

An initiative of



**Ministry of Power,
Government of
India**

**Restructured Accelerated Power Development and
Reforms Programme (R-APDRP) of Govt. of India
REQUEST FOR PROPOSAL (RFP)**

For Selection of Consultant to Study the existing status and
future roadmap of Time of Day Metering/ Tariff in the
Country

For further details, please visit the website
www.apdrp.gov.in

Nodal Agency



**Power Finance
Corporation Ltd.**

Request for Proposal for Appointment of Consultant to Study the
existing status and future roadmap of Time of Day Metering/ Tariff
for Industrial, Domestic and Other Sectors in the Country

BY



Power Finance Corporation Ltd.

Single Stage – Two Envelope Procedure

RFP Identification No: R-APDRP/TOD Consultant/2010

The last date for submission of RFP is 7th Jun 2010 at 1500 Hrs

(This document is meant for the exclusive purpose of RFP and shall not be transferred, reproduced
or otherwise used for purposes other than that for which it is specifically issued)

This document contains 33 pages

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BACKGROUND

Time of the Day (TOD) metering is a technology that enables the implementation of time varying prices under which the price per unit of electricity varies according to the time of day with higher tariff rates at peak periods and low rates at off-peak periods. These time varying tariffs send price signals to consumers that reflect the underlying cost of generating, transmitting and supplying electricity, and enabling resources to be allocated more judiciously and efficiently. Furthermore, price based demand response can reduce or shape consumer demand particularly to reduce load at peak hours on the electricity system. Hence, TOD metering & tariff assumes importance in the context of propagating and implementing demand side management (DSM) and achieving energy efficiency.

The Consultant shall study the experiences and scope of TOD metering in various States and Union Territories of the country using utilities data, state regulatory filings & orders and other available data.

SECTION-I: INSTRUCTION TO BIDDERS

1. Purpose of the RfP

Appointment of a Consultant to Study the existing status and future roadmap of Time of Day (ToD) Metering & tariff for Industrial, Domestic and Other Sectors in the Country.

2. Name of the Appointing Authority

Power Finance Corporation Ltd. (PFCL), New Delhi-110001.

Contact Email: apdrp.business@gmail.com

(Also use this e-mail ID for sending the bidder queries before deadline)

3. Website of the Appointing Authority

For details visit:

www.apdrp.gov.in / www.pfcindia.com

4. Address for Submission of Bids

DGM (APDRP), PFC Urja Nidhi, 1, Barakhamba Lane, Connaught Place, New Delhi
Telephone: 011- 23456000 (O)

5. Period of Appointment

Two months from the date of appointment, subject to conditions mentioned under “cancellation of appointment” as per clause 6.

6. Cancellation of Appointment

The period of appointment is subject to cancellation of appointment due to any of the reasons mentioned hereunder.

- If the Consultant is found to have submitted false particulars / fake documents for securing appointment or for the award of assignment.
- If the Consultant refuses to execute the job at his agreed scope/quoted rates, after the PFC issue the letter of Award (LoA)
- Any other reason deemed fit by the PFC for cancellation

7. Language of RFP

English

8. Number of Copies of RFP

Two Hardcopies with one Hardcopy to be marked as "Original" and another marked as "Copy". If there are any discrepancies between the original and the copy of the Proposal, the original governs.

9. Purchase of RFP

The RfP document can be purchased by paying through a demand draft/banker's cheque amounting to INR 1000/- or USD 20 in favour of “Power Finance Corporation Ltd” payable at New Delhi as cost of the document. The document can also be downloaded from the website

www.apdrp.gov.in. In case of downloaded document aforesaid demand draft/banker's cheque shall be furnished at the time of submission of RfP as the cost of purchase of document

10. Eligible Bidders

A Bidder may be a Public Limited Company/Private Limited Company/Government Owned Company or any combination of them, subject to them fulfilling the qualifying requirements as mentioned in this document.

No firm can submit more than one RfP.

11. Subcontracting

The Consultant shall not be permitted to sub-contract any part of its obligations under the Contract with the utilities.

12. Corrigendum

Should the PFC deem it necessary to amend the RFP Document, it shall do so by uploading the corrigendum in the website. At any time prior to the deadline for submission of the RFP, the PFC may amend the RFP Document by issuing corrigenda.

In order to provide prospective Bidders reasonable time in which to take the amendment into account in preparing their bids, the PFC may, at its discretion, extend the last date for the receipt of RFPs.

Any corrigendum issued shall be part of the RFP Document and shall be communicated in writing through registered letter and/ or Email to all who have obtained the RFP Document directly from the PFC.

13. Cost of preparation of RFP

The Bidder shall bear all costs associated with the preparation and submission of its RFP and the PFC shall not be responsible or liable for those costs, regardless of the conduct or outcome of the RFP process.

14. Submission of RFP

The Bidder shall submit the RfP using the appropriate Submission Sheets provided in Section VI – Response Formats. These forms must be completed without any alterations to their format, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested. All formats/ schedules given in the Response Formats duly filled along with supporting documents shall be page numbered and signed as one volume. Each page of the bid (along with the supporting documents including CVs) should be signed by the Authorised Signatory. Spiral/Spico bound documents with end sealed may also be accepted. The documents submitted in any other way is liable to be rejected.

The RfP must be submitted in a separate sealed envelope with covering letter as per the Form No.F1 (with respective markings in bold letters) in accordance with the formats/ schedules given in the Section VI – Response Formats. The envelope shall be marked as “RfP for Appointment of Consultant for Study of TOD Metering”.

The sealed envelope should be placed in a sealed cover, duly signed, and dropped in the RfP box in the Office of the DGM (APDRP), PFC, Urja Nidhi, 1, Barakhamba Lane, Connaught

Place, NEW-DELHI-110001. RfPs received late, on any account and for any reason whatsoever, will not be considered.

15. RFP Opening

The PFC shall conduct the opening of RFPs in the presence of Bidders' representatives who choose to attend, at the address, date and time specified in this document.

Envelopes holding Technical Bid of the RFP shall be opened one at a time, and the following read out and recorded:

- (a) the name of the Bidder;
- (b) whether there is a deviation, modification or substitution (if any);
- (c) Any other details as the PFC may consider appropriate.

Only RFPs read out and recorded at opening stage shall be considered for evaluation. No RFP shall be rejected at the opening stage, except for late bids or bids not accompanied with proof of having purchased the document.

16. Rights of Use

All rights of use of any process, product, service or facility developed or any other task performed by the Consultant for Study of TOD metering during execution of the engagement for the PFC would lie exclusively with the PFC and PFC in perpetuity free from all liens, encumbrances and other third party rights and the Consultant for Study of TOD metering shall, wherever required, take all steps that may be necessary to ensure the transfer of such ownership in favor of the PFC.

17. Intellectual Property

The Consultant for Study of TOD metering shall ensure that while it uses any software, hardware, processes, document or material in the course of performing the Services, it does not infringe the Intellectual Property Rights of any person and the Consultant for Study of TOD metering shall keep the PFC indemnified against all costs, expenses and liabilities.

18. Confidentiality

The Consultant/Consortium and the personnel of any 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 study, the Services, this Contract or the Owner's business or operations without the prior written consent of the owner. PFC will ensure confidentiality of the bids submitted.

19. Bid Security / Earnest Money Deposit (EMD)

The Bidder shall furnish as part of its Proposal, a Bid Security in original form and in the amount and currency specified in the Bid data Sheet. The value of Bid Security would be as specified in the Data Sheet.

20. Basis of Price Offer

The Price offer shall be for the assignment as per the Data Sheet (Section-II) and Scope of Work (Section-IV) and shall remain FIRM till completion of the assignment. Quoted price will be on a

Lump sum basis inclusive of all travel, stay, out of pocket expenses, cost of producing documents etc. The owner will not be required to pay and/or reimburse anything over and above the price quoted except service tax, which will be payable as per the rate prevailing at the time of payment.

21. Bid Validity Period

Bid should be valid for a period as specified in the Data Sheet from the date of opening of proposal

22. Acceptable Banks

All bank related documents should be submitted only from a bank listed in Schedule-2 of Reserve Bank of India (RBI).

23. Disclaimer

“This Request for Proposal (RFP) has been prepared by the Ministry of Power, Govt. of India THROUGH ITS DESIGNATED NODAL AGENCY POWER FINANCE CORPORATION LIMITED (PFCL) For Selection of Consultant to Study the existing status and future roadmap of Time of Day tariff for Industrial, Domestic and Other Sectors in the Country.

Though adequate care has been taken while preparing the RFP documents, the Bidder shall satisfy himself that document is complete in all respects. Intimation of any discrepancy shall be given to this office immediately. If no intimation is received from any Bidder within ten days from the date of issue of Bid documents, it shall be considered that the Bid document is complete in all respects and has been received by the Bidder.

All information submitted in response to the RFP become the property of PFC and PFC does not accept any responsibility for maintaining the confidentiality of the material submitted or any trade secrets or proprietary data contained therein.

In submitting a proposal in response to the RFP, each bidder certifies that it understands, accepts and agrees to the disclaimers on this page. Nothing contained in any other provision of the RFP nor any statements made orally or in writing by any person or party shall have the effect of negating or superseding any of the disclaimers set forth on this page.”

SECTION-II: DATA SHEET

.1	The name of the Assignment is:	Study of the existing status and future roadmap of Time of Day Metering/ tariff for Industrial, Domestic and Other Sectors in the Country
.2	The name of the Owner is:	POWER FINANCE CORPORATION LIMITED (PFC) (Govt. of India Undertaking),
.3	The description and the objectives of the assignments:	Time of the Day (TOD) metering is a technology that enables the implementation of time varying prices under which the price per unit of electricity varies according to the TOD tariff with higher rates at peak periods and low rates at off-peak periods. These time varying tariffs send price signals to consumers that reflect the underlying cost of generating, transmitting and supplying electricity, and enabling resources to be allocated more judiciously and efficiently. Furthermore, price based demand response can reduce or shape consumer demand particularly to reduce load at peak hours on the electricity system. Hence, TOD metering assumes importance in the context of propagating and implementing Demand Side Management (DSM) and achieving energy efficiency. The Consultant shall study the TOD metering & tariff experiences in India (if any) and other countries, and further scope for implementation in various States and Union Territories of India.
.4	The documents enclosed are:	1. Instruction to Bidders 2. Data Sheet 3. Qualifying Requirement 4. Scope of Work 5. Formats for Submission of RFP 6. Payment Terms
.5	Consortium:	The consultancy firms selected as consortium / joint ventures should submit financial capability of the consortium members and their role and responsibility for the above assignment. However, no firm can submit more than one bid (either individually or as a member of consortium/ joint ventures).
.6	The address for submission of Bids :	DGM (APDRP), PFC Urja Nidhi, 1, Barakhamba Lane, Connaught Place, New Delhi-110001 Telephone: 011- 23456000 (O)



Restructured Accelerated Power Development and Reforms Programme



.7	Bid Security / Ernest Money Deposit (EMD)	Earnest Money Deposit of Rs. 50,000/- (Rupees Fifty Thousand) or USD 1000 (US Dollar One Thousand) in the form of Bank Demand Draft payable to PFC Ltd. at New Delhi to accompany the Proposal.
.8	Date for queries/ seeking clarification	by 31 st May 2010
.9	The date and time of submission of Bids	Proposal Bid submission on 7 th June 2010 at 1500 Hrs.
.10	Bid Opening Date	Technical Proposal Bid Opening on 7 th June 2010 at 1530 Hrs or as decided by the owner.
.11	Bid Validity period:	Ninety (90) Days from the date of opening of proposal
.12	Commencement of the Assignment:	As per the Letter of Award/ Letter of Intent.

SECTION-III: QUALIFYING REQUIREMENT

RFP is invited from eligible bidders for taking up the role of Consultant meeting the following qualifying requirements:

- i. The consultant shall be a firm or a limited company with cumulative turnover of atleast Rs.100 Cr (Rupees Hundred Crore) in the consultancy business for last three audited financial years.

(Proof: Annual Audited Financial Statements for last three applicable financial year/ Audited annual reports)

- ii. The bidder has completed at least three assignments in the last five years against preparation/ review of Annual Revenue Requirement (ARR) or tariff petitions of a Power Distribution Utility/advisory services in policy/strategy formulation for development of power sector, implementation of transmission/ distribution projects, energy efficiency, performance study of power utilities, metering solutions, standardisation/ certification of meters.

(Proof of credentials for experience should be the following:

Bidder shall submit copy of purchase order (PO) of the concerned Assignments along with proof of final payment/ completion certificate issued by the client.)

Note: The proof documents available in any language other than English shall be translated to English and authenticated by Authorized Signatory of bidder for submission. In such cases, the original language copies shall also be submitted along with the translated proof documents.

SECTION-IV: SCOPE OF WORK

(Note: The consultant may interact with State/Utilities/Other authorities for completion of assignment. Sources of data for respective heads needs to be declared/provided in the report)

i. Study of Present Status of TOD Metering in Indian Power Distribution sector on following lines:

- a. Status of Time of Day (TOD) Metering, time zones and tariff structure for Industrial, Commercial, Domestic, Agricultural and other consumers where TOD metering and tariff has been implemented.
- b. Effect/Impact of implementation of Time of Day (TOD) Metering and tariff on power demand & supply, system management, utility's power distribution business and consumers satisfaction. The effect/impact are to be studied category wise i.e. industrial, commercial, domestic, agricultural etc.
- c. Preparedness of State/ power distribution utilities for implementation of TOD Metering and the current position of the related infrastructure.
- d. With respect to TOD metering in India, study of current regulatory and policy directives of Electricity Act. 2003, National Tariff Policy, MYT (Multi Year Tariff) in Utilities, National Electricity Policy, CERC, SERC, and contribution of various initiatives of MoP, Govt. of India in the distribution sector in this regard.
- e. Study of present and future demand and availability of power in the country based on various reports from State Electricity Regulatory Commission (SERC), Central Electricity Regulatory Commission (CERC), State Govt., Central Govt., Central Electricity Authority (CEA), Ministry of Power (MoP), Planning Commission etc.

ii. Study of Future Roadmap for Implementation of TOD Metering in India on following lines:

- a. Based on i (a) & (b) above, suggestive approach/action plan for implementation of TOD metering & tariff in other parts of India.
- b. Requirement of Infrastructure and consumer category wise meters in the states for implementation of TOD metering.
- c. Budget estimation and expenditure phasing for installation/implementation of TOD metering in India.
- d. Availability of manufacturing capacity for meeting the estimated demand of TOD meters in India.

Deliverables

The Consultant shall complete the study and submit following reports for two states from each region of India (namely Maharashtra, Madhya Pradesh, Rajasthan, Himachal Pradesh, Kerala, Karnataka, West Bengal, Jharkhand, Assam & Meghalaya) within 60 days of award of the assignment to them (*Deliverables against points (i), (ii), (iii) mentioned below shall be based on primary data and points (iv) to (x) mentioned below shall be based on secondary data*).

- i. Consumer category wise present implementation status of Time of Day (TOD) Metering, time zones and its tariff structure for Industrial, Commercial, Domestic, Agricultural and other consumers.
- ii. Category wise i.e. industrial, commercial, domestic, agricultural etc. effect/impact of implementation of Time of Day (TOD) Metering & tariff on power demand & supply, system management, utility's power distribution business and consumers satisfaction.
- iii. Preparedness for implementation of TOD Metering and the current position of the related infrastructure in India.
- iv. Report on current regulatory and policy directives of Electricity Act. 2003, National Tariff Policy, MYT (Multi Year Tariff) in Utilities, National Electricity Policy, CERC, SERC and contribution of various initiatives of MoP, Govt. of India in the distribution sector with regard to TOD metering in India.
- v. Present and projected future demand and availability of power in India.
- vi. Requirement of Infrastructure and consumer category wise meters in the states for implementation of TOD metering.
- vii. Budgetary Estimation of TOD metering costs and phasing of expenditure.
- viii. Suggestive approach/action plan for implementation of TOD metering in other parts of India
- ix. Report on available manufacturing capacity, in India to meet the estimated demand of TOD meters.
- x. Similar experiences of TOD metering in five other countries.

SECTION-V: GENERAL

1. *Payment Terms*

Payments will be made by the PFC to the Consultant as per Contract Value quoted in the Formats for Financial Proposal and agreed in the Contract, as follows:

- 1.1 Advance Payment: 10% of the contract value for appointment of consultant for Study of the existing status and future roadmap for Time of Day (ToD) tariff for Industrial, Domestic and Other Sectors in the Country shall be payable as “Initial Mobilization Advance” after signing the contract and submitting the necessary Advance Bank Guarantee. The same will be released on completion of contract/ assignment.
- 1.2 Final Payment: 90% of contract value shall be payable on submission & acceptance of final report by PFC.

2. *Taxes and Duties*

- 1.1 The bidders shall quote lump sum price for Consultancy services inclusive of all taxes and duties. The owner will not be required to pay and/or reimburse anything over and above the price quoted except service tax, which will be payable as per the rate prevailing at the time of payment.
- 1.2 The lump sum price should include overhead/out of pocket expenses, travel, boarding, lodging, visits etc. The owner shall not pay any money separately on this account.
- 1.3 The prices shall remain FIRM till completion of the assignment.

SECTION-VI: CONTRACT FORMS

1 Bidder response Forms (F-1 to F6)

- Form No F-1: RFP Submission Sheet
- Form No F-2: Certificate as to Corporate Principal
- Form No F-3: Project Experience
- Form No F -4: Company Information
- Form No F-5: CVs
- Form No F-6: Schedule of Price Bid

2 Appendix- I: Agreement

3 Appendix- II: Advance Bank Guarantee

BIDDERS RESPONSE FORMS (F-1 TO F-6)

Form No F-1: RFP Submission Sheet

[On Firm's letter head]

From: <Bidder>

To: <PFC>

DGM (APDRP),
Power Finance Corp Ltd.
1-Barakhamba Lane, C.P.
New Delhi – 110001.

Sir,

Appointment for Consultancy, reference number R-APDRP/ToD CONSULTANT/2010

I/we _____ Consultant / Consultancy Firm
herewith enclose RFP for appointment of Consultant to Study existing status and future roadmap
of Time of Day (TOD) metering/ tariff for Industrial, Domestic and Other Sectors in India. I/We
hereby accept and abide by the scope & terms and conditions of RFP document unconditionally.

Yours faithfully,

Signature: _____

Seal:

Full Name: _____

Address: _____

Date:

Phone No _____

Email ID _____



Form No F-2: Certificate as to Corporate Principal

CERTIFICATE AS TO CORPORATE PRINCIPAL [on Firm's letter head]

(To be signed by any of Board of Directors or Co. Secretary)

I _____ certify that I am _____ of the Company
under the laws of _____ and that _____ who signed the
above tender is authorized to bind the Company / Firm by authority of its governing body.

Signature: _____

Seal:

Full Name: _____

Address: _____

Date:

Form No F-3: Project Experience

Kindly provide relevant Project Experience of the Firm's / any member of the consortium's relevant past experience in either:

- The company should have completed at least three consultancy assignments in the last five years against preparation/ review of Annual Revenue Requirement (ARR) or tariff petitions of a Power Distribution Utility/advisory services in policy/strategy formulation for development of power sector, implementation of transmission/ distribution projects, energy efficiency, performance study of power utilities, metering solutions, standardization/ certification of meters.

Provide Summary of assignment focusing on the following areas:

- Sector of the Client's Business in which assignment was awarded
- Value and Year of award/ completion of assignments.
- Role of the Firm in assignment [Tick out from the following below]
 - preparation/ review of Annual Revenue Requirement (ARR) or tariff petitions of a Power Distribution Utility
 - Advisory services in policy/strategy formulation for development of power sector, implementation of transmission/ distribution projects,
 - Energy efficiency,
 - Performance study of power utilities,
 - Metering solutions,
 - Standardization/ certification of meters

Sl. No.	Assignment	Year		Value of Assignment	Role of Firm	Client & Business	Submitted to PFC
		Award	Completion				

Please provide proof of completed assignments. (Proof of credentials for experience: Bidder shall submit copy of purchase order (PO) of the concerned Assignments along with proof of final payment/ completion certificate issued by the client).

Signature: _____

Seal:

Full Name: _____

Address: _____

Form No F -4: Company Information

Kindly provide the following details for the Firm and Consortium Members:

1 Name of the Firm: _____

2 Individual and Cumulative Turnover in the Last three audited financial years (in INR):

Firm/ JV/ Consortium	Year 2006-07	Year 2007-08	Year 2008-09	Total
Lead Member-1	<Amount in INR>	<Amount in INR>	<Amount in INR>	<Amount in INR>

(Please provide Published Annual Account for Balance Sheet and Profit and Loss statements as Proof)

Signature: _____

Seal:

Full Name: _____

Address: _____

Form No F-5: CVs

The format for submission of CVs is the following:

1. Name: _____
2. Profession / Present Designation: _____
3. Years with firm: _____ Nationality: _____
4. Area of Specialisation: _____
5. Proposed Position on Team: _____
6. Key Qualification/Experience: _____

(Under this heading give outline of staff members experience and training most pertinent to assigned work on proposed team. Describe degree of responsibility held by staff member on relevant previous assignments and give dates and locations. Use up to half-a-page.)

7. Education:
(Under this heading, summarise college/ university and other specialised education of staff member, giving names of colleges, dates and degrees obtained. Use up to quarter page.)
8. Experience:
(Under this heading, list of positions held by staff member since graduation, giving dates, names of employing organisation, title of positions held and location of assignments. For experience in last ten years also give types of activities performed and Owner references, where appropriate. Use up-to three quarters of a page.
9. Language:
(Indicate proficiency in speaking, reading and writing of each language by 'excellent', 'good' or 'poor').

Signature : _____
Full Name : _____
Address : _____
Date : _____

Kindly ensure that the relevant work experience and its applicability to the present assignment are clearly articulated. The CVs should be in 'Times New Roman' with 'font size 11' and should not be longer than 4 type-written pages.

Signature: _____

Seal:

Full Name: _____

Address: _____

Form No F -6: Schedule of Price Bid

(To be submitted with financial offer in second envelope)

Price bid for Consultancy services for the assignment as given in the Terms of Reference for the R-APDRP works, enclosed with the Bid Document.

Sl	Item	Lump Sum Amount (In Indian Rupees)	
		In Figures	In Words
1	Services to Study the existing status and future roadmap of Time of Day (ToD) Metering/ Tariff for Industrial, Domestic and Other Sectors in the Country		

Total Contract Value = Rs. _____

= Rupees _____
 (in words)

Note:

1. The bidders shall quote lump sum price for Consultancy services inclusive of all taxes and duties. The owner will not be required to pay and/or reimburse anything over and above the price quoted except service tax, which will be payable as per the rate prevailing at the time of payment.
2. The lump sum price should include overhead/out of pocket expenses, travel, boarding, lodging, visits etc.
3. The prices shall remain FIRM till completion of the assignment.

Signature: _____

Full Name: _____

Address: _____

Phone No _____

Email ID _____

Seal:

Appendix-1: AGREEMENT

This CONTRACT (hereinafter, together with all Appendices attached hereto and forming and integral part hereof, called the “Contract”) is made this ____ day of the month of ____ 2010, between, on the one hand Power Finance Corporation (hereinafter called the “Owner”) and, on the other hand, _____ (hereinafter called the “Consultant”).

WHEREAS

- (A) The Owner intends to hire consultant to undertake a study of the existing status and future roadmap of Time of Day tariff for Industrial, Domestic and Other Sectors in the Country
- (B) The Owner invited bids for Consultancy services, viz., to Study the existing status and future roadmap of Time of Day tariff for Industrial, Domestic and Other Sectors in the Country and has accepted a Bid by the Consultant for the supply of Consultancy Services in the sum of _____ (hereinafter referred as “the Contract Price”).
- (C) The Consultant, having represented to the Owner/PFC that they have required professional skills, personal and technical resources as indicated in the bid proposal agreed to provide the Services on the terms and conditions set forth in this Agreement.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. GENERAL PROVISIONS

1.1 Definitions

Unless the context otherwise requires, the following terms whenever used in this Agreement shall have the following meanings:-

- (a) “Applicable law” means the laws and any other instruments having the force of law in the Owner’s Country, as they may be issued and in force from time to time;
- (b) “Agreement ” means this contract together with all Appendices/Attachments and including all modifications made in accordance with the provisions of Clause – 2.5 hereof between the Owner and the Consultant;
- (c) “Effective Date” means the date on which this Agreement comes into force;
- (d) “Personnel/Task team members” means persons hired by the Consultant as employees and assigned to the performance of the Services of any part thereof;

- (e) “Party” means of Owner or the consultant, as the case may be;
- (f) “Services” means the work to be performed by the Consultant pursuant to this agreement for the purposes of the assignment, as described in description and objectives of the assignments technical specification of the RFP;
- (g) “Starting Date” means the date referred to in Clause 2.2 hereof;
- (h) “Third Party” means any person or entity other than the Owner, the Consultant or a Consultant.

1.2 Relation between the parties

Nothing contained herein shall be construed as establishing a relation of master and servant or of agent and principal as between the owner and the Consultant. The Consultant, subject to this agreement, has complete charge of personnel performing the services and shall be fully responsible for the services performed by them or on their behalf hereunder.

1.3 Law Governing Contact

This Agreement its meaning and interpretation, and the relation between the parties shall be governed by the Applicable Law of India.

1.4 Language

This agreement 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 agreement.

1.5 Headings

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

1.6 Notices

- 1.6.1 Any notice, request or consent required or permitted to be given or made pursuant to this agreement 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 representation of the Party to whom the communication is addressed, or when sent by registered mail, telex, telegram or facsimile to such party at the following address:

For the Owner:

Attention: _____

Facsimile: _____

For the Consultant:

Attention: _____

Facsimile: _____

1.6.2 Notice will be deemed to be effective as follows:-

- a. In the case of personal delivery or registered mail, on delivery;
- b. In case of telegrams, ninety six (96) hours following confirmed transmission; and
- c. In the case of facsimiles, seventy two (72) hours following confirmed transmission.

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

1.7 Taxes and Duties

- (a) The price for Consultancy services shall be inclusive of all taxes and duties. The owner will not be required to pay and/or reimburse anything over and above the price quoted except service tax, which will be payable as per the rate prevailing at the time of payment.
- (b) The lump sum price should include overhead/out of pocket expenses, travel, boarding, lodging, visits etc.
- (c) The prices shall remain FIRM till completion of the assignment.

2. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF AGREEMENT

2.1 Effectiveness of Agreement

This Agreement will become effective upon signing by both the parties.

2.2 Commencement of Services

The consultant shall begin carrying out the Services immediately viz. from the date of submission of contract performance Guarantee (the "Starting Date"), or on such date as the parties may agree in writing.

2.3 Expiration of Agreement

Unless terminated earlier pursuant to Clause 2.8 hereof, this agreement shall terminate when, pursuant to the provisions hereof, the services have been completed and the

payments have been made.

2.4 Entire Agreement

This agreement contains all covenants, stipulations and provisions agreed by the parties, No agent or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein.

2.5 Modification

Modification of the terms and conditions of this agreement, including any modification of the scope of the services, may only be made by written agreement between the parties and shall not be effective until the consent of the parties has been obtained. Pursuant to Clause 7.2 hereof, however, each party shall give due consideration to any proposals for modification made by the other party.

2.6 Force Majeure

2.6.1 Definition

In the event of either party being rendered unable by force Majeure to perform any obligation required to be performed by them under the Agreement, the relative obligation of the party affected by such force Majeure shall be suspended for the period during which such cause lasts.

The term “Force Majeure” as employed herein shall mean acts of God, War, Civil Riots, Fire directly affecting the performance of the Agreement, Flood and Acts and Regulations of respective government of the two parties, namely Owner and the Consultant.

Upon the occurrence of such cause and upon its termination, the party alleging that it has been rendered unable as aforesaid thereby, shall notify the other party in writing the beginning of the cause amounting to Force Majeure as also the ending of the said clause by giving notice to the other party within 72 hours of the ending of the cause respectively. If the deliveries are suspended by Force Majeure conditions lasting for more than 2 (two) months, Owner shall have the option of cancelling this Agreement in whole or part at his discretion without any liability at his part.

Time for performance of the relative obligation suspended by Force Majeure shall then stand extended by the period for which such cause lasts as determined by Owner.

2.6.2 Breach under this agreement

The failure of a party to fulfill any of its obligations hereunder shall not be considered to be a breach of or default under, this agreement in so far as such inability arises from an event of Force Majeure, 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 agreement.

2.6.3 Measures to be taken

- a) A party affected by an event of Force Majeure 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 of Force Majeure shall notify the other party 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 taken all reasonable measures of minimize the consequences of any event of Force Majeure.

2.6.4 Extension of Time

Any period within a party shall, pursuant to this agreement, complete any action or task, shall be extended at the sole discretion of Owner for a period equal to the time during which such party was unable to perform such action as a result of Force Majeure.

2.6.5 Consultation

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

2.7 Suspension

The Owner may, by written notice of suspension to the consultant, suspend all payments to the consultant failing to perform any of their obligations under this agreement, including the carrying out of services, provided that such notice of suspension (i) shall specify the nature of the failure, and (ii) such request the Consultant to remedy such failure within a period not exceeding thirty (30) days after receipt by the Consultant of such notice of suspension and shall invoke contract performance guarantee.

2.8 Termination

2.8.1 By the Owner

The owner may by not less than thirty (30) days written notice of termination to the consultant (except in the event listed in paragraph (f) below, for which there shall be a written notice of not less than sixty (60) days) such notice to be given after the occurrence of any of the events specified in paragraphs (a) to (f) of this Clause -2.8.1, terminate this agreement.

- a) If the Consultant fails to remedy a failure in the performance of their obligations hereunder, as specified in a notice of suspension pursuant to Clause – 2.7 here in above, within thirty (30) days of receipts of such notice of suspension of within such further period as the Owner may have subsequently approved in writing;
- b) If the Consultant become insolvent or bankrupt or enter into an agreements with their creditors for relief of debts or take advance of any law for the benefit or debtors or go into liquidation receivership whether compulsory or voluntary;
- c) If the Consultant fails to comply with any final decision reached result of arbitration proceedings pursuant to Clause -9 hereof;
- d) If the consultant submit to the Owner a statement which has a material effect on the rights, obligations or interests of the owner and which the Consultant know to be false;
- e) If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the services for a period of not less than sixty (60) days or
- f) If the Owner, in its sole discretion and for any reason whatsoever, decides to terminate this agreement.

2.8.2 Cessation of Rights and Obligations

Upon termination of this agreement pursuant to clause 2.8.1 hereof or upon expiration of this agreement pursuant to clause 2.3 hereof, all rights and obligations of the parties hereunder shall cease, except:

- a) Such rights and obligations as may have occurred on the date of termination or expiration,
- b) The obligation of confidentiality set forth in Clause 3.2.2 hereof.
- c) Any right which a party may have under the Applicable Law.

2.8.3 Cessation of Services

Upon termination of this agreement by notice to pursuant to Clause – 2.8.1 hereof, the Consultant 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.

3. OBLIGATION OF THE CONSULTANT

3.1 General

3.1.1 Law Governing Services

The Consultant shall perform the Services in accordance with the Applicable Law and shall take all practicable steps to ensure that the Personnel and agents of the Consultant comply with the Applicable Law.

3.1.2 Conflict of Interest

The consultant shall hold the Owner's interest paramount, without any consideration for future work, and strictly avoid conflict with other assignments or their corporate interests.

3.2 Consultant Not to benefit from Commissions, Discounts etc

The payment of the Consultant shall constitute the Consultant's only payment in connection with this agreement or the Services, and the Consultant shall not accept for their own benefit any trade commission, discount, or similar payment in connection with activities pursuant to this Agreement or to the Services or in the discharge of their obligations under the agreement, and the Consultant shall use their best efforts to ensure that the Personnel and agents of either of them similarly shall not receive any such additional payment.

3.2.1 Prohibition of Conflicting Activities

The consultant and their affiliates shall not engage, either directly or indirectly, in any business or professional activities which would conflict with the activities assigned to them under this Agreement.

The consultant and their affiliates hired to provide services for the proposed assignment will be disqualified from services related to the initial assignment for the same project subsequently.

3.2.2 Confidentiality

The Consultant and the Personnel or either of them shall not disclose any proprietary or confidential information relating to the Project and the Services of this Agreement or the Owner's business or operations without the prior written consent of the Owner.

3.3 Liability of the Consultant

The Consultant shall be liable to the Owner for the performance of the Services in accordance with the provisions of this Agreement and for any loss suffered by the owner as a result of a default of the Consultant in such performance, subject to the following limitations:

- (a) The Consultant 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 Consultant or the Personnel or either of them; and
- (b) The Consultant shall not be liable for any loss or damage caused by or arising out of circumstances over which the consultant had no control.

3.4 Indemnification of the Owner by the Consultant–

The consultant shall keep the owner, both during and after the term of this Agreement, 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 the Owner or any Third Party, where such loss, damages, injury or death is the result of a wrongful action, negligence or breach of Contract of the Consultant, or the Personnel or agents of either of them including the use or violation of any copyright work or literary property or patented invention, article or appliance.

3.5 Consultant's Action Requiring Owner's Prior Approval

The Consultant shall not enter into a sub contract for the performance of any part of the Services. However, the consultant can hire the services of personnel to carry out any part of the services, for which, Consultant shall obtain the Owner's prior approval in writing before appointing, Personnel to carry out any part of the Services, including the terms and conditions of such appointment. The consultant shall remain fully liable for the performance of the services by its personnel pursuant to this agreement.

3.6 Reporting obligations

The consultant shall submit to the Owner the reports and documents specified in the RFP hereto, in the form, in the numbers and within the time periods set forth in the RFP, including any supporting data required by the owner.

4. CONSULTANT'S PERSONNEL / TASK TEAM MEMBERS

4.1 General

The Consultant shall employ and provide such qualified and experienced Personnel as are required to carry out the services.

4.2 Agreed Personnel

The Consultant hereby agrees to engage the personnel listed by title as well as by name as per the requirement of the RFP in order to fulfill his contractual obligations under this agreement.

4.3 Removal and / or replacement of Personnel

- (a) Except as the Owner may otherwise agree, no changes shall be made in the Personnel. If, for any reason beyond the reasonable control of the Consultant it becomes necessary to replace any of the Personnel, the Consultant shall forthwith provide as a replacement a person of equivalent or better qualifications, which shall be approved by the Owner.
- (b) If the Owner:
 - (i) Finds that any of the Personnel has committed serious misconduct or has been charged with having committed a criminal action, or
 - (ii) Has reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Consultant shall at the Owner's written request specifying the grounds therefore, forthwith provide as a replacement a person with qualifications and experience acceptable to the Owner.

5. OBLIGATIONS OF THE OWNER

5.1 Payment

In consideration of the Services performed by the Consultant under this agreement the Owner shall make to the Consultant such payments and in such manner as is provided by Clause 6.0 of this agreement.

6. PAYMENTS TO THE CONSULTANT

The payment would be released as per the following terms after achieving the milestones indicated therein:-

6.1 Payments will be made by the owner to the Consultant for Study of TOD Tariff as per Contract Value quoted in the Formats for Financial Proposal and agreed in this agreement, as follows:

- 1) Advance Payment: 10% of the contract value for appointment of consultant for Study of the existing status and future roadmap for Time of Day (ToD) tariff for Industrial, Domestic and Other Sectors in the Country shall be payable as “Initial Mobilization Advance” after signing the contract/agreement and submitting the necessary Advance Bank Guarantee. The same will be released on completion of contract/ assignment.
- 2) Final Payment: 90% of contract value shall be payable on submission & acceptance of final report by PFC.

6.2 The final payment under this Clause shall be made only after satisfactory completion of the activities mentioned in the Scope of work.

7. FAIRNESS AND GOOD FAITH

7.1 Good faith:

The parties undertake to act in good faith respect to each other’s rights under this agreement and to adopt all reasonable measures to ensure the realization of the objectives of this agreement.

7.2 Operation of the agreement:

The parties recognize that it is impractical in this agreement to provide for every contingency which may arise during the life of this agreement, and the parties hereby agree that it is their intention that this agreement shall operate fairly as between them and without detriment to the interest of either of them and that, if during the tenure of this agreement either party believes that this agreement 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 no failure to agree on any action pursuant to this clause shall give rise to a dispute subject to arbitration in accordance with Clause 9 hereof.

8. JURISDICTION AND APPLICABLE LAW

This agreement including all matter connected with this Agreement, shall be governed by the laws of India (both substantive and procedural) for the time being in force and shall be subject to exclusive jurisdiction of the Indian Courts / Tribunals at Delhi.

9. SETTLEMENT OF DISPUTES

9.1 Amicable Settlement

Except as otherwise provided elsewhere in the agreement, if any dispute, difference question or disagreement arises between the parties hereto or their respective representative or assignees, in connection with construction, meaning, operation, effect, interpretation of the agreement or breach thereof which parties are unable to settle mutually, the same shall be referred to Arbitration as provided hereunder;

- i) A party wishing to commence arbitration proceeding shall invoke Arbitration Clause by giving 60 days notice to the other party.
- ii) The party invoking arbitration shall specify all the points of disputes with details of the amount claimed to be referred to arbitration at the time of invocation of arbitration and not thereafter.
- iii) It is agreed that OWNER shall appoint a Sole Arbitrator with the approval of Chairman and Managing Director.
- iv) It is agreed that there will no objection that the Arbitrator appointed holds equity shares of OWNER or is a retired employee of OWNER.
- v) If any of the Arbitrators so appointed dies, resign, incapacitated or withdraws for any reasons from the proceedings, it shall be lawful for owner to appoint another person in his place in the same manner as aforesaid. Such person shall proceed with the reference from the stage where his predecessor has left it both parties consent for the same otherwise, he shall proceed de novo.
- vi) It is a term of the agreement that neither party shall be entitled for any preference or pendent lite interest on its claims, Parties agree that any claim for such interest made by any party shall be void.
- vii) The arbitrator shall give reasoned and speaking award and it shall be final and binding on the parties.
- viii) The venue of arbitration will be New Delhi.
- ix) Subject to aforesaid, provisions of the Arbitration of Conciliation Act, 1996 and any statutory modification or re-enactment thereof shall apply to the arbitration proceeding under this clause.

10. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the RFP referred to. The RFP shall be deemed to form and be read and construed as part of this Agreement.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of _____ on the day, month and year indicated above.

Signed by _____ (Authorised Owner/PFC official)

Signed by _____ (for the Consultant)

Appendix -2: ADVANCE BANK GUARANTEE

Ref: _____
Date: _____

Bank Guarantee: _____

Dear Sir,

In consideration of M/s _____ (Hereinafter referred as the 'Owner', which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators, and assigns), having awarded to M/s. _____ (hereinafter referred to as the 'Consultant for Study of TOD metering' which expression shall unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns), a Contract by issue of Owner's Contract Agreement No. _____ dated _____ and the same having been unequivocally accepted by the Consultant for Study of TOD metering resulting in a Contract valued at _____ for _____ (Scope of Work)

Contract (hereinafter called the 'Contract') and the Owner having agreed to make an advance payment to the Consultant for Study of TOD metering for performance of the above Contract amounting to _____ (in words and figures) as an advance against Bank Guarantee to be furnished by the Consultant for Study of TOD metering.

We _____ (Name of the Bank) having its Head Office at _____ (hereinafter 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 Owner immediately on demand any or, all monies payable by the Consultant for Study of TOD metering to the extent of _____ as aforesaid at any time upto _____ @ _____ without any demur, reservation, contest, recourse or protest and/or without any reference to the Consultant for Study of TOD metering. Any such demand made by the Owner on the Bank shall be conclusive and binding notwithstanding any difference between the Owner and the Consultant for Study of TOD metering or any dispute pending before any Court, Tribunal, Arbitrator or any other authority. We agree that the guarantee herein contained shall be irrevocable and shall continue to be enforceable till the Owner discharges this guarantee.

The Owner shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee, from time to time to vary the advance or the extend the time for performance of the Contract by the Consultant for Study of TOD metering. The Owner 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 Owner and to exercise the same at any time in any manner, and either to enforce or to forbear to enforce any convenience, contained or implied, in the Contract between the Owner and the Consultant for Study of TOD metering any other course or remedy or security available to the Owner. The Bank shall not be relieved of its obligations under these present by any exercise by the Owner of its liberty with reference to the matters aforesaid or any of them or by reason of any other act or forbearance or other acts of omission or commission on the part of the Owner or any other indulgence shown by the Owner or by any other matter or thing whatsoever which under law would but for this provision have the effect of relieving the Bank.

The Bank also agrees that the Owner 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 Consultant for Study of TOD metering and notwithstanding any security or other guarantee that

the Owner may have in relation to the Consultant's liabilities.

Notwithstanding anything contained herein above our liability under this guarantee is limited to _____ and it shall remain in force up-to and including @ _____ and shall be extend from time to time for such period (not exceeding one year), as may be desired by M/s. _____ on whose behalf this guarantee has been given.

Date this _____ day of _____ 2010.
at _____

WITNESS:

(Authorized Signatories of the Bank)

1.

.....
(Signature)

.....
(Name)

.....
(Official address)

.....
(Signature)

.....
(Name)

.....
(Designation with Bank Stamp)

Attorney as per Power of
Attorney No. _____
Dated _____

Strike out, whichever is not applicable

@ The date will be ninety (90) days after the date of completion of Contract.

Note:1 The stamp papers of appropriate value shall be purchased in the name of bank who issues the 'Bank Guarantee'.

Note:2 The bank guarantee shall be from a Scheduled Bank as notified by Reserve Bank of India (RBI)