

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**



(A wholly owned subsidiary of Power Finance Corporation Ltd.)

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

February 8, 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	February 08, 2019 from 14:00 hrs (IST)
b)	Pre-Bid Conference	February 18, 2019 from 11:00 hrs (IST)
c)	Closing date of Tender downloading	February 25, 2019 from 12:00 hrs (IST)
d)	Submission date of E-bids	February 25, 2019 from 14:00 hrs (IST)
e)	Submission of Pass-Phrase/ equivalent code to decrypt the Technical Proposal-Part to PFCCL	February 25, 2019 from 16:00 hrs (IST)
f)	Opening of E-bids	February 25, 2019 from 16:30 hrs (IST)

Note:

Pre-Bid Conference would be held in PFC Consulting Ltd Office, 9th Floor, A-Wing, Statesman House, Connaught Place, New Delhi.

Tender Notice and Tender Document are available on PFC Consulting Ltd.'s website and can be downloaded from <https://www.pfcclindia.com>. For bid submission, the Bidder will have to necessarily download an official online copy of the Tender Document from e-Procurement Portal to be intimated later after the Pre-Bid Meeting. All future Information viz. corrigendum /addendum/ amendments etc. for this Tender shall be posted on the PFC Consulting Ltd.'s website and 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.

Note: Bidders are advised to start the registration process on the e-Procurement Portal as it may take a few days so as to avoid any delay in bid submission (upload) stage.

TABLE OF CONTENTS

S. NO.	DESCRIPTION	PAGE NO.
SECTION-1: BID INVITATION LETTER		
1.0	BACKGROUND	5
2.0	SCOPE OF WORK	6
3.0	DELIVERABLES	8
4.0	QUALIFYING CRITERIA	8
5.0	CONTENTS OF TENDER DOCUMENT	9
6.0	PERIOD OF ENGAGEMENT	9
7.0	BASIS OF OFFER	9
8.0	SUBMISSION OF BID	9
9.0	BID OPENING AND EVALUATION OF PROPOSALS	10
10.0	BID SECURITY	11
11.0	CONTRACT PERFORMANCE GUARANTEE (CPG)	12
12.0	CONTRACT AGREEMENT	12
13.0	VALIDITY OF BID	12
14.0	TERMS OF PAYMENT	12
15.0	EXPENSES	12
16.0	OTHER TERMS & CONDITIONS	13
SECTION -2 : BID FORMS		
FORM 1	COVERING LETTER	15
FORM 2	TURNOVER AND NETWORTH	17
FORM 3	AUTHORISATION LETTER	18
SECTION -3 : BANK GUARANTEE FORMAT		
	FORMAT FOR BANK GUARANTEE FOR CONTRACT PERFORMANCE	20-21
SECTION - 4 : DRAFT CONTRACT AGREEMENT		
	DRAFT CONTRACT AGREEMENT	23-34

SECTION -1
BID INVITATION LETTER

BID INVITATION LETTER

Ref No.: PFCCL/Pilot-II/2019/Aggregator_Appt

Date: 08.02.2019

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 10th April 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 Accordingly, PFC Consulting Limited (PFCCL) had carried out the bid process of 2500 MW under Pilot Scheme through open and transparent competitive bidding on DEEP e-Bidding Portal based on offer of the lowest tariff. The Letter of Award for procurement of 1900 MW power was issued to 7 Successful Bidders and supply to 5 Utilities.
- 1.3 Aggregator had entered into “Agreement for Procurement of Power” with 7 Suppliers and “Power Supply Agreement” with 5 Utilities for 1900 MW under Pilot Scheme.
- 1.4 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”.
- 1.5 PFCCL as Nodal Agency has 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.
- 1.6 Accordingly, this Tender Document is being issued by PFCCL as the Nodal Agency to appoint Aggregator under Pilot Scheme-II.
- 1.7 **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.

- 1.8 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 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.
- iii) The Aggregator shall comply with various obligations mentioned in the Bidding Documents.
- iv) 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.
- v) 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.
- vi) 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.
 - vii) **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.
- viii) **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.
- ix) **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.
 - x) 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.

- xi) 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.
- xii) 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;
- xiii) 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.
- xiv) The Aggregator shall pay to PFCCL the Success Fee.
- xv) 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
ii)	Execution of PSAP-II with Distribution Licencee(s)	To be communicated by the Nodal Agency
iii)	Quarterly report including documentary evidence of number of energy units (in kWh) supplied under Pilot Scheme-II and calculation sheet for payment to PFCCL.	Within 7 (seven) days of the end of each Quarter

4.0 QUALIFYING CRITERIA

- 4.1 The Bidder should be a Trading Licensee or a Distribution Licensee, whosoever 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 17-18.

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

The selected Aggregator shall have to pay a Success Fee to PFCCL. The Reserve Price (RP) would be 1 (one) paisa per unit (in kWh) as Success Fee. The Bidder(s) have the option to quote their Financial Proposal at par **or** over and above the RP in the online e-Procurement Portal. The highest quoted Financial Proposal will be considered as Initial Price Offer (IPO). The Aggregator shall deposit the amount arrived after multiplying the number of units (in kWh) supplied under Pilot Scheme-II with the Final Price Offer (FPO) quoted by Aggregator in the bidding process pertaining to each quarter within 15 (fifteen) days after submission of Invoice by PFCCL through electronic transfer to the nominated bank of PFCCL. At the payment of the Success Fee, GST or any other applicable tax payable, to be paid extra by Aggregator. Income Tax provision will be as per the applicable law and regulation.

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 **25th February 2019 till 14:00 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 Chartered Accountant.
- 8.2 The Bidder should quote their "Financial Proposal" i.e. Initial Price Offer (IPO) at par **or** over and above the RP 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 February 25, 2019 at 16:30 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 have valid Trading/ Distribution License issued by Appropriate Commission.
- 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, as may be required by Nodal Agency/ PFCCL.
- 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 (Turnover and Networth) 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, in the presence of the authorized representatives of the agencies, who wish to be present.

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 price 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 paisa (Zero point Zero Five Paisa) or multiples thereof. At the end of the e-Forward Auction, Bidder who has quoted the highest Bid (Final Price Offer) as Success Fee shall be identified as “Aggregator”.

9.2.3 Tie-Bidders

- a) In case Bidders quote the same RP 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
	(a)	$(b = a * 0.7)$	(c)	$(d = c * 0.3)$	$(e = [b+d]/100)$
Bidder 1	1000	700	2000	600	13.0
Bidder 2	800	560	1000	300	8.6
Bidder 3	600	420	300	90	5.2
Bidder 4	500	350	100	30	3.8

- 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

The Bidders shall be required to deposit along with its Bid, a Bid Security of amount to be intimated after Pre-Bid Meeting, in the form of Bank Guarantee/ Demand Draft/ RTGS/ NEFT from the Scheduled Bank in India.

11.0 CONTRACT PERFORMANCE GUARANTEE (CPG)

In the event of an award, the successful Bidder (Aggregator), within thirty (30) days of issue of Letter of Award (LOA) from PFCCL, will be required to arrange submission of CPG in favour of PFCCL in the form of a Bank Guarantee (BG) equivalent to 10% (Ten Percent) of the Success Fee calculated on the basis of winning Bid on 2500 MW capacity on annual basis. The CPG should be as per PFCCL's format and should be kept valid upto the period of engagement as Aggregator under Pilot Scheme-II from the Letter of Award.

12.0 CONTRACT AGREEMENT

- 12.1 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.
- 12.2 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.
- 12.3 The Contract Agreement will be signed in two originals and the Aggregator shall be provided with one signed original Agreement
- 12.4 The date of execution of the Contract Agreement in no case shall alter the date of start or completion period of Pilot Scheme-II.
- 12.5 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.

13.0 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.

14.0 TERMS OF PAYMENT

Aggregator shall make payment of Success Fee plus GST or any other applicable tax/ duty payable within 15 (fifteen) days after submission of quarterly Invoice by PFCCL through electronic transfer to the nominated Bank of PFCCL. Income Tax provision will be as per the applicable laws and regulations.

15.0 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 responsibility whatsoever on this account.

16.0 OTHER TERMS & CONDITIONS

- 16.1 The Financial Proposal by the Bidders shall be submitted online in the e-Procurement Portal in paisa per kWh.
- 16.2 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.
- 16.3 **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.
- 16.4 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
- 16.5 No offer should be sent by Fax or E-mail. Offers received offline shall not be considered.
- 16.6 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.
- 16.7 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 Success Fee.
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 Success Fee/Bid submitted under IPO/ FPO in e-Forward Auction is firm and shall remain valid for the entire period of the Project. We further declare that the above quoted fee excludes all taxes/ duties.
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 Contract Performance Guarantee equivalent to 10% (Ten Percent) of the Success Fee calculated on the basis of winning Bid on 2500 MW capacity on annual basis in the form of bank guarantee shall be provided by us as per the prescribed format (*to be provided to Successful Bidder*) 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 sub 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 my _____ [Name of the Bidder] is as below:

TURNOVER

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

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 FOR BANK GUARANTEE FOR CONTRACT PERFORMANCE
(TO BE STAMPED IN ACCORDANCE WITH STAMP ACT)

The non-judicial stamp paper should be in the name of issuing bank

Ref. No.

Bank Guarantee No.....

Date.....

To,

PFC Consulting Ltd

9th Floor, A Wing,
Statesman House,
Barakhamba Road,
Connaught Place,
New Delhi

Dear Sir,

In consideration of the PFC Consulting Limited (hereinafter referred to as the 'Nodal Agency/ PFCCL' which expression shall unless repugnant to the context or meaning there of include its successors, administrators and assigns) have awarded to M/swith its Registered/Head Office at

(hereinafter referred to as the 'Aggregator by issue of Nodal Agency/ PFCCL's Letter of Award Nodated and the same having been unequivocally accepted by the Aggregator resulting into a contract valued atfor(Scope of Work) and the Aggregator having agreed to provide a Contract Performance Guarantee for the faithfully performance of the entire contract equivalent to% (per cent) of the said value of the contract to the Nodal Agency/ PFCCL.

We(name and address), having its Head Office at(herein after referred to as the 'Bank', which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns) do hereby guarantee and undertake to pay the Nodal Agency/ PFCCL, on demand any and all monies payable by the Aggregator to the extent ofas aforesaid at any time upto.....(days/ month/ year) without any demur, reservation, contest, recourse or protest and/or without any reference to the Aggregator any such demand made by the Nodal Agency/ PFCCL on the Bank shall be conclusive and binding notwithstanding any difference between the Nodal Agency/ PFCCL and Aggregator or any dispute pending before any court, tribunal or any other authority. The Bank undertakes not to revoke this guarantee during its currency without previous consent of the Nodal Agency/ PFCCL and further agrees that the guarantee herein contained shall continue to be enforceable till the Nodal Agency/ PFCCL discharges this guarantee. The Nodal Agency/ PFCCL shall have the fullest liberty without affecting in any way the liability of the Bank under this guarantee from time to time to extend the time for performance of the Contract Agreement by the Aggregator. The Nodal Agency/ PFCCL shall have the fullest liberty, without affecting this guarantee, to postpone from time to time the exercise of any powers vested in them or of any right which they might have against the Aggregator, and to exercise the same at any time in any manner, and either to enforce or to forbear to enforce any covenants, contained or implied, in the Contract Agreement between the Nodal Agency/ PFCCL and the Aggregator or any other course of or remedy or security available to the Nodal Agency/ PFCCL. The Bank shall not be released of its obligations under these presents by any exercise by the Nodal Agency/ PFCCL of its liberty with reference to the matters aforesaid or any of them or by reason of any other acts of omission or commission on the part of the Nodal Agency/

PFCCL or any other indulgence shown by the Nodal Agency/ PFCCL or by any other matters or thing whatsoever which under law would, but for this provision, have the effect of relieving the Bank.

The Bank also agrees that the Nodal Agency/ PFCCL at its option shall be entitled to enforce this Guarantee against the Bank as a principal debtor, in the first instance without proceeding against the Contractor/Aggregator and notwithstanding any security or other guarantee that the Nodal Agency/ PFCCL may have in relation to the Contractor/ Aggregator liabilities.

Notwithstanding anything contained herein above our liability under this guarantee is restricted toand it shall remain in force upto and includingand shall be extended from time to time for such period (not exceeding one year), as may be desired by M/swhose behalf this guarantee has been given.

Dated this Day of 2019.....at

WITNESS:

(Authorised Signatories of the Bank)

1.

.....
(Signature)

.....
(Signature)

.....
(Name)

.....
(Name)

.....
(Official address)

.....
(Designation with Bank Stamp)

.....

Attorney as per Power of Attorney No.

Dated

2.

.....
(Signature)

.....
(Name)

.....
(Official address)

Note:

This sum shall be equivalent to 10% (Ten Percent) of the Success Fee calculated on the basis of winning Bid on 2500 MW capacity on annual basis.

The stamp paper of appropriate value shall in the name of Bank issuing the guarantee.

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 COVENANTS 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 Clause 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 persons 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 CONTRACT PERFORMANCE GUARANTEE

- 4.1 The Aggregator within 30 days from the date of issue of Letter of Award shall furnish a Performance Guarantee in the form of Bank Guarantee as per format attached at Section-3 of Tender Document, from any Bank towards performance of the Contract. The guarantee amount shall be equal to 10% (Ten Percent) of the Success Fee calculated on the basis of winning Bid on 2500 MW capacity on annual basis. The guarantee shall be valid until after expiry of a period of 6 months from the date of issue of No Claim Certificate by the Nodal Agency/ PFCCL (Guarantee Period).
- 4.2 The Contract Performance Guarantee is intended to secure the performance of the entire Contract and shall not be construed as limiting the damages stipulated in other clauses in the Tender Document.
- 4.3 The Performance Guarantee will be returned without any interest at the end of the Guarantee Period.

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 by 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 (Aggregator, 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 Mode of Payment

- 6.1.** Payments shall be made to the Nodal Agency/ PFCCL by the Aggregator as per this Contract Agreement and no deviation shall be permitted. The Nodal Agency/ PFCCL shall confirm the payment details submitted by the Aggregator.

- 6.2.** The Aggregator shall deposit (along with applicable taxes, duties, etc.) the amount arrived after multiplying the number of units (in kWh) supplied under Pilot Scheme-II with the _____ paisa per kWh (i.e. Final Price Offer (FPO) quoted by Aggregator in the bidding process) pertaining to each quarter within 15 (fifteen) days after submission of Invoice by PFCCL through electronic transfer to the nominated bank of PFCCL.

- 6.3.** Adjustments, if any, would be made in the subsequent Quarter.

- 6.4.** All payments under this Contract shall be made to the account of Nodal Agency/ PFCCL with Account No. _____ in _____ Bank.

7.0 SUSPENSION

The Nodal Agency/ PFCCL may, by written notice of suspension to the Aggregator and invoke Performance Bank 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. However it is agreed that in no event shall Force Majeure shall exclude any Party's obligation to pay monies under this Agreement.

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/ PFCCL:

CEO, PFC Consulting Limited
(A Wholly Owned Subsidiary of Power Finance Corp. Ltd.)
First Floor, 'Urjanidhi', 1, Barakhamba Lane,
New Delhi - 110001

Email: yogesh.juneja@pfcindia.com; pfcconsulting@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