

# CONSORTIUM AGREEMENT FORMAT

## CONSORTIUM AGREEMENT

*(To be executed on stamp paper of appropriate value)*

THIS CONSORTIUM AGREEMENT is entered into on this the ..... day of  
..... 2020

### AMONGST

1. {.....}, a company incorporated under the provisions of Companies Act, 1956/  
a partnership firm registered under the Indian Partnership Act, 1932/ Limited  
Liability Partnership Act, 2008} and having its {registered office/office} at.....  
(hereinafter referred to as the “**First Part**” or the “**Primary Bidder**” which expression shall,  
unless repugnant to the context include its successors and permitted assigns)

**AND**

2. {.....}, a company incorporated under the provisions of Companies Act, 1956/  
a partnership firm registered under the Indian Partnership Act, 1932/ Limited  
Liability Partnership Act, 2008} and having its {registered office/office} at.....  
(hereinafter referred to as the “**Second Part**” or the “**1<sup>st</sup> Consortium Member**” which  
expression shall, unless repugnant to the context include its successors and permitted assigns)

**AND**

3. {.....}, a company incorporated under the provisions of Companies Act, 1956/  
a partnership firm registered under the Indian Partnership Act, 1932/ Limited  
Liability Partnership Act, 2008} and having its {registered office/office} at.....  
(hereinafter referred to as the “**Third Part**” or the “**2<sup>nd</sup> Consortium Member**” which  
expression shall, unless repugnant to the context include its successors and permitted assigns)

The above mentioned parties of the FIRST, SECOND and THIRD PART are collectively  
referred to as the “**Parties**” and each is individually referred to as a “**Party**”

**WHEREAS:**

- (A) Centre For Development of Advanced Computing –NOIDA (hereinafter referred to as the “C-DAC” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited bids (“bids”) by its tender vide reference No CDAC/DCIS/TIERIII/30(05)/19-20 dated 21.11.2019 (hereinafter referred as “TENDER”) for “**Supply, Installation, Testing and Commissioning of Tier III – Uptime Design and Facility Certified Data Center at Plot No. B-30, Sector 62, Noida**” (the “**Project/Contract**”).
- (B) The Parties are interested in jointly bidding for the Contract as members of a Consortium and in accordance with the terms and conditions of the Tender Bidding Documents in respect of the Contract, and
- (C) It is a necessary condition under the Bidding Documents that the members of the Consortium shall enter into a Consortium Agreement (the “**Agreement**”) and furnish a copy thereof with the bid.

**NOW IT IS HEREBY AGREED as follows:**

**1. Definitions and Interpretations**

In this Agreement, the capitalized terms shall, unless the context otherwise requires, have the meaning ascribed thereto under the Bidding Documents.

**2. Consortium**

The Parties do hereby irrevocably constitute a consortium (the “**Consortium**”) for the purposes of jointly participating in the bidding process for the Project.

The Parties hereby undertake to participate in the bidding process only through this Consortium and not individually and/ or through any other Consortium constituted for this Contract, either directly or indirectly or through any of their associates.

### **3. Role of the Parties**

The Parties hereby undertake that Party of the First Part is fulfilling the prequalification criteria as per the requirement of “**Tender**” in all respects and shall be the “**Primary Bidder**” of the Consortium and shall have the Power of Attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding Process and until the signing of the Contract when all the obligations of the Consortium shall become effective.

The project shall be executed by the “**Primary Bidder**” as a whole and solely responsible to C-DAC for all the activities mentioned in the Tender Document including financial liabilities(Reference to the Tender Document).

### **4. Joint and Several Liability**

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the Tender Bidding Documents and the Contract, during subsistence of the Contract.

### **5. Representation of the Parties**

Each Party represents to the other Parties as of the date of this Agreement that:

- a. Such Party is duly organised, validly existing and in good standing under the laws of India and has all requisite power and authority to enter into this Agreement;
- b. The execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution or any other resolution/ Power of Attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not,:
  - (i) require any consent or approval not already obtained;

- (ii) violate any Applicable Law presently in effect and having applicability to it;
  - (iii) violate the memorandum and articles of association, bye-laws or other applicable organisational documents thereof;
  - (iv) violate any clearance, permit, concession, grant, license or other Governmental authorisation, approval, judgment, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
  - (v) create or impose any liens, mortgages, pledges, claims, security interests, charges or encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;
- c. this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- d. there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfillment of its obligations under this Agreement.

**6. Conflict of Interest:**

The Parties herein undertake to take all necessary measures in order to avoid any conflict of interest during the performance of the project or the contract for **“Supply, Installation, Testing and Commissioning of Tier III – Uptime Design and Facility Certified Data Center at Plot No. B-30, Sector62, Noida”** and also to identify any conflict of interest so that C-DAC can consult with the Lead Partner and other Parties to sort out such conflicts.

**7. Post Contract Liabilities:**

For any loss or damage on account of any breach of this Agreement or the contract for **“Supply, Installation, Testing and Commissioning of Tier III – Uptime Design and Facility Certified Data Center at Plot No. B-30, Sector62, Noida”** or any shortfall in the execution of the Project, meeting the guaranteed performance / parameters as per technical specifications / documents relating to the Tender, **“Primary Bidder”** undertake to promptly make good such loss or damage on C-DAC’s demand without any demur. C-DAC shall have the right to proceed against any one of the Parties herein in this regard without establishing the individual liability of such party and it shall neither be necessary nor obligatory on the part of C-DAC to proceed against the **“Primary Bidder”** before proceeding against the other Parties herein.

**8. Assignment:**

The rights and obligations of First and Second Consortium Member under this Agreement shall not be assigned to any third party without the prior written consent of C-DAC.

**9. Employers’ responsibility:**

Each Party will be responsible according to the applicable laws and rules for their own personnel and property.

**10. Insurance:**

The Parties herein shall at their own expense take out and maintain insurance cover as may be necessary to cover their liabilities.

**11. Applicable Law:**

This Consortium Agreement shall be governed, construed and interpreted in accordance with the laws of India and the Courts in \_\_\_\_\_ (Name of the place) shall have the exclusive jurisdiction in all matters arising hereunder.

**12. Termination**

This Agreement shall be effective from the date hereof and shall continue till the expiry of the Defect Liability period under the Agreement. However, in case the Consortium is either not pre-qualified or does not get selected for award of the Contract, the Agreement will stand terminated in case the Consortium is not pre-qualified or upon return of the tender EMD by C-DAC to the Consortium, as the case may be. None of the parties will be entitled to terminate their association with the

Consortium, till return of the tender EMD by the Consortium or payment of the amount specified in the Financial Bid by the Consortium, whichever is later.

**13. Indemnification:**

All consortium members of this agreement shall fully indemnify, hold harmless and defend C-DAC and its officers etc., from and against all claims, liabilities, suits, damages including any criminal liability due to false declaration by the consortium members with regard to this Agreement (or) Tender transaction (or) Project (or) contract etc., caused due to negligence/commission/omission of the any of the consortium members (or) its employees and agents including representatives (or) sub-contractors (or) any other person claiming (or) any other person claiming under this tender (or) under the applicable laws of India.

The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior approval of C-DAC.

IN WITNESS WHEREOF THE PARTIES ABOVE NAMED HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

SIGNED, SEALED AND DELIVERED  
DELIVERED

For and on behalf of

LEADMEMBER by:

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND  
DELIVERED

For and on behalf of

SECONDPART

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of  
THIRD PART by:

(Signature)

(Name)  
(Designation)  
(Address)

In the presence of:

1.

2.

**Notes:**

- 1. The mode of the execution of the Consortium Agreement should be in accordance with the applicable laws.*
- 2. Each Consortium Agreement should attach a copy of the extract of the charter documents and documents such as resolution / Power of Attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member.*