

Tripartite Agreement

(On Stamp paper of appropriate value)

AGREEMENT

AMONGST

RURAL ELECTRIFICATION CORPORATION LIMITED

GOVERNMENT OF _____*

AND

_____**

THIS AGREEMENT entered into on this ____ day of _____ Two thousand five,
AMONGST

RURAL ELECTRIFICATION CORPORATION LIMITED, a company incorporated under the Companies Act, 1956 having its registered office at Core-4, Scope Complex, 7, Lodhi Road, New Delhi 110003 (herein after referred to as "**REC**" which expression shall unless repugnant to the context or meaning thereof include its successors and assignees) as party of the **First part**.

AND

GOVERNOR OF _____*, through DEPARTMENT OF POWER, Government of _____* (hereinafter referred to as "**Government of _____***" which expression shall include his successors in office") having its office at _____ as party of the **Second part**.

AND

_____, a body constituted under Section 5(i) of the Electricity Supply Act 1948, and its amendment thereof duly owned by Government of _____*, having its Head Office at _____ (hereinafter referred to as "**_____****" which expression shall unless repugnant to the context or meaning thereof include its successors and assignee) as party of the **Third part**.

OR

_____, a company incorporated under the Companies Act 1956 having its registered office at _____ (hereinafter referred to as "**_____****" which expression shall unless repugnant to the context or meaning thereof include its successors and assignee) as party of the **Third part**.

REC, Government of _____* and _____ collectively referred to as "Parties" and singularly as a "Party"**

TO BE INSERTED : (*) Name of State (**) Name of State Power Utility

A. AND WHEREAS GOVERNMENT OF _____* AND _____** intend to implement project(s) for providing access to electricity to rural households [(hereinafter referred to as project(s)] in selected districts / areas of the state of _____* in pursuance of the National Programme, **“Rajiv Gandhi Grameen Vidyutikaran Yojana – Scheme for Rural Electricity Infrastructure and Household Electrification” (RGGVY) and covered by the Office Memorandum of Ministry of Power, Government of India vide letter No.44/19/2004-D(RE) dated 18th March, 2005** and any amendments thereto and whereas REC has agreed to finance such project(s) on the terms and conditions as may be stipulated in the sanction letter(s) of the respective project(s) posed by _____** with the consent of Government of _____* and sanctioned by REC from time to time.

B. AND WHEREAS the parties have agreed that the individual project(s), as posed by _____** and sanctioned by REC, under the National Programme: Rajiv Gandhi Grameen Vidyutikaran Yojana – Scheme for Rural Electricity Infrastructure and Household Electrification (RGGVY), commencing from the financial year 2005-06 shall be deemed to have been covered under this agreement on notification by REC. The terms and conditions of sanction by REC for a particular project, as contained in the sanction letter issued by REC, shall also form part and parcel of the present agreement. The sanction letter shall include supplementals and modifications issued by REC, if any, to sanction letter.

C. AND WHEREAS Government of _____* has entrusted the responsibility to _____** for formulation, development and implementation of the projects in the identified areas involving system planning, design, engineering (in accordance with REC’s guidelines, specifications and construction standards, wherever applicable) and procurement in accordance with agreed competitive bidding procedures and undertake to construct/ implement/ commission the sub-transmission and distribution works under the project(s) on behalf of Government of _____*.

D. AND WHEREAS Government of _____* has authorised REC to release funds for implementation of the project(s), directly to _____** on their behalf, to meet the expenditure to be incurred for construction of project(s) by _____** covered under the programme.

E. AND WHEREAS, projectwise, separate accounts for development and implementation of such REC funded projects shall be maintained by _____**.

F. AND WHEREAS Government of _____* and _____ commit that they shall ensure–**

(a) Determination of bulk supply tariff for franchisees in a manner that ensures their commercial viability.

(b) Provision of requisite revenue subsidy by the State Government to the State Utilities as required under the Electricity Act-2003.

G. AND WHEREAS Government of _____* shall be the owner of the assets created on implementation of the individual project(s), as posed by _____** and sanctioned by REC under the National Programme. Government of _____* have authorized the _____** to operate and maintain these assets to effect power supply in the project areas and derive consequential benefits out of the assets created under the project.

H. AND WHEREAS a portion of the sum against the project cost if sanctioned and released as loan / subsidy by REC for development of franchisee arrangements in the project area in accordance with the relevant norms and guidelines, Government of _____* undertakes to repay the loan component of such funds, interest thereon and other charges to REC as per terms and conditions as detailed in the sanction letters issued by REC for these projects.

I. AND WHEREAS the Government of _____* and _____** also undertake and commit that the following arrangements would be put in position before the project is completed :-

(i) Deployment of Franchisee for the management of rural distribution in projects financed under the scheme and for the management of rural distribution through franchisee who could be Non-Governmental Organisations (NGOs), Users Association, Cooperatives or individual entrepreneurs, the Panchayat Institutions. The franchisee arrangement could be for system beyond and including feeders from substation or from and including Distribution Transformer(s).

(ii) The provision of requisite revenue subsidy to the State Utilities, as required under the Electricity Act, 2003. Revenue sustainability arrangement shall be ensured in the project area and based on the consumer mix and the prevailing consumer tariff and likely load, the Bulk Supply Tariff (BST) for the franchisee would be determined after ensuring commercial viability of the franchisee. Wherever feasible, bidding may be attempted for determining the BST. This Bulk Supply Tariff would be fully factored into the submissions of the State Utilities to the State Electricity Regulatory Commissions (SERCs) for their revenue requirements and tariff determination. The State Government under the Electricity Act is required to provide the requisite revenue subsidies to the State Utilities if it would like tariff for any category of consumers to be lower than the tariff determined by the SERC.

(iii) Adequate arrangement for supply of electricity without any discrimination in the hours of supply between rural and urban households.

J. AND WHEREAS Government of _____* and _____** shall ensure that Rural Electricity Distribution Backbone (REDB) and Village Electrification Infrastructure (VEI) shall be created under the project in accordance with the concerned Office Memorandum of Ministry of Power, Government of India dated 18th March, 2005 and this infrastructure would also cater to the requirements of agriculture and other activities including irrigation pumpsets, small and medium industries, khadi and village industries, cold chains, healthcare and education & IT.

K. AND WHEREAS the Government of _____* and _____ agree to implement the eligible projects fulfilling the conditionalities as above and as also as contained in the concerned Office Memorandum No. 44/19/2004-D(RE) dated 18th March, 2005 of Ministry of Power, Government of India for implementation of “RGGVY”. Government of _____* and _____** also agree that in the event the projects are not implemented satisfactorily in accordance with the conditionalities indicated in the concerned Office Memorandum of Ministry of Power dated 18th March, 2005 and also as indicated in para F & I above, the capital subsidy, if sanctioned for the project could be converted into interest bearing loans.**

NOW, therefore, in consideration of the premises and mutual agreements, covenants and conditions set-forth herein which shall form an integral part of this Agreement, it is hereby agreed by and amongst the parties as follows:

1.0 PROJECT FINANCING BY REC

1.1 (a) The _____** shall establish a dedicated organization within the utility and nominate a nodal officer of suitable rank, with the concurrence of Government of _____*, for speedy execution of the project(s) and shall be responsible for compliance of the provisions as stipulated under Para ‘E’ of RECITALS of this agreement. The nodal officer will also arrange to get the relevant clearance/orders from _____** and the Government of _____* expeditiously. The _____** will assign utmost priority to the works to be executed and also help in the speedy execution of the project(s) by issuing necessary orders to avoid delay.

(b) Expenditure details will also be submitted by _____** to REC for release of funds against progressive reimbursement claims in the manner prescribed herein under, after obtaining necessary concurrence of the Government of _____* for release of funds in accordance with the structured formats as may be prescribed by REC.

(c) Periodic review and monitoring of the Physical and Financial progress of the project(s) shall also be taken up by the Government of _____* and reported to REC as may be prescribed by REC.

1.2 Mode of Release of Funds

Funds for implementation of the project(s) shall be released by REC to _____** under the sanctioned project(s) on the specific request from the _____* and in the manner as indicated below :-

- a) **First Instalment** – 30% of sanctioned project cost of the project(s) within 15 days from date of execution of loan documents and fulfillment of all requirements, including requisite legal formalities by the Government of _____* and _____**, as per sanction letter of the project.

The release of 1st instalment would also be subject to fulfillment of the condition that evaluation of bids for award of contracts is finalized and also on the undertaking by the implementing agency that the contract for execution of the project(s) would be awarded within one week from the date of release of 1st instalment by REC.

- b) **Second Instalment** - 30% of the sanctioned project cost within 15 days from submitting the expenditure details to REC by _____**, after obtaining necessary concurrence of the Government of _____* for 80% expenditure of the first instalment.
- c) **Third Instalment** - 30% of the sanctioned project cost within 15 days from submitting the expenditure details to REC by _____**, after obtaining necessary concurrence of the Government of _____* for 80% expenditure of the first and second instalment.
- d) **Fourth Instalment (final instalment)** - 10% of the sanctioned project cost within 30 days from submitting the expenditure details and completion certificate to REC by _____** after obtaining necessary concurrence of the Government of _____* and after final monitoring by REC.
- e) ***Funds for development of franchisee, if sanctioned, shall be released in accordance with the conditions stipulated in the respective project sanction letters of REC.***
- f) The Govt. of _____* shall arrange for its concurrence for the expenditure as claimed by _____** at b), c) and d) above within two weeks from the receipt of the concerned claim documents.
- g) Final completed cost shall be submitted by _____** to REC with the concurrence of Government of _____*, based on the audited account and the difference shall be paid / recovered by REC as the case might be, from _____**.
- h) Additional funds for the project, if any, on account of variation in the project parameters, shall be payable to _____**, which would be governed by the provisions under clause 1.3 of this agreement.

1.3 While implementing the project, in the event of any variation in the project parameters or increase or decrease in the project cost, _____** shall submit the revised cost estimate (RCE) to REC through Government of _____*, for consideration of revised sanction from REC. Subject to technical suitability, REC would consider revised sanction of the cost estimates based on the RCE submitted by _____**, under the following circumstances: -

1. Change in scope
2. Change in statutory levies
3. Price escalation
4. Time overrun (beyond the control of project executing agency)
5. Underestimation

1.4 TAXES AND DUTIES

All statutory taxes/levies, duties, cess, entry tax or any kind of imposition(s) whatsoever imposed/charged by any Government (Central / State) and/or any other local bodies/ authorities on _____** and/ or its contractors in respect of execution of the project(s) covered under this Agreement and Service Tax on service charge (including any variation thereof), not included in the estimated cost of the project, shall also be eligible for reimbursement to _____** as loan / subsidy on production of documentary evidence and after obtaining necessary concurrence of the Government of _____*.

1.5 The entire sum released by REC directly to _____** for implementation of project(s) under the National Programme, shall be deemed to have been drawn by the Govt. of _____* as loan / subsidy, and Govt. of _____* undertakes to repay the loan component of such funds, interest accrued thereon and other charges to REC as per the terms & conditions as detailed in the sanction letters issued by REC for these project(s).

2.0 UTILISATION CERTIFICATE

Government of _____* shall provide utilisation certificate(s) for the funds released by REC for implementation of project(s) in the manner prescribed by the Government of India / REC.

3.0 CONSTRUCTION / IMPLEMENTATION

3.1 _____** shall make all possible efforts to complete the project(s) within the approved time frame starting from the date of release of the first instalment of funds by REC to _____**.

3.2 _____** and the Government of _____* shall specify quarterly milestones, and progress shall be reviewed with reference to these milestones jointly by REC, authorised representative of Govt. of _____* and _____** in quarterly Performance Review Meetings.

3.3 _____** shall suitably incorporate the provisions towards levy of Liquidated Damages in their agreements with contractors for delay in completion of the project(s) and also other relevant contractual provisions pertaining to the procurement of goods and works. Declaration in this regard shall be furnished by _____** before settling the actual expenditure on the project in line with the provisions under clause 1.2(g) of this agreement. All amount towards Liquidated Damages, if any, as may be recovered by _____** under this provision, and shall be suitably adjusted in the project cost.

3.4 (a) The best cost and quality control measures shall be enforced by _____** during implementation through appropriate management and control systems.

(b) On behalf of the project authority (Govt. of _____*), _____** shall ensure that the equipment & material specifications and construction practices & standard are in conformity with those approved/ stipulated by REC.

4.0 TAKING-OVER OF THE PROJECT

_____** shall ensure taking over of the completed project(s) after commissioning (in part or full, as the case may be). _____** shall be responsible for operation & maintenance of the project(s) thereafter (in part or full, as the case may be) at their own expenses and shall also ensure compliance of provisions as indicated earlier under Para 'F' & 'I' of RECITALS of this agreement.

5.0 ARBITRATION

Any differences or dispute between the parties arising out of or in connection with this project shall be discussed and settled amicably amongst the parties. In the event of non-settlement of the difference or dispute within sixty (60) days, the same shall be referred to the Secretary to the Government of India in the Ministry of Power, for arbitration and whose decision shall be final and binding on the parties to this Agreement.

6.0 FORCE MAJEURE

The parties shall ensure due compliance with the terms of this Agreement. However, no party shall be liable for any claim for any loss or damage whatsoever arising out of failure to carry out the terms of the Agreement to the extent that such a failure is due to force majeure events such as fire, rebellion, mutiny, civil commotion, riot, strike, lock-out, forces of nature, accident, act of God and any other reason beyond the control of concerned party. But any party claiming the

benefit of this clause shall satisfy the other party of the existence of such an event and give written notice of 15 days to the other party to this effect. The services covered under this Agreement shall be started as soon as practicable by the parties concerned after such eventuality has come to an end or ceased to exist.

7.0 IMPLEMENTATION OF THE AGREEMENT

All discretions to be exercised and directions, approvals, consents and notices to be given and actions to be taken under these presents, unless otherwise expressly provided herein, shall be exercised and given by the signatories to this Agreement or by the Authorized representative(s) that each party may nominate in this behalf and notify in writing to the other party by Registered Post. Any other nomination of Authorized representative(s) and/or changes in designation shall be informed likewise in writing to/by _____** and REC within one month of signing of the Agreement. Any changes in designations/ registered office address shall be intimated in writing to all concerned parties.

8.0 NOTICE

All notices required or referred to under this Agreement, shall be in writing and signed by the respective authorized signatories of the parties mentioned herein above, unless otherwise notified. Each such notice shall be deemed to have been duly given if delivered or served by registered mail, speed post of Department of Posts or by Courier service with an acknowledgement due to the other parties.

9.0 TERMINATION

This agreement shall remain valid unless terminated with consent of all the Parties.

10.0 The competent Courts of Delhi shall have exclusive jurisdiction in all matters relating to or arising out under these presents.

IN WITNESS WHEREOF the parties have executed these presents through their Authorized Representatives at New Delhi.

**For and on behalf of
Rural Electrification Corporation Ltd.**

**For and on behalf of
Governor of _____*
Through Dept. of Power
Government of _____***

**For and on behalf of
_____****

Witness 1.

Witness 2.

Witness 3.

Witness 4.