

ANNEXURE-II

**DRAFT
A G R E E M E N T**

THIS AGREEMENT made at Mumbai ____day of_____ Two Thousand Seventeen between Brihanmumbai Electric Supply and Transport Undertaking a body constituted under the Mumbai Municipal Corporation Act No. 111 of 1888 having its office at BEST Bhavan, Colaba, Mumbai – 400 001, hereinafter referred to as "the Undertaking" (which expression shall unless it be repugnant to the subject context or meaning thereof be deemed to mean and include its successors and assigns) of the **ONE PART** and

M/s. _____having its office at _____ hereinafter referred to as retainer consultant (which expression shall unless it be repugnant to the subject context or meaning thereof be deemed to mean and include its successors and assigns) of the **OTHER PART**.

WHEREAS The Undertaking has expressed its desire to appoint M/s. _____as a retainer consultant for providing consultancy assistance & Advisory Services in Regulatory matters for 5 years FY 2017-18 to FY 2021-22 as per the terms of reference given below.

TERMS OF REFERENCE

1.0 Objectives and scope of work:

- 1.1 The consultancy firm who is now appointed for various assignments will deploy the necessary experienced & knowledgeable teams to carry out assignments as specified in this ToR and file reports of the findings to the Undertaking as specified / to the satisfaction of the Undertaking.
- 1.2 The consultancy firm may quote the various models / alternatives to carry out the assignments and offer the quotations. It shall, however, be the Undertaking's sole prerogative to decide giving the assignment to one or more number of consultancy firms.
- 1.3 The scope of work:-
 - 1.3.1 The consultancy firm shall, under the overall responsibility of Project director / Project Manager, designated by them for this job shall deploy teams of qualified professionals, with adequate experience in the related fields such as electricity distribution, generation, transmission, market operations, ABT, power procurement etc.
 - 1.3.2 Advise in writing regarding the course of action to be adopted by Electric Supply Branch of the Undertaking, to equip itself to comply with the regulations, notifications, codes etc.
 - 1.3.3 Prepare reports on various projects required to be undertaken by the Undertaking as per the directives of the Regulatory Commission and other aspects as may come up from time to time, as per pre-decided timeframe given by Undertaking as and when assignments are given.
 - 1.3.4 Advise in writing, the Undertaking on the various datas and their formats to be maintained to facilitate compliances to various rules and regulations, orders and directives of the Regulatory Authorities as and when assignments are given.
- 1.4 Preparation of draft reports on various projects required to be undertaken by the Undertaking as per directives of Regulatory Commission such as Demand Side Management (DSM), Renewable Power Obligation (RPO), Availability Based Tariff (ABT), Power Purchase Agreement (PPA) and on any other issues as may come up from time to time for which following action may be required.
 - 1.4.1 Study of the draft regulations/notifications/ directions /codes, approach papers published from time to time by various regulatory bodies such as CEA, CERC, MERC and other statutory bodies as and when directed by BEST Undertaking and offer their comments vis-à-vis its implications and repercussions in terms of financial aspects and organizational set up, operational changes, etc.
 - 1.4.2 Make presentation / discussions to / with officers of various departments of the Undertaking, gather data and coordinate / compile the same for the assignments as and when needed.
 - 1.4.3 Advise the Undertaking regarding the future course of actions to be adopted to equip itself to comply with the regulations/notifications / directions and codes once published.
 - 1.4.4 Represent the Undertaking in the Commission and other statutory bodies as and when required by the Undertaking. This may involve discussions with Undertaking's officials at various levels and presentations to the senior management from time to time.
- 1.5 The above activities are only to give an idea, however it may expand depending upon the directives issued by the Commission from time to time. The Undertaking reserves the right to expand or reduce the scope of work to be carried out for the following in various fields / areas. The financial impact of such change shall be based on mutual agreement of both the parties.
- 1.6 The key measures of performance of the consultancy firm will be
 - a) Coverage of all the items of concern to the Undertaking
 - b) Quality and extensiveness of Reports

- c) Punctuality regarding visits to sites as well as submission of reports to the Undertaking.
- d) Response to every assignment.
- e) Honesty and integrity of team members.
- f) Communication skills and ability on part of the team members to build good rapport with the site personnel.
- g) Retaining the same personnel throughout the Project.
- h) At least one of the working level person deputed for assignment should have Electrical Engineering qualification and should have experience in similar assignment.

2.0 **Methodology for carrying out assignment:**

- 2.1 In the assignment where sufficient time is available to the Undertaking for offering its comments/suggestions etc., The consultancy firm will be asked to submit the estimated professional fees based on milestones basis of the assignment with a timeframe. The approach to the assignment, the estimated time required for completing the assignment and the proposed professional fees would be studied by the Undertaking and the assignment will be cleared for consultancy on mutually agreed terms and conditions along with time frame.
- 2.2 In case of urgencies, M/s. _____ would be required to submit its comments/observations etc. in the stipulated timeframe given under the Regulations to the Undertaking. In such cases/ instances M/s. _____ will be required to take up the assignment immediately on the receipt of the communication from the Undertaking and will be required to submit the comments/observations, within the timeframe.
- 2.3 M/s. _____ shall be required to provide BEST full details of assumption, calculations and analysis made, any reference or background material used for preparation report in hard as well as soft copy.
- 2.4 The Undertaking reserves the right to award the assignment to any retainer consultant at the sole discretion of the Undertaking without assigning any reason thereof.

3.0 **Time frame:**

All the work covered in the assignment needs to be completed within given period of time from the date of issue of letter of Intent for that particular assignment so as to enable to the Undertaking to put up replies to the regulatory authorities within the stipulated time limit. (This shall include the regular reviews of progress of work along with the adequacy of the work done and reports put up).

4.0 **Retainership period and fees:-**

Period of retainer ship arrangement shall be upto 31st March 2022 from the date of issuing the letter of indent awarding the contract. This retainer ship assignment may be extended after expiry of the period on mutually agreeable terms.

4.1 **Retainership fees:**

No retainership fees will be payable during the retainer ship period.

4.2 **Terms of payment:**

- 4.2.1 M/s. _____ shall quote for carrying out the assignment with various alternatives, quoting the prices & duration of work to arrive at total estimate under various alternatives for completing the assignment. It shall, however, be the Undertaking's sole prerogative to decide regarding giving the assignment to one or more number of consultancy firms.

- 4.2.2 The payment of professional fees for short assignments (upto 1 month period) shall be made within 30 days after submission of the bill for the assignment completed in all respects. Before the submission of the bill Retainer Consultant has to submit the detailed report with findings in the desired format as well as hand over to the Undertaking all the relevant records of data / information & statistic etc. collected & received from the Undertaking during the execution of particular assignment.
- 4.2.3 The payment for the professional fees shall be as per mutually agreed terms on milestones basis in case the assignment is prolonged beyond one month.
- 4.2.4 The fees quoted for the particular assignment and accepted by the Undertaking in the contract will be inclusive of all the costs of 'Teams' travel, lodging and boarding and also all incidental expenses, professional fees etc., incurred by the teams for the site inspection visits, various consumer surveys (unless additional cost is specifically mentioned in the offer) as a part of the assignment and/or any discussions / meetings with the Undertaking. No separate charges will be payable by the Undertaking on any such account.
- 4.2.5 Members of the Team travelling to any area for work will have to plan on their own. No facilities will be made by the Undertaking in the area being visited. Provision of safety apparel / rain-wear etc. as required, for the site inspection shall be provided by the Consultant to their staff.
- 4.2.6 Service tax, if any, payable by consultant for advisory services rendered to BEST would be reimbursed by BEST.
- 4.2.7 Tax Deduction at Source:- Income Tax shall be deducted from the bill as per the prevalent stipulations of Income Tax Act. BEST shall also provide relevant tax deduction certificate in a timely manner.

5.0 **Confidentiality of data and documents: -**

The Intellectual Property Rights (IPR) of the data collected as well as the deliverables prepared for the Undertaking shall remain with the Undertaking. M/s. _____ shall not utilize or publish or disclose or part with, to a third party, any part of the data or statistics or proceedings or information collected for the purpose of this assignment or during the course of the assignment for the Undertaking, without the express written consent of the Undertaking. The consultancy firm shall be bound to hand-over the entire set of records of assignment to the Undertaking before the expiry of the contract, and before the final payment is released by the Undertaking.

6.0 **Deliverables:**

At the end of each assignments, M/s. _____ shall prepare a detailed report on the assignment with findings & will submit the report in the pre-decided format to the Undertaking in the form of seven (1 + 6) hard copies & one soft copy. The hard copy shall be spiral bound & complete with all descriptions, tabulations and relevant details/ data. Photographic illustrations as a part of the report, to substantiate and emphasize upon the important points and observations, will be appreciated. The soft copy, submitted on a CD, with due identification and markings, shall have the data and scanned documents, in the file formats approved by the Undertaking.

7.0 **Conflict of interest:**

M/s. _____ shall not accept any assignment that would be in conflict with their current assignment with Undertaking or that may place them in a position of not being able to carry out the assignments of the Undertaking objectively and impartially. In case of conflict of interest specially pertaining to the regulatory Commission, M/s. _____ shall obtain the no objection certificate from the Commission & submit it to the Undertaking.

8.0 **Liquidated damages:**

Progress of the assignment will be reviewed during the assignment period periodically for any delays from the original schedule and submission of specified report. M/s. _____ in case of delay shall be liable to pay the Undertaking, by way of liquidated damages @ ½% of the value of the incomplete part of the assignment, per weeks delay or part thereof.

If final completion of the assignment gets delayed beyond the originally assigned duration from the date of issue of the letter of intent, the Liquidated Damages will be applied on the unfinished portion of the assignment, on the above basis. The total value of the Liquidated Damages applied during the tenure of the contract will however be limited to maximum 10% of the assignment value.

9.0 **Contract security deposit:-**

The Retainer Consultant shall furnish Demand Draft for Rs. 25,000/- (Rupees Twenty five thousand only) - payable at Mumbai or Bank Guarantee for Rs. 25,000/- (Rupees Twenty five thousand only) from the scheduled bank being a contract security deposit which shall be valid for the entire period of contract and six months subsequent to completion of contract so as to enable the Undertaking to lodge the claims, if any, arising out of failure on the part of the Retainer Consultant during the period of contract.

The contract security deposit shall be refunded by the Undertaking to the Retainer Consultant after satisfactory completion of the contract and on production of the original security deposit receipt duly discharged.

If the Retainer Consultant commits breach of any of the clause of the agreement, the contract security deposit paid by the Retainer Consultant shall liable to be forfeited or the Undertaking shall invoke the Bank Guarantee submitted by the Retainer Consultant.

10.0 **Termination of Contract:-**

The Undertaking reserves the right to terminate the contract by giving one month's notice in case the performance of the Retainer Consultant is not found satisfactory or if the Retainer Consultant commits breach of any of the clause of the agreement.

11.0 **Arbitration**

In case of dispute and / or difference arising out of interpretation of clauses of this agreement, the General Manger of the Undertaking shall be appointed as the sole arbitrator and the decision given by the General Manager of the Undertaking shall be final and binding on the parties.

SIGNED, SEALED AND DELIVERED BY)	
Shri Surendrakumar Bagde,)	
General Manager)	
THE BRIHAN MUMBAI ELECTRIC SUPPLY)	
AND TRANSPORT UNDERTAKING)	
For and on behalf of the Municipal)	
Corporation of Brihanmumbai, as)	
Authorized under BCR 900 dated 13.12.1974)	For General Manager,
Countersigned by:)	the BES&T Undertaking
1.)	
2.)	
Two member of Brihanmumbai)	
Electric Supply and Transport)	Members,
Committee, in the presence of)	<u>the BES&T Committee</u>

SIGNED, SEALED AND DELIVERED BY)
M/s _____)
_____)
_____)
