

**PFC CONSULTING LIMITED**

**(A wholly owned subsidiary of Power Finance Corporation Ltd.  
A Government of India Undertaking)**

**ELECTRONIC TENDER DOCUMENT  
FOR  
APPOINTMENT OF AGGREGATOR  
UNDER  
PILOT SCHEME- II  
FOR  
PROCUREMENT OF 2500 MW POWER  
ON  
MEDIUM TERM FOR 3 (THREE) YEARS**



**Registered Office  
1st Floor, "Urjanidhi"  
1, Barakhamba Lane, Connaught Place,  
New Delhi - 110 001**

**December 17, 2019**

**PFC Consulting Ltd. invites E-Tenders for Appointment of “Aggregator” under Pilot Scheme-II notified by Ministry of Power, Govt. of India on 30.01.2019 for Procurement of Aggregated Power of 2500 MW for three years (covered under Medium Term) through PFC Consulting Ltd (PFCCL) – the Nodal Agency**

a)	Opening date of Tender downloading	<b>December 17, 2019 from 14:00 hrs (IST)</b>
b)	Closing date of Tender downloading	<b>December 24, 2019 from 12:00 hrs (IST)</b>
c)	Submission date of E-bids	<b>December 24, 2019 from 15:00 hrs (IST)</b>
d)	Opening of E-bids	<b>December 24, 2019 from 15:30 hrs (IST)</b>
e)	Opening of Financial Proposal (Tentative)	<b>December 27, 2019 from 10:00 hrs (IST)</b>
f)	e-Forward Auction (Tentative)	<b>December 27, 2019 from 12:00 hrs (IST)</b>

Note:

Tender Notice and Tender Document are available on PFC Consulting Ltd.'s and MSTC's website and can be downloaded from <https://www.pfcclindia.com> and <https://www.mstcecommerce.com/auctionhome/pfcclaggr/index.jsp>. For bid submission, the Bidder will have to necessarily download an official online copy of the Tender Document from MSTC e-Procurement Portal. All future Information viz. corrigendum /addendum/ amendments etc. for this Tender shall be posted on the PFC Consulting Ltd.'s website and MSTC e-Procurement Portal only. Printed copy of Tender Document will not be sold from PFC Consulting Ltd.'s office.

The Bidder shall bear all costs associated with the preparation, submission/participation in the bid. Nodal Agency/ PFCCL in no way responsible or liable for any costs regardless of the conduct or outcome of the bidding process.

The Technical and Financial Proposal of the Bidder shall not be opened/ evaluated further in case Pass Phrase/ equivalent code is not provided or incorrectly provided by the Bidder due to any reason.

**Bidders are advised to start the registration process on the MSTC e-Procurement Portal as it may take a few days so as to avoid any delay in bid submission (upload) stage. The Bidders registered in DEEP will not require a fresh registration, they will be allowed to login through their existing username, password and DSC.**

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***SECTION -1***  
***BID INVITATION LETTER***

## BID INVITATION LETTER

Ref No.: PFCCL/Pilot-II/2019/Aggregator\_Appt

Date: 17.12.2019

**Sub: Appointment of “Aggregator” under Pilot Scheme - II notified by Ministry of Power, Govt. of India on 30.01.2019 for Procurement of Aggregated Power of 2500 MW for three years (covered under Medium Term) through PFC Consulting Ltd (PFCCL) – the Nodal Agency**

Sir,

### **1.0 BACKGROUND**

- 1.1 Ministry of Power, Govt. of India had issued Gazette notification dated 10.04.2018 Guidelines for Pilot Scheme-I for Procurement of Power under Pilot Scheme for Medium Term through PFC Consulting Ltd (PFCCL) as Nodal Agency and PTC India Ltd (PTC) as Aggregator on 16.04.2018 from the already commissioned Power Station(s) that would dedicate a contracted capacity of 2500 MW from the capacity without having a Power Purchase Agreement for a period of 3 (three) years in accordance with Pilot Scheme.
- 1.2 Ministry of Power, Govt. of India vide letter no 23/78/2017-R&R dated 30.01.2019 had issued notice to facilitate procurement of the aggregated power of 2500MW power for the period of three years (covered under Medium term) from the generating companies having coal based Power Plants which are already commissioned without having a Power Purchase Agreement for the quantum of power, the Bidder is willing to bid. Ministry of Power, Govt. of India had also issued (i) Bidding Document; (ii) Draft Agreement for Procurement of Power under Pilot Scheme-II and (iii) Draft Power Supply Agreement under Pilot Scheme-II collectively referred as **Bidding Documents** for “Procurement of Aggregated Power of 2500 MW for three years (covered under Medium Term) through PFC Consulting Ltd (PFCCL) as Nodal Agency - Pilot Scheme-II”.
- 1.3 PFCCL as Nodal Agency has been directed by MoP to adopt the Bidding Documents for procurement of power from power producers through a process of open and transparent competitive bidding on DEEP e-Bidding Portal. Further, PFCCL has also been directed to appoint Aggregator to facilitate procurement and supply of power. The Aggregator will sign an Agreement for Procurement of Power (APPP-II) with the Successful Bidder(s) and back to back Power Supply Agreement (PSAP-II) with Distribution Licensee(s)/Utilities under Pilot Scheme-II.
- 1.4 The earlier Bidding process initiated for Pilot Scheme – II on 21.02.2019 for selection of Aggregator and procurement of the aggregated power of 2500MW for the period of three years (covered under Medium term) from the generating companies having coal based Power Plants which are already commissioned without having a Power Purchase Agreement for the quantum of power has been annulled by Ministry of Power, Govt. of India vide letter no 23/78/2017-R&R dated 09.12.2019 and had further advised PFCCL to undertake rebidding of Pilot Scheme-II through another Aggregator.
- 1.5 Accordingly, this Tender Document is being issued by PFCCL as the Nodal Agency to appoint Aggregator under Pilot Scheme-II.
- 1.6 **The Bidders are advised to go through Bidding Documents as no change is envisaged in “Bidding Document, Draft APPP-II and Draft PSAP-II”. Further, Bidders should ensure that they have understood all the do’s and don’t applicable for selection of Aggregator as mentioned in the Bidding Documents for the purpose of the Pilot Scheme-II.**

- 1.7 Bidders are invited to submit Technical Proposal & Financial Proposal in single stage two envelop system for the appointment of the Aggregator. The Scope of Work, Deliverables, Qualifying Criteria, Basis of Offer, Terms of payment, Expenses, Terms and Conditions etc. are given below:

## **2.0 SCOPE OF WORK**

Bidders are advised to go through the Bidding Documents issued by Ministry of Power, Govt. of India on 30.01.2019. Subject to and on the terms and conditions of Pilot Scheme-II, the Aggregator shall observe, fulfill, comply with and perform all its obligations set out in the Bidding Documents under Pilot Scheme-II inter alia including but not limited to the following:

- i) The Aggregator shall undertake the procurement and supply of electricity.
- ii) The Aggregator shall coordinate and liaisons with various State/ Distribution Licensee(s) for procurement of power under Pilot Scheme-II till its successful completion.
- iii) The Aggregator shall sign an Agreement for Procurement of Power (APPP-II) with the Successful Bidder(s) and back to back Power Supply Agreement (PSAP-II) with Distribution Licensee(s)/Utility(s) as per the Bidding Documents.
- iv) The Aggregator shall comply with various obligations mentioned in the Bidding Documents.
- v) The Aggregator shall comply with all Applicable Laws and other Applicable Permits (including renewals as required) in the performance of its obligations under APPP-II and PSAP-II.
- vi) The Aggregator shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out:
  - a) upon written request from the Supplier, and subject to the Supplier complying with Applicable Laws, provide reasonable support and assistance to the Supplier in procuring the Applicable Permits required from any Government Instrumentality for Supply of Electricity; Non-grant of Medium Term Open Access shall be mutually decided by the Aggregator and Supplier
  - b) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars as may be required for obtaining Applicable Permits, and obtain and keep in force and effect such Applicable Permits in conformity with Applicable Laws; Non-grant of Medium Term Open Access shall be mutually decided by the Utility and Aggregator;
  - c) procure, or cause to be procured, as required, the appropriate proprietary rights, license, agreements and permissions for materials, methods, processes, know-how and systems used or incorporated into the Power Station;
  - d) ensure performance and fulfillment of Supplier's obligation in respect of debt service for the Power Station during the tenure of the Agreement;
  - e) ensure and procure that its Supplier comply with all Applicable Permits and Applicable Laws in the performance by them of any of its obligations under the APPP-II and PSAP-II agreements;

- f) always act in a manner consistent with the provisions of APPP-II and PSAP-II Agreements and not cause or fail or omit to do any act, deed or thing, whether intentionally or otherwise, which may in any manner be violative of any of the provisions of the Agreements or Applicable Laws;
  - g) support, cooperate with and facilitate the Utilities and Suppliers in the implementation and Supply of Electricity in accordance with the provisions of the APPP-II and PSAP-II Agreements and Applicable Laws.
  - h) comply with the provisions of Applicable Laws with regard to metering of supply of electricity;
  - i) comply with the directions of the Commission issued from time to time under the Act.
- vii) The Aggregator shall ensure that Supplier has procured access to the transmission system required for carrying electricity from the Power Station to the Utility's Drawal Point.
- viii) **The Supplier shall be liable for payment of all charges**, due and payable under Applicable Laws, (i) for **Intra-State transmission of electricity from the Power Station to the Delivery Point** and (ii) for **Inter-State transmission of electricity from the Delivery Point to the Drawal Point**.
- The Utility shall reimburse all charges to the Supplier through Aggregator, due and payable under Applicable Laws, for **inter-state transmission of electricity from the Delivery Point to the Drawal Point**.
- ix) **Obligations relating to Transmission Losses**
- a) The Supplier shall be liable for the transmission losses (i) in all Intra-State transmission of electricity from the Power Station to the Delivery Point and (ii) through Aggregator all Inter-State transmission of electricity from the Delivery Point to the Drawal Point.
  - b) The Utility shall be liable for payment to Supplier through Aggregator of the equivalent amount pertaining to transmission losses in all inter-state transmission of electricity from the Delivery Point to the Drawal Point.
- x) **Obligations relating to SLDC and RLDC charges**
- a) The Supplier shall be liable for payment of all the charges, due and payable under Applicable Laws by the Supplier to (i) the SLDC up to the Delivery Point and (ii) the RLDC, from the Delivery Point to the Drawal Point for and in respect of all its supplies to the Aggregator.
  - b) The Utility shall be liable for reimbursement of all the charges to the Supplier through the Aggregator, due and payable to the RLDC under Applicable Laws, from the Delivery Point to the Drawal Point for and in respect of all its supplies to the Utility.
- xi) The Aggregator shall pay, at all times during the subsistence of the APPP-II and PSAP-II agreements, all taxes, levies, duties, cesses and all other statutory charges etc. payable in respect of the supply of electricity under the APPP-II and PSAP-II agreements.

- xii) The Aggregator shall provide all information provided by the Supplier and Aggregator to the SLDC(s) and RLDC(s) as a part of its operating and reporting requirements under Applicable Laws, including the Grid Code to the Utility.
- xiii) The Aggregator shall provide reasonable support and assistance to the Supplier in procuring the Applicable Permits required from any Government Instrumentality for Supply of Electricity; Non-grant of medium term open access shall be mutually decided by the Aggregator and Supplier;
- xiv) The Aggregator shall support, cooperate with and facilitate the Supplier in the implementation and Supply of Electricity in accordance with the provisions of APPP-II and PSAP-II agreements and Applicable Laws.
- xv) The selected Aggregator shall pay to PFCCL the following:
  - a. For the first year, lumpsum Non Refundable Management Fee of Rs. 2 (Two) Crore plus applicable taxes before issuance of LoA which also includes Bidding Fee.
  - b. From second year onwards, annual Non Refundable Management Fee of Rs. 2 (Two) Crore plus applicable taxes (to be paid on quarterly basis) during period of assignment.
- xvi) Any other activity as per Pilot Scheme-II or as intimated by PFCCL.

### 3.0 DELIVERABLES

The Aggregator is required to submit the following deliverables in line with the time schedule indicated against each deliverables. These time schedules may undergo change as may be required by PFCCL.

Sl. No.	Deliverables	Time Schedule
i)	Execution of APPP-II with Supplier(s)	To be communicated by the Nodal Agency/ State/ Distribution Licensee(s)
ii)	Execution of PSAP-II with Distribution Licencee(s)	To be communicated by the Nodal Agency/ State/ Distribution Licensee(s)
iii)	Quarterly report including documentary evidence of number of energy units (in kWh) supplied under Pilot Scheme-II.	Within 7 (seven) days of the end of each Quarter

### 4.0 QUALIFYING CRITERIA

- 4.1 The Bidder should be a **Trading Licensee whatsoever is allowed to undertake trading in electricity as per the Electricity Act, 2003.**
- 4.2 The Bidder should be submitting the bid on its own and **not in consortium** with any other Bidder.
- 4.3 The Bidder should have **“Turnover” of Rs. 500 crore (Rupees Five Hundred crore only)** as per Audited Annual Account in any of the last three (03) immediately preceding Financial Years. The Bidder should submit documentary proof in support of the Turnover in the form of a certificate by Statutory Auditor along with Audited Annual Accounts for the relevant period and calculation sheet as well.



4.4 The Bidder should have “**Networth**” (as per **Companies Act 2013**) of **Rs. 100 crore (Rupees One Hundred crore only)** as per the last Audited Annual Account i.e. FY 18-19. The Bidder should submit documentary proof in support of the Networth in the form of a certificate by Statutory Auditor along with Audited Annual Accounts for the relevant period and calculation sheet as well.

## 5.0 CONTENTS OF TENDER DOCUMENT

The Tender Document contains the following documents.

- Section -1 : Bid Invitation Letter**
- Section -2 : Bid Forms**
- Section -3 : Bank Guarantee Format**
- Section -4 : Draft Contract Agreement**

## 6.0 PERIOD OF ENGAGEMENT

The period of engagement would be till the completion of the Contract Agreements entered between the Aggregator, Suppliers and the Utilities under Pilot Scheme-II.

## 7.0 BASIS OF OFFER

- a) The Aggregator shall be selected on the basis of maximum percentage (%) discount on Trading Margin to be offered by the Bidders through e-Forward Auction. As per the Pilot Scheme-II Guidelines and Bidding Documents, Trading Margin shall be as approved by Appropriate Commission.
- b) The Bidder(s) have to quote the percentage (%) discount on Trading Margin in their Financial Proposal on the online e-Procurement Portal which will be the Initial Price Offer (IPO). Subsequently, Bidders will be given an opportunity for increasing the percentage (%) discount on Trading Margin in the multiple of 0.05 (Zero point Zero Five) through e-Forward Auction and whosoever submits final maximum percentage discount on Trading Margin [Final Price Offer (FPO)] through e-Forward Auction process would be the Selected Aggregator.

## 8.0 SUBMISSION OF BID

8.1 Bid shall consist of two parts "**Technical Proposal**" and "**Financial Proposal**" and should be duly submitted online using the e-Procurement Portal before the due date. The last date for Bid submission (i.e. Bid Due date) online on e-Procurement Portal would be **December 24, 2019 till 15:00 hrs (IST)**.

### Note:

- a) The Technical Proposal should contain **Form-1** and **Form-2** duly filled and signed by authorized signatory and authority letter as per **Form-3**.
- b) The Bidder should agree to the entire Scope of Work and Deliverables (given in the Covering Letter **Form-1**). No proposal for deviation/ part Scope of Work will be considered.
- c) Documentary proof in support of Turnover and Networth shall be submitted by the Bidder in the form of Audited Annual Accounts and certificate certified by Statutory Auditor.

8.2 The Bidder should quote their “Financial Proposal” i.e. Initial Price Offer (IPO) on the online e-Procurement Portal.

8.3 Bidders are instructed not to approach via e-mail, fax, and telephone or contact any official in PFCCL as regards to this bid after the submission of the bids, apart from communications by PFCCL in writing, and any Bidder doing so shall be summarily rejected.

## **9.0 BID OPENING AND EVALUATION OF PROPOSALS**

### **9.1 Opening of Technical Proposal**

The “Technical Proposal” will be opened on **December 24, 2019 at 15:30 Hrs** in the presence of the authorized representatives of the agencies, who wish to be present.

#### **9.1.1 Technical Proposal Evaluation**

The Technical evaluation would be in two parts:

##### **A. Responsiveness of bid with respect to the Tender Document**

- a) The Bidder should be a Trading Licensee whosoever is allowed to undertake trading in electricity as per the Electricity Act, 2003 The Bidder should provide documentary evidence for the same.
- b) The Technical Proposal should contain **Form-1** and **Form-2** duly filled and signed by authorized signatory and authority letter as per **Form-3**.
- c) The Bidder should agree to the entire scope of work and deliverables. No proposal for part scope of work will be considered.
- d) The Bidder should not be member of another Bidder and should not participate in consortium.
- e) The Bidder should submit a Letter of Authority in favour of the authorised signatory submitting the Bid as per **Form-3**.
- f) The Bidder should have submitted Bid Security to Nodal Agency(PFCCL), as per clause 10.0 of this Tender Document.
- g) There should be no deviations from any or all the contents of the Tender Document or conditional or alternate bids.

Bid of any Bidder not meeting any or all the above criteria, the technical evaluation of the Bid will not be carried out, the bid shall be rejected outright and shall be marked non-responsive.

##### **B. Evaluation of experience of the Bidder**

Experience of the Bidders would be evaluated on the following basis:

- a) **“Turnover” of the Bidder** - The Bidder should have minimum Turnover of Rs. 500 crore (Rupees Five Hundred crore only) in any of the last three immediately preceding Financial Years.
- b) **“Networth” of the Bidder** - The Bidder should have minimum Networth of Rs. 100 crore (Rupees One Hundred crore only) as per the last Financial Year.

PFCCL reserves the right to seek clarifications during the evaluation process of the Technical Proposal.

**The Bidder(s) who are responsive and meet the above criteria would be regarded as “Technically Qualified” Bidder(s) and considered for opening of “Financial Proposal”.**

## 9.2 Opening of Financial Proposal

The “Financial Proposal” would be opened only of the Technically Qualified Bidders. The date and time of opening of Financial Proposal would be intimated to the Technically Qualified Bidders separately. The Financial Proposal will be opened online at PFCCL Office 9<sup>th</sup> Floor, A wing, Statesman House, Barakhamba Road, New Delhi.

### 9.2.1 Financial Proposal Evaluation

Financial Proposals of only such Bidders will be opened who have been declared Technically Qualified. The highest Financial Proposal of Technically Qualified Bidders shall be considered as Initial Price Offer (IPO) and e-Forward Auction shall continue from the time intimated to Technically Qualified Bidders with the same IPO.

### 9.2.2 E-Forward Auction Stage

- a) The e-Forward Auction shall continue for a period of next 30 (thirty) minutes with auto extension of 10 (ten) minutes, as applicable. This process of auto extension will continue till there is a period of 10 (ten) minutes during which no bid is received which is higher than the prevailing highest Bid.
- b) In e-Forward Auction Stage, the highest Financial Proposal i.e. IPO shall be displayed to the Bidders on the e-Procurement Portal and thereafter any subsequent highest Bid in e-Forward Auction Stage on a real time basis.
- c) During the e-Forward Auction Stage, the Bidders will have the option of increasing the quote in increments of 0.05 (Zero point Zero Five) or multiples thereof. At the end of the e-Forward Auction, Bidder who has quoted the highest Bid (Final Price Offer) i.e. maximum percentage discount on Trading Margin shall be identified as “Selected Aggregator”.

### 9.2.3 Tie-Bidders

- a) In case two or more Bidders quote the same percentage discount on Trading Margin during IPO stage and there is no further increase in IPO during e-Forward Auction, the Aggregator would be selected based on the maximum score as per the illustration given in table below:

Bidder	Turnover	Weightage 70%	Networth	Weightage 30%	Score	Ranking
	(a)	$(b = a * 0.7)$	(c)	$(d = c * 0.3)$	$(e = [b+d]/100)$	
Bidder 1	1000	700	2000	600	13.0	1
Bidder 2	800	560	1000	300	8.6	2
Bidder 3	600	420	300	90	5.2	3
Bidder 4	500	350	100	30	3.8	4

- b) In case two or more Bidders quote the same Bid at the end of e-Forward Auction, the Aggregator would be selected on the basis of time of submission of Bid.

## 10.0 BID SECURITY

- a) The Bidders shall be required to deposit along with its Bid, a Bid Security of Rs. 1 (one) Crore in the form of Bank Guarantee/ Demand Draft/ RTGS/ NEFT from the Scheduled Bank in India.
- b) Bid Security submitted in the form of Bank Guarantee shall be as per PFCCL’s format provided at Section 3 of this Tender Document and should be kept valid upto 180 (one hundred and eighty days) from the Bid submission date.

- c) Bid Security submitted in the form of RTGS/ NEFT/ DD shall be deposited in the following Bank Account of PFCCL:

**Beneficiary Name – PFC Consulting limited**

Bank Name – Yes Bank  
A/c No.013684100000304  
IFSC – YESB0000136

- d) The Bidders shall be required to submit the Bid Security at the following address prior to last date of Bid submission,

**PFC Consulting Ltd**

9<sup>th</sup> Floor, A Wing,  
Statesman House,  
Barakhamba Road,  
Connaught Place,  
New Delhi – 110001

- e) Any Bid not accompanied by the Bid Security shall be summarily rejected.
- f) In the event the Non-Refundable Management Fee mentioned at clause 13 of this Tender Document not remitted by the Selected Aggregator, the Bid Security will be forfeited and the next Ranked Bidder will be selected as Aggregator and so on.
- g) The Bid Security of unsuccessful Bidders will be returned, without any interest, as promptly as possible on receipt of Non-Refundable Management Fee from the Selected Bidder or when the Bidding process is cancelled by the Nodal Agency/ PFCCL, and in any case within 200 (two hundred) days from the Bid Submission Date. Where Bid Security has been paid by deposit, the refund thereof shall be in the form of an account payee cheque in favour of the unsuccessful Bidder(s) in the name of the company which submits the Bid.
- h) The Bid Security of Selected Bidder will be treated as Contract Performance Guarantee. The Selected Aggregator will extend the Bank Guarantee till the completion of the Contract Agreements entered between the Aggregator, Suppliers and the Utilities under Pilot Scheme-II. Bank Guarantee shall be returned, without any interest, after the completion of the period of engagement.

## **11.0 CONTRACT AGREEMENT**

- 11.1 In the event of award, the selected Bidder (“**Aggregator**”) will be required to enter into a Contract Agreement with the PFCCL within 10 (ten) working days from the date of the Letter of Award (LOA) or within such extended time, as may be granted by the PFCCL.
- 11.2 Formal Contract Agreement will be executed on Non-judicial stamp paper of Rs. 100/- (Rs. one hundred only) as per the format provided by PFCCL. Two sets of Non-Judicial Stamp papers of Rs.100/- each and water mark papers to be purchased by the Aggregator from Delhi State.
- 11.3 The Contract Agreement will be signed in two originals and the Aggregator shall be provided with one signed original Agreement
- 11.4 The date of execution of the Contract Agreement in no case shall alter the date of start or completion period of Pilot Scheme-II.
- 11.5 Till the time ‘Contract Agreement’ is executed, the Letter of Award shall be read in conjunction with the Tender Document and will constitute a binding contract.

## **12.0 VALIDITY OF BID**

Bidders shall keep their bids /proposals valid up to 120 (One hundred Twenty) days from the date of opening of the Financial Proposals. Bidders may be required to further extend the validity of Bid as per the requirement of PFCCL.

## **13.0 TERMS OF PAYMENT**

13.1 The Selected Aggregator shall make following payments to PFCCL:

- i) For the first year, lumpsum Non-Refundable Management Fee of Rs. 2 (Two) Crore plus applicable taxes before issuance of LoA which also includes Bidding Fee.
- ii) From second year onwards, annual Non-Refundable Management Fee of Rs. 2 (Two) Crore plus applicable taxes (to be paid on quarterly basis) during period of assignment.

13.2 The payment shall be made to PFCCL through electronic transfer to the following Bank Account:

Beneficiary Name – PFC Consulting limited  
Bank Name – Yes Bank  
A/c No.013684100000304  
IFSC – YESB0000136

13.3 Income Tax provision will be as per the applicable laws and regulations.

## **14.0 EXPENSES**

All related expenses incurred by the Aggregator in connection with the Aggregator services will be borne solely by the Aggregator and the PFCCL will not be responsible whatsoever on this account.

## **15.0 OTHER TERMS & CONDITIONS**

15.1 The Financial Proposal by the Bidders shall be submitted online on the e-Procurement Portal in percentage (%) terms.

15.2 PFCCL with the approval of CEO, can cancel the Contract Agreement at any stage of the work, in case it is found that any information given at the time of submission of the bid is found to be incorrect.

15.3 **Conflict of Interest:**

- i) Organisations would not be hired for any work whose interests are in conflict with their prior or current obligations to the other organisations/ clients or/and that may place them in a position of being unable to carry-out the work assigned to them at any point of time during the currency of engagement by PFCCL or above all enable them to pose a threat to PFCCL's consulting business in future. Without limitation on the generality of the foregoing, organisations would not be hired, under the circumstances set forth below:
- ii) Organisations who have business or family relationship with member(s) of PFC's and/or PFCCL's employees or persons positioned in or on the Board of these two organisations by whatever process, would not be engaged. A declaration to this effect

would be taken from the organisation when being engaged, and if found incorrect, the organisation would be debarred from any further engagement by PFCCL ever.

- 15.4 The Aggregator shall keep PFCCL, both during and after the term of this Contract, fully and effectively indemnified against all losses, damage, injuries, deaths, expenses, actions, proceedings, demands, costs and claims, including, but not limited to, legal fees and expenses, suffered by PFCCL or any Third Party, where such loss, damage, injury or death is the result of a wrongful action, negligence or breach of contract by the Aggregator, or the Aggregator's personnel, including the use or violation of any copyright work or literary property or patented invention, article or appliance
- 15.5 No offer should be sent by Fax or E-mail. Offers received offline shall not be considered.
- 15.6 PFCCL reserve the right to accept or reject any or all Proposals/Offer or annul the bid Process or modify/ change the content of the Tender Document without assigning any reason.
- 15.7 PFCCL shall not entertain any claim of any nature, whatsoever, including without limitations, any claim of expenses in relation to the preparation, submission or any other activity relating to bidding or any other expense till award of contract.

Yours sincerely,

**FOR and on behalf of PFC CONSULTING LTD**

**(Yogesh Juneja)  
Chief Executive Officer**

Encl.: As Above

***SECTION -2***  
***BID FORMS***

**FORM – 1: COVERING LETTER**  
(ON THE LETTER HEAD OF THE ORGANIZATION/BIDDER)

From: \_\_\_\_\_ To: \_\_\_\_\_  
Name: \_\_\_\_\_ Chief Executive Officer,  
Designation: \_\_\_\_\_ PFC Consulting Ltd.,  
Address: \_\_\_\_\_ 9 Floor, A Wing,  
Statesman House,  
Connaught Place,  
New Delhi – 110 001

Sir,

**Sub: Appointment of “Aggregator” under Pilot Scheme - II notified by Ministry of Power, Govt. of India on 30.01.2019 for Procurement of Aggregated Power of 2500 MW for three years (covered under Medium Term) through PFC Consulting Ltd (PFCCL) – the Nodal Agency**

We \_\_\_\_\_ (Name of Bidder) herewith enclose Technical & Financial Proposal for selection of our organization for providing **Aggregator services under Pilot Scheme - II notified by Ministry of Power, Govt. of India on 30.01.2019 for Procurement of Aggregated Power of 2500 MW for three years (covered under Medium Term) through PFC Consulting Ltd (PFCCL) – the Nodal Agency**

1. We are submitting our following bid on the e-Procurement Portal:
  - i. **Technical Proposal** consisting of Form-1 and Form-2 duly filled and signed by authorized signatory and authority letter as per Form-3.
  - ii. **Financial Proposal** as percentage discount on Trading Margin.
2. \_\_\_\_\_ [Name and contact information of one of the team member] shall be the Team Leader for the Project.
3. We confirm that we have understood all the do's and don't applicable for selection of Aggregator as mentioned in the Bidding Documents for the purposes of the Pilot Scheme-II.
4. We hereby represent that we have the requisite experience, professional skills, adequate manpower and technical resources and personnel, to render the services required by the Nodal Agency/ PFCCL in a timely and efficient manner.
5. We declare that the Bid submitted under IPO/ FPO in e-Forward Auction is firm and shall remain valid for the entire period of the Project.
6. We hereby confirm that if any Income Tax, Surcharge or any other Corporate Tax is attracted under the law, we agree to pay the same to the concerned authorities.
7. We confirm that the prices and other terms and conditions of this proposal are valid for a period of 120 days from the date of opening of the Financial Proposal.
8. We declare that the services will be rendered strictly in accordance with the provisions of Tender Document. We confirm our acceptance/compliance to the `Deliverables` and `Terms of payment` clauses as stipulated in the Tender Document. We confirm that Bid Security of



Rs. 1 (One) Crore only shall be converted to Contract Performance Guarantee in case of issue of Letter of Award.

9. We hereby declare that only the company, persons or firms interested in this proposal as principal or principals are named herein and that no other company, person or firm other than one mentioned herein have any interest in this proposal or in the contract to be entered into, if we are awarded this contract.
10. We declare that the services will be rendered strictly in accordance with the scope of the work and we do not have any deviation to any of the terms and conditions of the Tender Document.
11. We confirm and certify that all the information / details provided in our bid are true and correct.
12. We give our unconditional acceptance to the Tender Document issued by PFCCL, as amended. We shall execute the Contract Agreement as per the provisions of the Tender Document.
13. Further, we confirm that we agree and seek no deviations from the scope of work, time schedule, deliverables, payment terms and all other terms and conditions as contained in the 'Tender Document'. The proposal is unconditional. The Bid will be valid 120 (One hundred twenty days) from the opening of Financial Proposal.
14. We also declare that by taking this assignment we do not have any conflict of Interest with any of our prior or current obligations to other organisations/clients and also do not have business or family relationship with member(s) of PFC's and/or PFCCL's employees or persons positioned in or on the Board of these two organisation by whatever process and if found incorrect, we may be debarred from any further engagements by PFCCL forever.
15. We certify that all the information provided in our FPO, including the information regarding the team members, are true. We understand that any willful misstatement in the FPO may lead to disqualification or cancellation of award, if made or termination of contract. We also understand that in such a case we may be debarred for future assignments with PFCCL for a period of maximum three years from the date of such disqualification.
16. Further, we undertake that in the event of our appointment as Aggregator, given the nature of the work being entrusted, the contents/ essence of any reference/ documents given would not be disclosed to any third person without the express approval of PFCCL, failing which the engagement of the organisation would be terminated.

Signature of Authorized Person

Name

Designation & Company seal

Date:

Place:

**FORM - 2: TURNOVER AND NETWORTH**  
(ON THE LETTER HEAD OF THE ORGANIZATION/BIDDER)

I \_\_\_\_\_[Name] hereby certify that the Turnover and Networth of \_\_\_\_\_ [Name of the Bidder] is as below:

**1. TURNOVER**

S No	Financial Year	Turnover (in Rs crore)
1.		
2.		
3.		

**2. NETWORTH**

S No	Financial Year	Networth (in Rs crore)
1.		

Signature:

Full Name:

Address:

(Seal)

Date:

Place:

Note:

The Bidder should submit documentary proof in support of the Turnover and Networth in the form of a certificate by Statutory Auditor along with Audited Annual Accounts for the relevant period and calculation sheet as well.

**FORM – 3: AUTHORISATION LETTER**  
(ON THE LETTER HEAD OF THE ORGANIZATION/BIDDER)

I \_\_\_\_\_[Name] certify that I am \_\_\_\_\_[Designation] of the Organisation, established under the Laws of India and that \_\_\_\_\_[Authorised Signatory] who has signed the Technical & Financial Proposal is authorised to bind the Organization by authority of its governing body.

Signature:

Full Name:

Address:

(Seal)

Date:

Place:

***SECTION -3***  
***BANK GUARANTEE FORMAT***

**FORMAT OF THE UNCONDITIONAL AND IRREVOCABLE BANK  
GUARANTEE FOR BID SECURITY/ CONTRACT PERFORMANCE GUARANTEE**

(To be on non-judicial stamp paper of appropriate value  
as per Stamp Act relevant to place of execution.)

In consideration of the ..... [Insert name of the Bidder] submitting the Bid *inter alia* for appointment of “**Aggregator**” under Pilot Scheme - II notified by Ministry of Power, Govt. of India on 30.01.2019 for Procurement of Aggregated Power of 2500 MW for three years (covered under Medium Term) through PFC Consulting Ltd (PFCCL) – the Nodal Agency, in response to the Tender Document dated December 17, 2019 issued by **PFC Consulting Limited**, as Nodal Agency agreeing to consider such Bid of .....[Insert the name of the Bidder] as per the terms of the Tender Document, the ..... [Insert name and address of the bank issuing the Bid Security and address of the Head Office] (hereinafter referred to as “Guarantor Bank”) hereby agrees unequivocally, irrevocably and unconditionally to pay to **PFC Consulting Limited** or its authorized representative at **New Delhi** forthwith on demand in writing from **PFC Consulting Limited** or any representative authorized by it in this behalf, any amount upto and not exceeding **Rupees 1 (one) crore only**, on behalf of M/s. ....[Insert name of the Bidder] .

This guarantee shall be valid and binding on the Guarantor Bank until \_\_\_\_\_ and shall not be terminable by notice or any change in the constitution of the Guarantor Bank or by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alternations made, given, or agreed with or without our knowledge or consent, by or between concerned parties.

Our liability under this Guarantee is restricted to **Rupees 1 (one) crore only**. Our Guarantee shall remain in force until \_\_\_\_\_. **PFC Consulting Limited** or its authorized representative shall be entitled to invoke this Guarantee until \_\_\_\_\_. The Guarantor Bank hereby expressly agrees that it shall not require any proof in addition to the written demand from the **PFC Consulting Limited** or its authorized representative, made in any format, raised at the abovementioned address of the Guarantor Bank, in order to make the said payment to **PFC Consulting Limited** or its authorized representative.

The Guarantor Bank shall make payment hereunder on first demand without restriction or conditions and notwithstanding any objection, disputes, or disparities raised by the Bidder or any other person. The Guarantor Bank shall not require **PFC Consulting Limited** or its authorized representative to justify the invocation of this BANK GUARANTEE, nor shall the Guarantor Bank have any recourse against **PFC Consulting Limited** or its authorized representative in respect of any payment made hereunder.

This BANK GUARANTEE shall be interpreted in accordance with the laws of India.

The Guarantor Bank represents that this BANK GUARANTEE has been established in such form and with such content that it is fully enforceable in accordance with its terms as against the Guarantor Bank in the manner provided herein.

This BANK GUARANTEE shall not be affected in any manner by reason of merger, amalgamation, restructuring or any other change in the constitution of the Guarantor Bank.

This BANK GUARANTEE shall be a primary obligation of the Guarantor Bank and accordingly, **PFC Consulting Limited** or its authorized representative shall not be obliged before enforcing this BANK GUARANTEE to take any action in any court or arbitral proceedings against the Bidder, to make any claim against or any demand on the Bidder or to give any notice to the Bidder to enforce any security held by **PFC Consulting Limited** or its authorized representative or to exercise, levy or enforce any distress, diligence or other process against the Bidder.

Notwithstanding anything contained herein above, our liability under this Guarantee is restricted to **Rupees 1 (one) crore only** and it shall remain in force until \_\_\_\_\_, with an additional claim period of 30 days thereafter. We are liable to pay the guaranteed amount or any part thereof under this BANK GUARANTEE only if **PFC Consulting Limited** or its authorized representative serves upon us a written claim or demand.

In witness whereof the Bank, through its authorized officer, has set its hand and stamp on this ..... day of ..... at .....

**Witness:**

1. ....

Name and Address.

2. ....

Name and Address

Signature: .....

Name: .....

Designation with Stamp:

Signature .....

Attorney as per power of attorney No. ....

For:  
..... [Insert Name of the Bank]

**Banker's Stamp and Full Address:**

Dated this ..... day of ..... 20.....

**Notes:**

1. The Stamp Paper should be in the name of the Executing Bank.

***SECTION -4***  
***DRAFT CONTRACT AGREEMENT***

**DRAFT CONTRACT AGREEMENT FOR AGGREGATOR SERVICES**

This Contract (hereinafter, together with all Appendices attached hereto and forming an integral part hereof, called the "Contract Agreement") is made this \_\_ day of the \_\_\_\_month of 2019, between:

**PFC Consulting Limited** (a wholly owned subsidiary of Power Finance Corporation Limited, a Government of India Company) incorporated in India under Companies Act 1956, having its registered office at first Floor, Urjanidhi, 1-Barakhamba Lane, Connaught Place New-Delhi-110001 hereinafter referred to as "Nodal Agency/ PFCCL" (which expression shall unless repugnant to the context or the meaning thereof include its successors and permitted assigns)



AND

\_\_\_\_\_ a Company incorporated in India under Companies Act, 1956/2013, having its registered office at \_\_\_\_\_ hereinafter called the "Aggregator" (which expression shall unless repugnant to the context or the meaning thereof include its successors and permitted assigns)

WHEREAS the Nodal Agency/ PFCCL is intending to hire an experienced and qualified organization for "**Aggregator Services under Pilot Scheme - II notified by Ministry of Power, Govt. of India on 30.01.2019 for Procurement of Aggregated Power of 2500 MW for three years (covered under Medium Term) through PFC Consulting Ltd - the Nodal Agency**" (hereinafter to be referred as Project)

AND WHEREAS the Aggregator, have represented to the Nodal Agency/ PFCCL, that they have the requisite experience, professional skills, adequate manpower and technical resources and personnel, to render the Services required by the Nodal Agency/ PFCCL in a timely and efficient manner.

AND WHEREAS based on above representations of the Aggregator, the Nodal Agency/ PFCCL has agreed to appoint the Aggregator to render services on the terms and conditions hereafter contained:

NOW THEREFORE THIS AGREEMENT WITNESSES THAT, IN CONSIDERATION OF THE PREMISES AND THE MUTUAL COVENANATS HEREIN CONTAINED, IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS:

## **1.0 GENERAL PROVISIONS**

### **1.1 Definitions**

Unless the context otherwise requires, the following terms whenever used in this Contract, Appendices, Schedules and Exhibits shall have the following meanings:

- (a) "Approvals" shall mean all consents, licenses and approval of any local, municipal, State or National Authority necessary to carry out the services for each and every phase of the Project.
- (b) "Contract" means this Contract together with all Appendices, Attachments, Exhibits and Schedules and including all modifications made in accordance with the provisions of Clauses 10 hereof between the Nodal Agency/ PFCCL and the Aggregator.
- (c) "Aggregator" means \_\_\_\_\_ Company appointed by the Nodal Agency/ PFCCL for providing the Services to the Nodal Agency/ PFCCL in execution of the Project.
- (d) "Confidential Information" means any material, proprietary, non-public information acquired, developed, disclosed or exchanged among the Parties pursuant to this Agreement.
- (e) "Effective Date" means the date on which this Contract Agreement comes into force and effect pursuant to Clause 3.1 hereof;
- (f) "Personnel" means a person hired by the Aggregator as employees, for the purposes of rendering services or any part thereof;

- (g) "Parties" means the Nodal Agency/ PFCCL or the Aggregator, as the case may be;
- (h) "Contract Time" means the duration of the Contract Agreement as referred to Clause 3.
- (i) "No Claim Certificate" means certificate issued by the Nodal Agency/ PFCCL after the Contract Agreement has expired and the Aggregator has performed all his Services as per the terms and conditions envisaged in this Contract Agreement and all undisputed payments of remuneration and reimbursable expenditures payable to the Nodal Agency/ PFCCL by the Aggregator has been made.
- (j) "Project" means Aggregator Services under Pilot Scheme - II notified by Ministry of Power, Govt. of India on 30.01.2019 for Procurement of Aggregated Power of 2500 MW for three (3) years (covered under Medium Term) through PFC Consulting Ltd - the Nodal Agency.
- (k) "Services" means the works to be provided/ performed by the Aggregator for completion of various tasks as per LOA hereto;
- (l) "Starting Date" means the date referred to in Clause 3.3 hereof;
- (m) "Third Party" means any person or entity other than the Nodal Agency/ PFCCL or the Aggregator.

## **2.0 LOCATION FOR PERFORMANCE OF THE SERVICES:**

The Aggregator shall render/perform services as required anywhere in India.

## **3.0 COMMENCEMENT, COMPLETION, AND TERMINATION OF CONTRACT**

### **3.1 Commencement of Contract**

- a) This contract shall come into force from the date ("effective date") on which the Nodal Agency/ PFCCL and the Aggregator have signed this Contract.
- b) Till the time a 'Contract Agreement' is prepared and executed, the Letter of Award in conjunction with the Tender Document has constituted the binding contract.

### **3.2 Termination of Contract for Failure to Become Effective**

- a) If this Contract has not become effective within 15 days from effective date the Nodal Agency/ PFCCL has the right to declare the same to be null and void, and in the event of such a declaration the Aggregator shall not have any claim against the Nodal Agency/ PFCCL.
- b) In case the contract is rendered null and void on account of failure/inaction on the part of the Aggregator, the Aggregator shall be liable to pay damages to the Nodal Agency/ PFCCL.

### **3.3 Commencement of Services**

The Aggregator shall begin carrying out the Services immediately viz. from the date of issue of Letter of Award (the "Starting Date"), or on such date as the Parties may agree in writing.

### **3.4 Expiration of Contract**

- a) Unless terminated earlier pursuant to Clause 10 hereof, this Contract shall expire after the Aggregator has performed all his Services as per the terms and conditions envisaged in this Contract and the Nodal Agency/ PFCCL has issued a 'No Claim Certificate' to the Aggregator.
- b) The Nodal Agency/ PFCCL shall issue the "No claim certificate" after being satisfied that the Aggregator has performed/rendered all the Services to the satisfaction of the Nodal Agency/ PFCCL, as per the contract and all undisputed payments of remuneration and reimbursable expenditures payable to the Nodal Agency/ PFCCL by the Aggregator has been made.

### **4.0 BID SECURITY/ CONTRACT PERFORMANCE GUARANTEE**

- a) Aggregator here by agrees that Bid Security furnished along with the Bid will be treated as Contract Performance Guarantee. Further the Bank Guarantee shall be extended till the completion of the contract agreements entered between the Aggregator, Suppliers and the Utilities under Pilot Scheme-II.
- b) Bank Guarantee shall be returned, without any interest, after the completion of the period of engagement.

### **5.0 OBLIGATIONS OF THE AGGREGATOR**

#### **5.1. Standard of performance**

The Aggregator shall perform the Services and carry out his obligations hereunder with all due diligence, efficiency and economy, in accordance with generally accepted techniques and practices in execution of project. The Aggregator shall always act, in respect of any matter relating to this Contract or to the Services to the Nodal Agency/ PFCCL, and shall at all times support and safeguard the Nodal Agency/ PFCCL's legitimate interests in any dealings with Third Parties.

#### **5.2. Compliance With Rules And Regulations**

The Aggregator agrees that it shall be responsible and liable to comply with all the rules and regulations of various concerned government authorities and departments for the services rendered under this Agreement.

#### **5.3. Conflict Of Interest**

The Aggregator shall hold the Nodal Agency/ PFCCL's/ Project's interest paramount, without any consideration for future work, and strictly avoid conflict with other assignments or their corporate interests.

#### **5.4. Benefit from Commissions, Discounts etc.**

Payment to the Aggregator in connection with the Project shall constitute the Aggregator's payment in connection under Pilot Scheme-II or the Services as an Aggregator, and the Aggregator shall not accept for their own benefit any trade commission, discount, or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of their obligations under the Contract, and the Aggregator shall use their best efforts to ensure that the Personnel and agents or either of them similarly shall not receive any such additional benefits.

**5.5. Aggregator and Affiliates not to be otherwise interested in Project**

The Aggregator agrees that, during the term of this Contract, the Aggregator, Personnel and/or any entity affiliated with the Aggregator shall not provide services resulting from or directly related to the Aggregator's Services for the implementation of the Project to any Third Party. In the event of breach of the aforesaid condition the Nodal Agency/ PFCCL shall be entitled to disqualify such Aggregator or any of their Personnel from providing services to the Nodal Agency/ PFCCL and further claim damages for breach.

**5.6. Prohibition of Conflicting Activities**

The Aggregator shall not engage and shall cause their Personnel not to engage, either directly or indirectly, in any business or professional activities which would conflict with the activities assigned to them under this Contract.

**5.7. Insurance to be taken out by the Aggregator**

The Aggregator shall take out and maintain at their own cost, insurance against risks etc.

**5.8. Liability of the Aggregator**

The Aggregator and each of his Members (Personnel etc.) shall be jointly and severally liable to the Nodal Agency/ PFCCL for the performance of the Services under this Contract and further for any loss suffered by the Nodal Agency/ PFCCL as a result of a default of the Aggregator or his Members in such performance, subject to the following limitations:

- (a) The Aggregator shall not be liable for any damage or injury caused by or arising out of the act, neglect, default or omission of any persons other than the Aggregator or the Personnel or either of them; and
- (b) The Aggregator shall not be liable for any loss or damage caused by or arising out of circumstances of Force Majeure.

5.9. The Aggregator shall inform the Nodal Agency/ PFCCL the name of the Personnel to carry out any part of the Services. The Aggregator shall employ qualified and experienced Personnel as may be required to carry out the Project.

**5.10. Reporting Obligations**

The Aggregator shall submit to the Nodal Agency/ PFCCL the reports and documents as may be required.

5.11. All reports and documents prepared by the Aggregator in performing the Services shall become and remain the property of the Nodal Agency/ PFCCL.

**6.0 TERMS OF PAYMENT**

6.1. The Aggregator shall make following payments to PFCCL,

- a) For the first year, lumpsum Non Refundable Management Fee of Rs. 2 (Two) Crore plus applicable taxes before issuance of LoA which also includes Bidding Fee.
- b) From second year onwards, annual Non Refundable Management Fee of Rs. 2 (Two) Crore plus applicable taxes (to be paid on quarterly basis) during period of assignment.

6.2. The payment shall be made to PFCCL through electronic transfer to the following Bank Account:

Beneficiary Name – PFC Consulting limited  
Bank Name – Yes Bank  
A/c No.013684100000304  
IFSC – YESB0000136

6.3. Income Tax provision will be as per the applicable laws and regulations.

## **7.0 SUSPENSION OF CONTRACT AGREEMENT**

The Nodal Agency/ PFCCL may, by written notice of suspension of Contract Agreement to the Aggregator and invoke Contract Performance Guarantee hereunder:

a) if the Aggregator fails to perform any of its obligations under this Contract, including carrying out of the Services, provided, that such notice of suspension (i) shall specify the nature of the failure, and (ii) shall request the Aggregator to remedy such failure within a period not exceeding thirty (30) days after receipt by the Aggregator of such notice of suspension

**OR**

b) if at any stage it is found that the Aggregator has provided any wrong information/ false information/ mis-represented the fact.

## **8.0 TERMINATION**

### **8.1. By the Nodal Agency/ PFCCL**

The Nodal Agency/ PFCCL may terminate this Contract Agreement, by issuing a written notice not less than thirty (30) days, from the date of occurrence of any of the events as specified in sub clause (a) to (e) of this clause.

The Nodal Agency/ PFCCL may terminate this Contract Agreement, by issuing a written notice not less than sixty (60) days, from the date of occurrence of the event as specified in sub clause (f) of this clause.

(a) if the Aggregator fail to remedy a failure in the performance of their obligations hereunder, as specified in a notice of suspension pursuant to clause 7 hereinabove, within thirty (30) days of receipt of such notice of suspension or within such further period as the Nodal Agency/ PFCCL may have subsequently approved in writing;

(b) if the Aggregator fail to comply with any final decision reached as a result of arbitration proceedings pursuant to clause 16 hereof;

(c) if the Aggregator submit to the Nodal Agency/ PFCCL a statement which has a material effect on the rights, obligations or interests of the Nodal Agency/ PFCCL and which the Aggregator know to be false;

(d) if, as the result of Force Majeure, the Aggregator are unable to perform a material portion of the Services for a period of not less than sixty (60) days; or

(e) if Aggregator become Bankrupt and the company has been wound up through liquidation proceedings.

(f) if the Nodal Agency/ PFCCL, in its sole discretion and for any reason whatsoever, decides to terminate this Contract.

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

Upon termination of this Contract pursuant to Clauses 8 hereof, or upon expiration of this Contract pursuant to Clause 3 hereof, all rights and obligations of the Parties hereunder shall cease, except

- (a) such rights and obligations as may have accrued on the date of termination or expiration,
- (b) the obligation of confidentiality set forth in Clause 14 hereof,
- (c) any right which a Party may have under the Applicable Law.

## **8.3. Cessation of Services**

Upon termination of this Contract by notice to pursuant to Clauses 8 hereof, the Aggregator shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum.

## **8.4. Payment upon Termination**

Upon termination of this Contract pursuant to Clause 8 hereof, the Nodal Agency/ PFCCL shall forfeit the Bank Guarantee of the Aggregator.

## **9.0 FORCE MAJEURE**

### **9.1. Definition**

- (a) For the purposes of this Contract, "Force Majeure" means an event or circumstance or combination of events and circumstances, the occurrence of which is beyond the reasonable control of either party and which materially affects the performance by either Party of its obligations under this agreement, provided such material and adverse effect could not have been prevented, overcome or remedied in whole or in part by the affected party and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), confiscation or any other action by government agencies.
- (b) It is however agreed that 'Force Majeure' shall not mean or include:
  - (1) any event caused by the negligence or intentional action of a Party or agents or employees
  - (2) any event which a diligent Party could reasonably have been expected to take into account at the time of the execution of this Agreement, and avoid or overcome in the carrying out of its obligations hereunder.

## **9.2. No Breach of Contract**

Neither party shall be responsible or be liable for, or deemed to be in breach hereof because of any failure or delay in complying with its obligations under or pursuant to this Agreement due to one or more events of Force Majeure or its effects or any combination thereof, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Contract.

## **9.3. Measures to be taken**

- (a) A Party affected by an event of Force Majeure or any combination of events shall take all reasonable measures to remove such Party's inability to fulfill its obligations hereunder with a minimum of delay.
- (b) A Party affected by an event or any combination of events of Force Majeure shall notify the other Party of such event as soon as possible, and in any event not later than fourteen (14) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible.
- (c) The Parties shall take all reasonable measures to minimise the consequences of any event of Force Majeure.

## **9.4. Extension of Time**

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

## **9.5. Consultation**

Not later than thirty (30) days after the Aggregator, as the result of an event of Force Majeure, have become unable to perform a material portion of the Services, the Parties shall consult with each other with a view to agreeing on appropriate measures to be taken in the circumstances.

## **10.0 AMENDMENT/MODIFICATION**

This Agreement may not be altered, modified, revoked or cancelled in any way unless such alteration, modification or cancellation is in writing and duly signed by or on behalf of the Parties which shall not be effective until the consent of the Parties has been obtained. However, it is agreed between the Parties that each Party shall give due consideration to any proposals for modification made by the other Party in conformance with the Bidding Documents under the Project.

## **11.0 AMICABLE SETTLEMENT**

The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or the interpretation thereof. Any dispute between the Parties as to matters arising pursuant to this Contract which cannot be settled amicably shall be resolved as per the Indian Arbitration Act, 1996 as amended from time to time.

## **12.0 FAIRNESS AND GOOD FAITH**

### **12.1. Good Faith**

The Parties hereunder undertake to act in good faith with respect to their performance, obligations and rights under this Agreement and further undertake, during the tenure of this Agreement, to take all reasonable measures, to ensure the achievement/ realization of the objectives of this Agreement in conformance with the Bidding Documents under the Project.

### **12.2. Operation of the Contract**

The Parties recognize that it is impractical in this Contract to provide for every contingency which may arise during the life of the Contract, and the Parties hereby agree that it is their intention that this Contract shall operate fairly as between them, and without detriment to the interest of either of them, and that, if during the term of this Contract either Party believes that this Contract is operating unfairly, the Parties will use their best efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness, but on failure to agree on any action pursuant to this clause shall give rise to a dispute subject to arbitration in accordance with clause 16 hereof in conformance with the Bidding Documents under the Project.

## **13.0 TAXES AND DUTIES/CHANGE IN LAW**

It is hereby agreed between the Parties that the Aggregator and its personnel shall pay the taxes, duties, fees, levies and other impositions levied under the existing, amended or enacted laws during life of this contract and the Nodal Agency/ PFCCL shall claim the taxes, duties and levy whatsoever as may be lawfully imposed.

## **14.0 CONFIDENTIALITY**

The Aggregator and the Personnel or either of them shall not, either during the term or within two (2) years after the expiration of this Contract, disclose any proprietary or Confidential Information relating to the Project, Services, under this Contract or any information pertaining to the Nodal Agency/ PFCCL's business or operations without the prior written consent of the Nodal Agency/ PFCCL.

## **15.0 LAW GOVERNING CONTRACT**

This Agreement, its meaning and interpretation, and the relation between the Parties shall be governed by Indian Laws or any statutory modifications thereof, and shall be subject to the exclusive jurisdiction of the Courts of **Delhi** in any matter arising under this Agreement and or in matters pertaining to the conduct of arbitration, enforcement of the award or obtaining of interim relief(s) etc.

## **16.0 SETTLEMENTS OF DISPUTES/ ARBITRATION.**

16.1. The Parties shall endeavor to resolve amicably, in the first instance, all disputes, controversies or differences which may arise between the Parties, out of or in relation to or in connection with this Agreement, or for breach thereof.

16.2. In the event, the Parties are unable to resolve such dispute/difference amicably within **ninety (90)** days after the same has arisen then the dispute shall be referred to arbitration



in accordance with the Rules of Arbitration of the Indian Council of Arbitration and such arbitration shall be conducted in accordance with the rules of ICA. The place of arbitration shall be New Delhi or any other place mutually agreeable by the Parties and the language of arbitration shall be English.

The Arbitration shall be conducted by panel of 3 Arbitrators, one to be appointed by each party and third Arbitrator to be appointed by two Arbitrators as the Chairman of the Tribunal.

The Parties agree that the arbitrator's decision shall be final and conclusive. The costs of arbitration (including without limitation, those incurred in the appointment of the arbitrators) shall be borne equally by the Parties hereto; however each Party shall pay its respective legal charges. The Award shall be final and binding and non-appeal able. Judgment on the award may be entered and enforced in any court of competent jurisdiction. By execution and delivery of this Agreement, each Party agrees and consents to the jurisdiction of the aforesaid arbitration panel and solely for the purpose of enforcement of an arbitral award, as referred to hereinabove, in any Court of competent jurisdiction for itself and in respect of its property and waives in respect of both itself and its property, any defense it may have to or based on sovereign immunity, jurisdiction, improper venue or inconvenient forum.

## **17.0 GENERAL PROVISIONS**

### **17.1. Language**

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

### **17.2. Headings**

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

### **17.3. Notices**

Any notice, request or consent required or permitted to be given or made pursuant to this Contract shall be in writing. Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent by registered mail, or facsimile to such Party at the following address:

1. For the Nodal Agency/ PFCCCL:

**CEO, PFC Consulting Limited  
(A Wholly Owned Subsidiary of Power Finance Corp. Ltd.)  
9<sup>th</sup> Floor, A wing, Statesman House,  
Barakhamba Road, Connaught Place,  
New Delhi - 110001**

Email: anubhav\_kansal@pfcindia.com; deep-pfcccl@pfcindia.com  
Facsimile: 011-23443990

2. For Aggregator:

Attention:

**Facsimile:** \_\_\_\_\_ **Email :** \_\_\_\_\_

17.4. Notice will be deemed to be effective as follows:

- (a) in the case of personal delivery or registered mail/ speed post, on delivery;
- (b) in the case of facsimiles, forty eight (48) hours following confirmed transmission;
- (c) in the case of email, twenty four (24) hours following confirmed transmission;

17.5. A Party may change its address for notice hereunder by giving the other Party notice of such change pursuant to this Clause.

**17.6. Authority of Aggregator in Charge**

The Aggregator hereby authorize : Mr./Ms. \_\_\_\_\_ to act on their behalf in exercising all the Aggregator's rights and obligations towards the Nodal Agency/ PFCCL under this Contract Agreement, including without limitation to receiving instructions and payments to the Nodal Agency/ PFCCL. The change in Authority shall be communicated forthwith by the Aggregator to the Nodal Agency/ PFCCL.

**17.7. Authorised Representatives**

Any action required or permitted to be taken, and any document required or permitted to be executed under this Contract, may be taken or executed:

- (a) on behalf of the Nodal Agency/ PFCCL by \_\_\_\_\_ or his designated representative;
- (b) on behalf of the Aggregator \_\_\_\_\_ or his designated representative.

**17.8. Waiver Of Right**

The failure of either party to enforce at any time or for any period of time, the provisions hereof shall not be construed to be waiver of any provision or of any right and shall not preclude such party from subsequently enforcing such provisions or right.

**17.9. Severeability Clause**

If any provision of this Agreement shall be determined to be void or unenforceable, such provision shall be amended or deleted in so far as is reasonably consistent with the provisions of this Agreement and to the extent necessary to conform to applicable law and the remaining provision of this Agreement shall remain valid and enforceable in accordance with their terms.

17.10. This Agreement may be executed in any number of counterparts which together shall constitute a single agreement.

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

FOR AND ON BEHALF OF  
[NODAL AGENCY/ PFCCL]

By:  
Authorized Representative

FOR AND ON BEHALF OF  
[AGGREGATOR]

By :  
Authorized Representative