
- (iii) In appropriate cases, a 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 such [here give any specific item which needs to be expressly denied to the consultant/professional expert];
- (v) The consultant will function from the office premises of CERC.

**6. 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. The Consultant shall undertake that there should be no conflict of interest with any of the assignment and provides the undertaking in this context which will be abided by during the assignment.
- (ii) The consultant further affirms and confirms 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/ts 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) The consultant shall have to enter into Confidentiality and non-disclosure agreement and Conflict of interest agreement and abide by the provisions of this agreement;
- (iv) The CERC shall be entitled to, without prejudice to any other right for civil or criminal proceedings, receive from the consultant/ professional expert 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 office premises, shall indemnify the office for any damages at all times. The consultant, shall undertake the entire responsibility of their professional, while executing their assignment from office premises. No compensation towards the expenses for their professionals is admissible.
- (vi) The consultant shall ensure that their professional maintain office discipline, follows ethical professional practice while functioning from office premises and follows/report to the officer in charge.

**7. Termination of contract:**

At the option of the CERC:

- (i) Without any notice: The assignment may be terminated by the CERC, any time, with immediate effect, under any of the 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.
- (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/professional expert to offer explanation:
  - (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 Commission that there is a material change in the circumstances of the Consultant based on which the assignment was awarded to the consultant/professional expert [This clause may be used under circumstances such as fall in the net worth criteria, if any fixed for the selection of the consultant, cancellation of the practitioner's license by the professional body, forming the basis of the consultant's eligibility].
  - (c) The consultant/professional expert has failed, without any valid justification, to adhere to the time-frame 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 for three consecutive occasions as reported by the officer in charge.

At the option of either parties

- (iii) 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.

- 8. 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.

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) Arbitration shall be subject to 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, ..... [the consultant/Professional party or on behalf of .....]  
in the presence of

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

**Note: In contracts wherein time is crucial factor, damages for delay clause and Force Majeure clause may be addressed.**

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

On 100 Rs Stamp Paper

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This **CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT** entered into on this \_\_\_\_\_ day of September, 2015 [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 3<sup>rd</sup> 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 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 11.4 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.
- (b) "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:**

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 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)

(ON COMPANY LETTER HEAD)

(TO BE SIGNED BY AUTHORISED SIGNATORY AND TEAM LEADER)

**UNDERTAKING OF CONFIDENTIALITY**

This is to certify that I, \_\_\_\_\_, an employee of [the name of firm ], understand that any information (written, verbal or other form) obtained during the performance of my assignment “ Providing inputs for determination of tariff by the Central Electricity Regulatory Commission for relevant tariff period”) awarded by the Central Electricity Regulatory Commission vide letter dated \_\_\_\_\_, shall remain confidential and adhere to the provisions of Confidentiality and Non-disclosure Agreement dated \_\_\_\_\_. This includes all business information restricted for permitted use including confidential information and any other information marked or known.

2. I understand that any unauthorized release or carelessness in the handling of this confidential information is considered a breach of duty to maintain confidentiality. I further understand that any breach of the duty to maintain confidentiality could be grounds for immediate termination and /or liability in any legal action arising from such breach.

Authorised Signatory and  
Seal of the Consultant firm  
(Date \_\_\_\_\_ )

Signed in Witness of:

- 1. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.
- 2. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.