Tripartite Agreement
(On Stamp paper of Rs. 100)

AMONGST
RURAL ELECTRIFICATION CORPORATION LIMITED

GOVERNMENT OF _______* AND

__________________________**

THIS AGREEMENT entered into on this ___ day of __________, Two thousand _______, 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 (hereinafter 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 called “Decentralized Distributed Generation (DDG) under “Deendayal Upadhyaya Gram Jyoti Yojana” (DDUGJY) erstwhile RGGVY and conveyed by the Office Memorandum of Ministry of Power, Government of India vide letter No. 44/10/2011-RE dated 29.08.2013 and any amendments thereto and whereas REC is the Nodal Agency for implementation of the said Programme. The said Office Memorandum is integral part of this agreement.

B. AND WHEREAS the parties have agreed that the individual project(s), as proposed by ________ ** and sanctioned by REC, under the National Programme: Deendayal Upadhyaya Gram Jyoti Yojana” (DDUGJY) erstwhile RGGVY, commencing from the financial year 2012-13 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 supplemental and modifications issued by REC, if any, to sanction letter.

C. AND WHEREAS as per the guidelines issued vide the said Office Order by Ministry of Power, Government of India, for implementation of the said Programme, Government of ________ * has entrusted the responsibility to ________ ** for formulation, 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 DDG Sanctioned Projects 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 recommendation and on their behalf, to meet the expenditure to be incurred for construction of project(s) by ________ ** covered under the programme. 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).

E. AND WHEREAS Government of ________ * undertake that in case of non-payment of dues of REC in respect of DDG scheme, REC reserves the right to recover its dues from further loan releases to be made.

F. AND WHEREAS, project-wise, separate accounting for development and implementation of such REC funded projects shall be maintained by ________ **.

G. AND WHEREAS Government of ________ * shall be the custodian of the assets created on implementation of the individual project(s), as posed by ________ ** and sanctioned by REC under the National Programme. Government of ________ *

TO BE INSERTED : (*) Name of State  (**) Name of State Power Utility
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 Government of ** and ** shall ensure that Rural Electricity Distribution Backbone (REDB) and Village Electrification Infrastructure (VEI) shall be created under the projects in accordance with Office Memorandum No. letter No. 44/10/2011-RE dated 29.08.2013 of Ministry of Power, Government of India.

I. AND WHEREAS the Government of ** and ** agree to implement the eligible projects as above and as also as contained in the concerned Office Memorandum No. 44/10/2011-RE dated 29.08.2013 of Ministry of Power, Government of India for implementation of DDG under “DDUGJJ”. Government of ** and ** also agree that in the event the projects are not implemented satisfactorily in line with the sanction terms and conditions, the capital subsidy sanctioned for the project(s) could be converted into interest bearing loans.

J. BPL households will be provided free electricity connections with LED lamp at the rate of Rs. 3000 per connection in villages and habitations with above 100 population.

K. AND WHEREAS the Government of ** and ** agree that Households above poverty line would be paying for their connections at prescribed connection charges and no subsidy would be available for this purpose from this scheme.

L. AND WHEREAS the Government of ** and ** agree that Wherever SC/ST population exists amongst BPL households and subject to being eligible otherwise, they will be provided connection free of cost and a separate record will be kept for such connection.

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
90% of Capital subsidy would be provided towards overall cost of the projects under the scheme, excluding the amount of state or local taxes, which will be borne by the concerned State/State Power Utility. 10% of the project cost would be contributed by states through own resources/loan from financial institutions including REC.

2.0 MODE OF RELEASE OF FUND

Financial assistance for implementation of the DDG Project(s) shall be released for each of sanctioned project separately in accordance with the sanctioned project cost as indicated in sanction letter of the project by REC to ** on the request from the ** and in the manner as indicated below:

TO BE INSERTED : (*) Name of State  (**) Name of State Power Utility
a) First Instalment – 30% of sanctioned project cost of the project(s) on signing of tripartite agreement and fulfillment of all requirements, including requisite legal formalities by the Government of (*) and (**) .

Before release of 1st instalment, implementing agencies shall furnish a certificate to REC for the followings:

(i) that evaluation of bids for award of contracts has been finalized and approved by their competent authority and also 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.

(ii) that the land required for the project has been acquired by the Government of (*) and handed over to (**) for execution of project(s)

b) Second Instalment – 30% of the sanctioned project cost.

Before release of 2nd instalment, implementing agencies shall furnish a certificate to REC for the followings:

(i) Submission of the expenditure details to REC by (**), after obtaining necessary concurrence of the Government of (*) for 80% expenditure of the first instalment

(ii) that the work has been awarded and a copy of the work order has been submitted to concerned REC, Project Office/ Zonal Office.

(iii) That third party has been engaged for quality monitoring as per guidelines

c) Third Instalment - 8% of the sanctioned project cost.

Before release of 3rd instalment, implementing agencies shall furnish a certificate to REC regarding expenditure details after obtaining necessary concurrence of the Government of (*) for 80% expenditure of the first and second instalment and successful commissioning of the project(s) duly verified by the third party engaged for quality monitoring.

d) Fourth, Fifth and Sixth Instalment – Each instalment of 8% of the sanctioned project every year commencing after one year from date of commissioning.

Before release of Fourth, Fifth and Sixth Instalment, implementing agencies shall furnish a certificate to REC regarding expenditure details after obtaining necessary concurrence of the Government of (*) for 80% expenditure of all the previous instalments and also submit a certificate that the project is running successfully as may be prescribed by Ministry of Power / REC.

e) Seventh Instalment (final instalment) – 8% of the sanctioned project cost after one year from date of release of sixth instalment.

Before release of Seventh instalment, implementing agencies shall furnish a certificate to REC regarding expenditure details after obtaining necessary concurrence of the Government of (*) for 100% expenditure of all the previous instalments

TO BE INSERTED : (*) Name of State  (***) Name of State Power Utility
and also submit a certificate the project is running successfully as may be prescribed by Ministry of Power / REC.

Each of the above instalments would consist of 90% capital subsidy and 10% Loan component, if loan availed from REC. In case, Government of _____* has not availed loan from REC, the Government of _____* shall ensure that 10% of the project cost is released to the ______** on pro-rata basis against each of the above instalments and submit an undertaking that they have made payment to the developer in this regard at the time of release of funds by REC.

2.1 The Government of __________* shall concur the expenditure as claimed by __________** at 2.0 above within two weeks from the receipt of the concerned claim documents.

2.2 Final project cost (based on award 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 __________**.

2.3 Additional funds for the project, if any, on account of variation in the project parameters, shall be payable to ______** subject to approval by the Ministry of Power.

2.4 TAXES AND DUTIES

All statutory taxes/levies/duties or any kind of imposition(s) whatsoever imposed/charged by the State Government or its local authorities/bodies shall be borne by the concerned State/State Power Utility and shall not be eligible for subsidy under the Programme.

3.0 STATE LEVEL CO-ORDINATION COMMITTEE

State Government shall setup a State Level Standing Committee, headed by the Chief Secretary and consisting of Secretaries of Energy, Rural Development, Finance, Panchayati Raj, Forest, Revenue, a representative of REC etc. The committee shall vet the district-wise list of villages, habitations, BPL households to be covered under the scheme and recommend the project proposals formulated by the implementing agency in accordance with the guidelines. The State Committee, while considering project proposals for its recommendations, shall ensure adequacy of upstream network commensurating with the proposed distribution network and availability of adequate power supply to cater to the load demand of project area. The Committee shall also monitor progress, quality control and resolve issues relating to implementation of sanctioned projects viz. allocation of land for substations, right of way, forest clearance, railway clearance, safety clearance, etc..

4.0 PROJECT MANAGEMENT

TO BE INSERTED : (*) Name of State   (**) Name of State Power Utility
The project implementing agencies shall create a dedicated team for implementation of projects at district & project implementing agency level to enhance level of awareness, redress grievance of public and public representatives of the project areas. Payment of agency charges would be contingent upon deployment of such dedicated teams by the implementing agencies for management of projects.

5.0 SERVICE CHARGES /FEES
The ** will be provided 5% of the project cost (excluding the cost of providing connections to BPL households) as agency charges (inclusive of all taxes like service tax etc.) for implementing the scheme including field survey, preparation of DPR, deployment of dedicated manpower and also for meeting additional expenditure on compulsory third party monitoring at the first tier of the Quality Control Mechanism.

6.0 CONSTRUCTION / IMPLEMENTATION
6.1 ** and the Government of * shall ensure selection of suitable Project Developer in accordance with the stipulated guidelines under the Programme. The Project Developer shall meet all obligations relating to implementation of the project(s) including under this agreement such as planning, design & engineering, procurement of equipment/materials, execution of works, installation & commissioning, operations & maintenance etc. **/Government of * shall enter into a suitable agreement with Project Developer for the same.

6.2 ** shall make all possible efforts to complete the project(s) within the approved time frame starting from the date of award of project.

6.3 ** 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. All amount towards Liquidated Damages, if any, as may be recovered by ** under this provision, and shall be suitably adjusted in the project cost.

6.4 (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 (Government of *), ** shall ensure that the equipment and material specifications and construction practices and standard are in conformity with those approved /stipulated by REC.

6.5 ** and the Government of * shall ensure that the Project Developer implements the Projects on Build, Operate, Maintain & Transfer (BOMT) basis for a period of 5 years. The plant will be handed over to the State Government in working condition after 5 years. All the replaced parts will be handed over to the State Government. The role of Project Developers shall be as per Programme.

TO BE INSERTED : (*) Name of State  (***) Name of State Power Utility
7.0 TAKING-OVER OF THE PROJECT

_________ After 5 years, Implementing Agency___________ ** will have the option to take over the Project or handover the Project to "Project Developer" or any other agency as approved by the Government of _________* for running the project, either on negotiated rate basis or limited or open tender basis.

8.0 UTILISATION CERTIFICATE

_________ ** shall arrange to submit a Utilisation Certificate(UC) issued by Govt. of _________* for the funds released during the Financial year and utilisation thereof in prescribed format, latest by 30th April of succeeding year after due auditing by Chartered Accountant.

9.0 ARBITRATION

Any differences or dispute among 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, as the sole arbitrator whose decision shall be final and binding on the parties to this Agreement.

10.0 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 30 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.

11.0 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.

12.0 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 to the respective heads on the addresses mentioned in the recital.

TO BE INSERTED : (*) Name of State  (***) Name of State Power Utility
13.0 TERMINATION
This agreement shall remain valid unless terminated with consent of all the Parties.

14.0 JURISDICTION
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.

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