

TOP PRIORITY

K-16011/76/2016-AMRUT-II/E.No.3125182
Government of India
Ministry of Housing and Urban Affairs
(AMRUT-IIB)

Nirman Bhawan, New Delhi
Dated 17 January, 2018

To

The Secretary /Principal Secretary/Administrator
Urban Development Deptt./Public Health Engineer Dept.
All States/UTs (As per list attached)

Sub: Model tripartite agreement (TPA) among Energy Efficiency Services Limited (EESL), State Govt. and the City/ULB concerned for implementation of energy efficient projects in public water works and sewerage systems across 500 AMRUT cities and 100 Smart Cities-reg.

Madam/Sir,

This is with reference to the Memorandum of Understanding (MoU) signed between Ministry of Housing and Urban Affairs (MoHUA) and Energy Efficiency Services Limited (EESL) on 28 September, 2016 for providing an overarching framework in order to facilitate engagement between Urban Local Bodies (ULBs) and State Governments with EESL in the area of Energy Efficient Projects in the Indian cities.

2. Subsequently, the model agreement for conducting energy audit and preparation of Investment Grade Energy Audit (IGEA) reports was disseminated by the MoHUA to all States/UTs vide Memo No. K-16011/76/2016-AMRUT-II dated 14 December, 2016.

3. As a follow up to above, a tripartite agreement (TPA) needs to be signed between EESL, State Govt./UT and the respective ULBs, as per the MoU signed by EESL with MoHUA and the IGEA agreement signed with respective States. The State and/ or ULB may amend the model TPA according to their requirements.

4. A copy of the Model TPA can be downloaded from the **What's new section of AMRUT website www.amrut.gov.in**.

Yours faithfully,



(H. C. Prasad)

Under Secretary to the Govt. of India
Tel: 011-23063488

Copy to:

1. Managing Director, EESL, 4th floor, IWAI Building A-13, Sector-1, Noida-201301.
2. Sr. Technical Director (NIC), MoHUA, Nirman Bhawan, New Delhi with a request to upload the model TPA on the what's new section of website www.amrut.gov.in.

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(To be executed on stamp paper of Rs. 500)

**Model Tri-partite Agreement between EESL, State Government and ULB
for Implementation of Municipal Energy Efficiency Program (MEEP) in the
Public Water Works & Sewerage Systems**

This Tri-partite Agreement (the "**Tri-partite Agreement**") is made and executed on the ____ day of _____, YYYY, at _____, in the State of - _____.

BY AND AMONGST:

The Governor of the State of _____ acting through the _____, Public Health Engineering Department / Department of Urban Development / Local Self Government, Government of _____ having its principal office at _____ (hereinafter referred to as "**State Government**"), which expression shall unless repugnant to the context thereof, include his successors and assigns), of the **FIRST PARTY**;

AND

ULB, a _____ **[Brief Description]**
with its registered office at _____

(hereafter referred to as "**ULB**", which expression shall, unless repugnant to the context or meaning thereof, include its permitted assigns and substitutes) of the **SECOND PARTY**;

AND

Energy Efficiency Services Limited, a company incorporated under the provisions of the Companies Act, 1956 as a JV of PSUs of the Ministry of Power, Government of India, with its registered office at **4th and 5th Floor, Sewa Bhawan, R. K. Puram, Sector- 1, New Delhi – 110066** and corporate office at **4th Floor, IWAI Building, A-13, Sector-1, Noida – 201301, Uttar Pradesh** (hereinafter referred to as "**EESL**", which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes) of the **THIRD PARTY**.

Hereinafter, State Government, ULB and EESL are individually referred to as a Party and collectively referred to as the Parties.

1.0 Background

- 1.1. Ministry of Housing and Urban Affairs, Government of India (hereinafter referred to as "MoHUA") and EESL has entered into a Memorandum of Understanding (hereinafter referred to as "MoU") on 28th September 2016 at New Delhi.
- 1.2. The MoU has been entered with an objective to provide an overarching framework in order to felicitate engagement between State Governments and ULB with EESL in the area of Energy Efficiency Implementation Projects in the Indian Cities.
- 1.3. State Government and EESL have entered into an Agreement on _____ at _____. The Agreement has been entered with an objective to conduct Study and Prepare Investment Grade Energy Audit (IGEA) Reports for Energy Efficiency in Public Water Works & Sewerage Systems. Subsequently, IGEA report has been prepared for the City of _____.
- 1.4. EESL has submitted the IGEA report to ULB and State Government on _____.
- 1.5. State Level Technical Committee (SLTC) has approved the IGEA report submitted by EESL for the City of _____ on _____.
- 1.6. State Government and the ULB wishes to implement the findings of the approved IGEA report (Vide no.____) by entering into this Tri-partite Agreement for implementation of the Energy Efficiency Measures (EEMs).
- 1.7. NOW THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Tri-partite Agreement, the sufficiency and adequacy of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

2.0 Definitions and Interpretation

Unless the context otherwise requires, the definitions and interpretations in Schedule 1 – (Definition and Interpretation) shall apply.

3.0 Effective Date and Term of the Tri-Partite Agreement

- 3.1. This Tri-partite Agreement shall come into force and effect on the date of execution of this Tri-partite Agreement by all the Parties (hereinafter referred to as "Effective Date").
- 3.2. Unless terminated earlier by either Party in accordance with the Clause 13 of this Tri-partite Agreement, this agreement shall continue in full force and effect until all obligations of the Parties in relation to the Implementation Project have been fulfilled, discharged and/or waived, or 8 years whichever

is earlier (hereinafter referred to as "**Term of the Tri-partite Agreement**").

- 3.3. The "**Commissioning Date**" is the date on which the replacement of all replaceable old pump sets, as mentioned in approved IGEA report, in a particular pumping station/ pumping house gets completed. In case of submersible/ individual pump sets, group of 5 pump sets will be considered one pumping station/ pumping house.
- 3.4. The "**Completion Date**" is the date on which the replacement of all replaceable pumps sets (in all respects) as mentioned in the approved IGEA report (Vide No.____).

4.0 SCOPE OF THE TRI-PARTITE AGREEMENT

4.1 Implementation Project Title

The Implementation Project shall be known as the "**Implementation of Energy Efficiency Program in Public Water Works & Sewerage System in the City of _____**" (hereinafter referred to as "**Implementation Project**").

4.2 Implementation Project Area

The extent of the Implementation Project Area shall be as defined in the approved IGEA report (Vide no.____) by SLTC.

4.3 Implementation Project Scope

The Parties agree that the following key activities shall be scope of the Implementation Project and the Parties shall work together to complete the activities through mutual co-operation and support:

- 4.3.1. Procurement of Energy Efficient Pump Sets (hereinafter referred to as "**EEPS**") through transparent manner;
- 4.3.2. Dismantle of existing old pump sets and handover to ULB on as-is where-is basis. For the avoidance of doubt it is clarified, that ULB will not deny the acceptance of old pump sets
- 4.3.3. Replacement of existing pump sets with EEPS and other related components wherever already installed such as NRV, Gate Valve, Foot Valve, Pressure Gauge and Web-based Dashboard along with necessary allied civil work;
- 4.3.4. Measurement & Verification (hereinafter referred to as "**M&V**") of the EEPS in accordance with Schedule 2 - (M&V protocol with correction factor);
- 4.3.5. Repayment of EESL's investments from the **Commissioning Date** for a period of 7 years (hereinafter referred to as "**Repayment Period**") as defined in Schedule 3- (Payment Schedule);

4.3.6. Repair & Maintenance (hereinafter referred to as "**R&M**") of the EEPS for a period of 7 years (hereinafter referred to as "**R&M Period**") from the **Commissioning Date**; and

4.3.7. The negative list for R&M in which conditions/constraints, EESL will not provide the R&M services. The detailed negative list for R&M as defined in Schedule – 8 (Negative list for R&M services).

4.4 Implementation Project Schedule

4.4.1. Within one (1) month of the Effective Date, EESL will initiate the process of inviting tenders for hiring of agency / supplier for replacement of existing pump sets with EEPS.

4.4.2. The agency/ supplier (hereinafter referred to as "**Identified Supplier(s)**") will be selected by EESL and LoA will be placed within three (3) months from the Effective Date.

4.4.3. The overall replacement is to be completed by the Identified Supplier(s) within nine (9) months from the Effective Date.

4.4.4. "**Project Implementation Period**" shall be the Period between the Effective Date and completion of the replacement of pump sets (in all respects).

4.5 Change in scope of the Implementation Project

4.5.1. Once EESL has initiated the task of inviting tender for hiring of Identified Supplier(s) for the implementation or from the Effective Date till the time the Letter of Award has been issued to the Identified Supplier(s), the particular City/ULB shall not deny the implementation work, or else EESL shall be reimbursed for the actual tendering process cost and IGEA report preparation cost. Further, EESL will be indemnified by particular city/ULB for any cost or damages claimed against EESL due to deny or suspension of implementation work by the particular City/ ULB.

4.5.2. Once the Letter of Award has been issued to the Identified Supplier(s) by EESL and till the first Pumping Station has been successfully implemented, if in between the particular City/ ULB denies the implementation work then EESL shall be reimbursed for the actual tendering cost, IGEA report preparation cost as well as actual investment done by EESL.

4.5.3. There will be no change in number and/ or operating parameters of the pump sets as mentioned in the approved IGEA report.

4.6 Ownership, Rights and Title of EEPS

4.6.1. The ownership and title of the EEPS installed by EESL shall vest with EESL till the Term of the Agreement. However, the rights for use and operation shall vest with the ULB.

- 4.6.2. Technical Specifications of EEPS and Service Level Agreements for R&M are in accordance with Schedule – 7 (Technical Specifications and Service Level Agreements).

5.0 DUTIES, RESPONSIBILITIES AND OBLIGATIONS OF THE PARTIES

5.1. EESL's Obligations

EESL shall be responsible for planning, financing, conducting study, installation & commissioning, R&M and M&V of the Implementation Project as per the terms and conditions indicated below:

- 5.1.1. To appoint and notify to State Government and ULB regarding the details (name, communication address, etc.) of nodal officer of EESL for the Implementation Project. The appointed nodal officer shall coordinate with State Government and or ULB during the Term;

- 5.1.2. Investment Grade Energy Audit (IGEA) Study;

EESL has already completed the Investment Grade Energy Audit. The approved IGEA report (Vide no.....) including all revisions and amendments as mutually agreed, which was formed as the basis for this Tri-partite Agreement.

- 5.1.3. Equipment Design and Construction

- a) EESL shall arrange the finance, design, install and commissioning of the EEPS as stated in the approved IGEA report.
- b) EESL shall be responsible for quality control including Pre-Dispatch Inspection (PDI) of the procured material. ULB, at its sole discretion, may join to witness the PDI activities along with EESL. EESL shall inspect and test all work performed, to ensure compliance with this Tri-partite Agreement requirements and shall maintain all necessary records and data of inspections and tests performed.
- c) EESL shall also give the Project Scheduling Plans to the ULB and execute the same as per the Clause 4.4.
- d) EESL will not be responsible for any act or omission under this Tri-partite Agreement if the act or omission of EESL is based or emanating from the document, design, data drawing, specification or any instruction provided by the ULB/State Government. Provided that EESL performance is as per the instruction or guidance received from the ULB/ State Government.

- 5.1.4. EESL shall have no lien on replaced items during the sale proceed of such items by ULB, if any, in future. All costs, expenses and revenue related to sale and auction of the replaced items shall be borne by the ULB. EESL shall not be responsible for managing/ conducting the sale/ auction process of replaced items;
- 5.1.5. R&M of the installed EEPS for 7 years from the **Commissioning Date**: EESL at its sole expense shall be responsible for R&M of all EEPS installed under the project. Repair includes all labor, materials, consumables, transport and equipment required to replace, rebuild or restore to designated output and equipment that have failed;
- 5.1.6. To provide reports to the ULB and/or State Government as per the Schedule - 6 (Reporting Requirement); and
- 5.1.7. To provide the manuals to the ULB personnel during the Project Implementation Period.

5.2. State Government's obligations

- 5.2.1. To appoint and notify to EESL, the name and communication address of the nodal person for the Implementation Project at State Government level who shall render full support to EESL for Implementation Project during the Term;
- 5.2.2. To direct the concerned departments/ agencies such as District Administration, Electricity Distribution Company, Public Works Department, State Police, State Traffic Police, etc. to provide approvals, consents, permits, clearances, etc.;
- 5.2.3. To provide payment security instrument in accordance with Schedule - 5 (Billing Procedure, Payments to EESL and Default Interest);
- 5.2.4. To issue suitable directives based on EESL's suggestion and requests to ULB in order to execute the performance under this Tri-Agreement from time to time, which shall encompass roles, responsibilities and obligations as indicated and set out in this Tri-partite Agreement;
- 5.2.5. To correct any irregularity the cause of which has been brought to its attention by EESL;
- 5.2.6. To promptly notify EESL of any events or circumstances that could affect the Implementation Project or EESL's services and obligations under this Tri-partite Agreement; and
- 5.2.7. To settle dispute(s) raised by local consumers, political parties, agencies, etc.

5.3. ULB's Obligations

- 5.3.1. To appoint and notify to EESL, the name and communication address of the nodal person for the Implementation Project at ULB level who shall render full support to EESL and its Identified Supplier(s) for Implementation Project during its Term;
- 5.3.2. To provide support to EESL and their designated EEPS manufacturers, technology providers, ESCO's, etc. to conduct site survey during tender procedure;
- 5.3.3. To actively participate in the Implementation Project by directing concerned officers, engineers, operators, staff, linemen, foremen, mechanics, electricians, contractual staffs, etc. to coordinate in relation to the Implementation Project and provide complete support during replacement;
- 5.3.4. To provide access to EESL and/or Identified Supplier(s) to work in ULB premises/ offices/ pump houses/ plants/ overhead tanks/ sumps/ reservoir, etc.;
- 5.3.5. To allow EESL and/ or its Identified Supplier(s) unfettered access to a covered and enclosed space to set up godown(s) for storage of EEPS and its spare parts. Such space shall be provided by the ULB at free of cost for the Term of the Tri-partite Agreement;
- 5.3.6. To provide the receipt/ acknowledgement certificate for receiving/ handover of old pump sets, EEPS and its related components from EESL or its Identified Supplier(s);
- 5.3.7. To allow EESL or its Identified Supplier(s) to use free of cost power supply, water, office space for working, etc. for carrying out work during the Term of the Tri-partite Agreement;
- 5.3.8. To provide all stoppages required for connection and disconnection required during replacement and provide proper isolation of the pump sets and permit to work to EESL and/ or its Identified Supplier(s);
- 5.3.9. To allow EESL to use ULB's overhead crane, welding machine, chain pulley machine, etc. (if available) during the installation and R&M activity of the EEPS.
- 5.3.10. To coordinate with the Electricity Distribution Company for operation and maintaining power supply system and promptly attend to any break down including repair or replace any equipment used/ needed for maintaining power supply during the Term of the Tri-partite Agreement;

- 5.3.11. To nominate staff for witnessing / inspecting the Measurement & Verification (M&V) job cards for evaluation of energy savings;
- 5.3.12. To operate the installed EEPS in accordance with good engineering practices and shall not operate the EEPS in adverse operating conditions;
- 5.3.13. To ensure timely payments to EESL as per annuity in accordance with Schedule 3 - (Payment Schedule);
- 5.3.14. To provide necessary safety and security of the EEPS and related components after arriving in ULB's premises. EESL and/ or its Identified Supplier(s) shall not be held responsible for any kind of theft/sabotage/fire/riots/flood/earthquake caused in the ULB's premises till the Term of the Tri-partite Agreement. Further, any request for re-installation of the EEPS due to theft/sabotage/fire/riots/flood/earthquake or any reason not solely attributable to EESL, will be at separate cost.;
- 5.3.15. To correct any irregularity the cause of which has been brought to its attention by EESL and/ or its Identified Supplier(s);
- 5.3.16. To promptly notify EESL and/ or its Identified Supplier(s) of any events or circumstances that could affect the Implementation Project or EESL's services and obligations under this Tri-partite Agreement; and
- 5.3.17. To settle dispute(s) raised by local consumers, political parties, agencies, etc.

6.0 ENERGY SAVINGS AND COSTS

- 6.1 EESL shall provide a minimum 20% energy savings at ULB level. This savings will be verified in accordance with Schedule - 2 (M&V protocol with correction factor).
- 6.2 EESL will use its best effort to provide a minimum 10% energy savings at individual pump set level.
- 6.3 The savings computed in accordance with Schedule - 2 (M&V protocol with correction factor) would be considered deemed savings and constant for the Repayment Period. Any adjustment in computed energy savings and associated annuity payment in accordance with Schedule-3 & 4 will not be considered during the Repayment Period.
- 6.4 **Determination of annuity payment**
The repayment to EESL in form of annuity would be determined based on capital cost incurred by EESL based on the following parameters:

6.4.1. Total Implementation Project Cost

6.4.1.1. Cost of preparation of IGEA report including EESL's service charges (@15%) & applicable GST to hire energy auditing agency through competitive bidding process;

6.4.1.2. The Implementation Capital Cost shall be capitalized comprising of:

- a. Actual incurred cost on the basis of tendered cost towards procurement of EEPS and other related components such as NRV, Gate Valve, Foot Valve, Pressure Gauge and Web-based Dashboard along with allied civil work;
- b. Actual incurred cost on the basis of tendered cost towards dismantling, installation, testing and commissioning;
- c. Project Establishment and supervision charges of EESL at 5 % of summation of point a and point b; and
- d. Interest on Debt during Project Implementation Period.

6.4.2. Financing Terms

6.4.2.1. Debt Equity ratio shall be 70 : 30;

6.4.2.2. Post Tax Return on Equity of 16% (per annum) on the equity component of the Implementation Project Cost; and

6.4.2.3. Interest Rate on the Debt component of the Implementation Project Cost at actuals (subject to a ceiling limit of 11 %).

6.4.3. The Yearly Recurring Costs shall be comprising

6.4.3.1. Project Establishment and supervision charges of EESL at 4% of Implementation Project Cost with annual escalation of 5%; and

6.4.3.2. Actual incurred Repair & Maintenance charges, on the basis of tendered cost.

6.5 Incentive

6.5.1. The savings computed in accordance with Schedule - 2 (M&V protocol with correction factor) is more than minimum 20% energy savings at ULB level, EESL will not be entitled for any additional incentive.

6.6 Determination of penalty

6.6.1. If EESL fails to achieve minimum 20% energy savings at ULB level during the M&V process, then EESL will be liable for penalty for percentage energy reduced below 20%. The penalty will be calculated as per the below formula:

Penalty Amount = (0.5 X Annuity Amount) X (Minimum Guaranteed Energy Savings (i.e. 20%) - Aggregate % Savings at

ULB in accordance with Schedule-2) / Minimum Guaranteed Energy Savings (i.e. 20%)

Note: The maximum penalty amount will be equivalent to 20% of total annuity amount of Repayment Period.

- 6.6.2. The penalty will be distributed equally over the Repayment Period and deducted from EESL annuity.
- 6.6.3. Penalty due to non-achievement of minimum 20% energy savings at ULB level, the penalty amount till the Completion Date would be adjusted in the subsequent quarterly invoice. The applicable penalty amount after the Completion Date will be deducted from the corresponding quarterly invoices raised by EESL.
- 6.6.4. EESL shall be liable for penalty if it fails to comply with the service level agreement as per Schedule 7. The quantum of penalty related to non-compliance of defined service level agreement will be decided as per Schedule 7. The penalty so calculated will be deducted from EESL annuity.
- 6.6.5. For any penalty deduction, the ULB will issue the deduction certificate to EESL.
- 6.7 All applicable taxes / duties / levies / cess shall be extra and on actual basis. Any change in law on account of the introduction of new taxes/ duties/ levies/ cess or change in the rates of existing one's shall be to the account of and payable by ULB or shall be adjusted in determination of annuity.
- 6.8 ULB shall be entitled to make any deductions at source in accordance with applicable laws, but provide certificate for such deductions as per law.
- 6.9 EESL shall be responsible for all compliance related to the payment of any taxes payable by it under this Tri-partite Agreement.

7.0 REPRESENTATIONS AND WARRANTIES

Each of the Parties represent, warrant and confirm the following:

- 7.1 It is duly organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Tri-partite Agreement and to carry out the transactions contemplated hereby;
- 7.2 It has taken all necessary actions under applicable laws to authorize the execution and delivery of this Tri-partite Agreement and to validly exercise its rights and perform its obligations under this Agreement;

- 7.3 It has the financial standing and capacity to undertake the Implementation Project in accordance with the terms of this Tri-partite Agreement;
- 7.4 This Tri-partite Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof;
- 7.5 The execution, delivery and performance of this Tri-partite Agreement shall not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its constitutional documents or any applicable laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- 7.6 There are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any Court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Tri-partite Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Tri-partite Agreement;
- 7.7 It has the financial standing and resources to fund the required for undertaking and implementing the Implementation Project in accordance with this Tri-partite Agreement;
- 7.8 No representation contained herein or in any other document furnished by it to the Parties contains any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or Implementation Project; and
- 7.9 Each of the Parties acknowledge that prior to the execution of this Tri-partite Agreement, it has, after a complete and careful examination, made an independent evaluation of the scope of the Implementation Project, specifications and standards, Implementation Project site, local conditions, and all relevant information provided by the Parties or obtained procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder.

8.0 DISCLOSURE

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties (as stated in Clause 7) untrue or incorrect, the Parties shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or Implementation Project that has been found to be untrue or

incorrect nor shall it adversely affect or waive any obligation of any of the Parties under this Tri-partite Agreement.

9.0 INDEMNITIES AND LIMITATION OF LIABILITY

9.1. Each Party shall indemnify and keep indemnified the other Party from and against all consequences and liabilities arising out of or in any way connected with the indemnifying Party's negligence, fault, nuisance, breach of this agreement and failure to perform its obligations under this agreement, except to the extent that the same is attributable to a negligent or wilful act or omission of the Party seeking to be indemnified.

9.2. EESL shall be excused and shall not be liable or responsible for any delay or failure to perform the services or failure of the Services or a EESL's deliverable under this Agreement to the extent that such delay or failure is not solely attributable to EESL or has arisen as a result of any delay or failure by the ULB/State or its employees or agents or third party service providers to perform any of its duties and obligations as set out in this Agreement. In the event that the EESL is delayed or prevented from performing its obligations due to such failure or delay, EESL shall be allowed an additional period of time to perform its obligations and unless otherwise agreed, the additional period shall be equal to the amount of time for which EESL is delayed or prevented from performing its obligations. Such failures or delays shall be brought to the notice the ULB/State and subject to mutual agreement with the ULB/State, EESL shall take such actions as may be necessary to correct or remedy the failures or delays. EESL shall be entitled to invoice the ULB/State for any additional costs and expenses incurred, including idle time, resulting from the delay or failure.

9.3. Except for the express representations and warranties contained in this Tri-partite Agreement, EESL makes no representations or warranties, express or implied, with respect to any services or deliverables provided hereunder, including without limitation, any implied warranties.

9.4. In no event shall EESL shall be liable, for any (a) loss of profit, loss of revenue, anticipated savings, opportunity, (b) special, indirect, incidental, consequential, punitive or any other loss or damages, whatsoever, whether in contract, tort (including negligence), strict liability or otherwise, in connection with or arising out of the furnishing, performance or use of the services or deliverables provided by EESL under the terms of this Tri-partite Agreement, even if such loss or damage was reasonably foreseeable.

9.5. Notwithstanding anything contrary contained in this Tri-partite Agreement, in no event shall the total aggregate liability of EESL, whether in the Tri-partite Agreement, tort (including negligence), strict liability or otherwise, shall exceed the amount of fees paid to EESL by the ULB/State during the previous 6 (six) months immediately preceding the claim first arose.

10.0 INTELLECTUAL PROPERTY

Each Party represents warrants and agrees to the other Party that it shall:

- 10.1. Not use nor represent (in any manner whatsoever) the other Party's intellectual property as their own;
- 10.2. Treat the other Party's intellectual property as Proprietary Information, and use and disclose it only as set forth herein; and
- 10.3. Not do anything which, in the opinion of other Party, may bring the interests of such Party or any of its Affiliates into disrepute or damage the interests of the other Party or any of its Affiliates in any way; and
- 10.4. Formulate ways in which a record is maintained giving details of a Party's intellectual property made available to the other Party.

11.0 CONFIDENTIALITY

The Parties to this Tri-partite Agreement will further maintain utmost confidentiality regarding the contents of this Agreement at all times and they shall not make any announcement to the public or to any third party regarding the arrangements contemplated by this Tri-partite Agreement without the consent of the Parties involved, such consent not to be unreasonably withheld provided that the Parties to this Tri-partite Agreement shall be liable for disclosure if the same is required to be disclosed by law or regulation pursuant to the legal process.

12.0 INSURANCE

EESL will take appropriate insurance policy to insure the installed EEPS and other related components under this Tri-partite Agreement and all costs and expenses related to insurance policy will be reimbursed by the ULB on actual basis. .

13.0 EVENTS OF DEFAULT AND TERMINATION

13.1. EESL Event of Default

EESL Event of Default means any of the following events arising out of any acts or omission of EESL, its representative, sub-contracts, employees and which have not occurred solely as a result of any breach of this Tri-partite Agreement by State Government and/ or ULB or due to Force Majeure, and where EESL has failed to remedy these events within a period of 90 days of issuance of a notice by State Government and or ULB requiring EESL to remedy such event.

- 13.1.1. EESL has failed to procure and arrange requisite finances for undertaking the Implementation Project;
- 13.1.2. Other than in accordance with Clause 3.2, EESL abandons the Implementation Project or repudiates this Tri-partite Agreement or otherwise takes any action, or evidences or conveys an intention not to be bound by the Tri-partite Agreement. However, suspension of this Tri-

partite Agreement due to non-payment of EESL fee/annuity as per the agreed terms and conditions will be not be treated as default on EESL's part;

- 13.1.3. EESL fails to comply with any of its material obligations under this Tri-partite Agreement;
- 13.1.4. EESL is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for EESL or for the whole or material part of its assets that has a material bearing on its ability to implement the Implementation Project;
- 13.1.5. EESL has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that in the reasonable opinion of the ULB and/ or State Government would adversely affect EESL's ability to implement the Implementation Project;
- 13.1.6. A resolution for winding up of EESL is passed, or any petition for winding up of EESL is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (Ninety) days of the date thereof or EESL is ordered to be wound up by a Court of competent jurisdiction; and
- 13.1.7. Any representation made by EESL under this Tri-partite Agreement being false or misleading having material impact of the execution of the project.

13.2. **ULB Event of Default**

ULB Event of Default means any of the following events, unless such event has occurred as a consequence of the EESL Event of Default or a Force Majeure Event and where ULB or its authorised representative has failed to remedy these events within a period of 90 days of issuance of a notice by EESL requiring ULB to remedy such event:

- 13.2.1. Failure of ULB to pay the Annuity Payment in accordance with Clause 6.4 and Schedule 3 & 4 plus IGEA report preparation cost or any other payment due from ULB under this Tri-partite Agreement for more than 90 Days have elapsed since such payments became due;
- 13.2.2. The breach by ULB or its authorized representative of its obligations under this Tri-partite Agreement which has an effect on the performance of EESL's obligations under this Tri-partite Agreement;
- 13.2.3. Failure of timely renew or maintaining the inadequate amount of payment security instrument in accordance with Schedule -5 of this Tri-partite agreement; and
- 13.2.4. Any representation made or promised by the ULB under this Tri-partite Agreement is found to be false or misleading.

13.3. Termination for EESL Event of Default

13.3.1. Without prejudice to any other right or remedy which ULB may have in respect thereof under this Tri-partite Agreement, upon the occurrence of an EESL Event of Default, ULB shall be entitled to terminate this Tri-partite Agreement in the manner provided in Clause 13.3.2 below.

13.3.2. ULB shall issue a Preliminary Notice to EESL providing 90 Days to cure the underlying Event of Default. If EESL fails to cure the underlying Event of Default within such period allowed, ULB shall be entitled to terminate this Tri-partite Agreement or a Particular Implementation Project under this Tri-partite Agreement, by issuing a Termination Notice to EESL.

13.4. Termination for ULB Event of Default

13.4.1. Without prejudice to any other right or remedy which EESL may have in respect thereof under this Tri-partite Agreement or a Particular Implementation Project under this Tri-partite Agreement, upon the occurrence of an ULB Event of Default, EESL shall be entitled to terminate this Tri-partite Agreement or a Particular Implementation Project under this Tri-partite Agreement, in the manner provided in Clause 13.4.2 below.

13.4.2. EESL shall issue a Preliminary Notice to ULB and/ or State Government providing 90 Days to cure the underlying Event of Default. If ULB fails to cure the underlying Event of Default within such period allowed, EESL shall be entitled to terminate this Tri-partite Agreement or a Particular Implementation Project under this Tri-partite Agreement by issuing a Termination Notice to State Government and ULB.

13.5. Termination for convenience by EESL

EESL shall, in addition to any other right enabling it to terminate this Tri-partite Agreement or a Particular Implementation Project under this Tri-partite Agreement at any time by giving a 30 days written notice to State Government and ULB, if EESL is of the opinion that the Implementation Project is not financially or technically viable. In such event EESL shall be entitled to receive the Annuity Payments in accordance with Clause 13.6.3.

13.6. Consequences of Termination

13.6.1. Notwithstanding anything to the contrary contained in this Tri-partite Agreement, any termination of this Tri-partite Agreement pursuant to its term shall be without prejudice to accrued rights of any Party, including its right to claim and recover damages and other rights and remedies which it may have in law or contract. All accrued rights and obligations of any of the Parties under this Tri-partite Agreement, shall survive the termination of this Tri-partite Agreement to the extent such survival is necessary for giving effect to such rights and obligations.

- 13.6.2. Following issue of the Termination Notice by any Party, ULB will take possession and control of EESL's installed EEPS & other related components (except the spare materials).
- 13.6.3. Upon termination of this Tri-partite Agreement by any Party-whether for default or for convenience, EESL shall be entitled to receive the Annuity Payments (including the unamortized cost of equipment/EEPS and other related components) as per the Clause 6.4 and Schedule 3 &4 including IGEA report preparation cost minus the amount paid till the termination of this Tri-partite Agreement minus the interest not applicable for the balance period of the Tri-partite Agreement after termination. If at the date of termination of this Tri-partite Agreement, only part of the work is completed, EESL will be entitled to receive the Annuity Payments for the part work.
- 13.6.4. The Annuity Payments upon the termination in accordance with Clause 13.6.3 shall become due and payable to EESL by the ULB within thirty (30) days of the termination of this Tri-partite Agreement.

14.0 FORCE MAJEURE

- 14.1. If either Party is prevented, directly or indirectly, from performing any obligation under this Tri-partite Agreement or arising in connection herewith, by reason of Acts of God, drought, war, floods, earthquakes, governmental action, legal requirements or any similar cause, whatsoever, beyond the reasonable control of the Party claiming relief under this Section (collectively referred to herein as the "**Force Majeure**"), such delayed performance or non-performance shall not constitute a default hereunder or subject the party whose performance is delayed or prevented to any obligation or liability to the other Party, and the affected Party shall be given an additional time to perform equal to the delay caused by the event of Force Majeure, provided, however, that the Party so affected shall promptly notify the other in writing not later than [seventy two (72) hours] of the occurrence of any such circumstances with all pertinent facts relating thereto.
- 14.2. Non-performance of an obligation pursuant to this Clause 14 shall not terminate this Tri-partite Agreement in respect of the obligations affected by the event of Force Majeure. Such obligation shall be resumed upon the cessation of the event of Force Majeure affecting the performance of such obligation. In respect of the obligations not affected by the event of Force Majeure, the Parties shall perform them as if no event of Force Majeure had occurred.
- 14.3. In the event of Force Majeure, the Parties shall give written notice to the other party at the earliest possible time and thereafter consult and agree

upon the appropriate measures to be taken to eliminate, mitigate and minimize the consequences of such Force Majeure.

- 14.4. For the avoidance of doubt it is clarified that any re-installation of the EEPS or any re-work due to Force Majeure events or for any reasons not solely attributable to EESL, will be at a separate cost.

15.0 GOVERNING LAW AND DISPUTE RESOLUTION

- 15.1. This Tri-partite Agreement and all disputes, claims or controversies arising out of, in connection with or relating to this Tri-partite Agreement, validity, enforceability, performance, interpretation, breach or termination, shall be governed and interpreted by, and construed in accordance with, the substantive laws of India and subject to Clause 15.5 and the Court of Delhi shall have jurisdiction.
- 15.2. Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Tri-partite Agreement (including its interpretation) between the Parties (the "**Dispute**"), and so notified in writing by either Party to the other Party (the "**Dispute Notice**") shall, in the first instance, be attempted to be resolved amicably.
- 15.3. The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Tri-partite Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.
- 15.4. If the parties do not resolve the Dispute within thirty (30) Business Days of the Dispute Notice or such longer period as agreed to by the Parties, then the Parties agree to submit the Dispute to final and binding arbitration.
- 15.5. If an amicable resolution is not reached within the above said period, or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration of Sole Arbitrator appointed by the Ministry of Housing and Urban Affairs, Govt. of India and dispute resolution shall be as under the provisions of Arbitration & Conciliation Act, 1996 and its subsequent amendments. The cost the arbitration shall be shared equally by the Parties.
- 15.6. The venue of such arbitration shall be New Delhi and the language of arbitration proceedings shall be English.
- 15.7. This Tri-partite Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

16.0 MISCELLANEOUS

16.1. Amendment

No change to this Tri-partite Agreement shall be valid or binding unless it is set forth in writing and duly executed by the authorized representatives of the Parties hereto.

16.2. Severability

If for any reason whatsoever, any provision of this Tri-partite Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other legal and valid instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing upon one or more provisions, which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable. Provided failure to agree upon any such provisions shall not be a subject matter to dispute resolution under this Tri-partite Agreement or otherwise.

16.3. Compliance with applicable laws

With respect to all matters and activities relating to this Tri-partite Agreement, each of the Parties shall comply with, in all material respects, all Applicable Laws.

16.4. Counterparts

This Tri-partite Agreement may be executed in three counterparts, each of which shall constitute one and the same Tri-partite Agreement.

16.5. Assignment

This Tri-partite Agreement shall ensure to the benefit of the Parties hereto and to their respective successors and permitted assigns. No Party shall assign this Tri-partite Agreement to any Third Party without the prior written consent of the other Parties, which written consent shall not be unreasonably withheld by the other Parties.

16.6. Entire Tri-partite Agreement

This Tri-partite Agreement and the its Schedules/ Annexes referred therein together constitute a complete and exclusive statement of the terms and conditions of the agreement between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties.

16.7. Waiver

No exercise or failure or delay in exercising any right, power or remedy vested in any Party under or pursuant hereto shall constitute a waiver by

that Party or any other right power or remedy and a waiver shall only be deemed duly given if done unambiguously and in writing.

16.8. Cumulative Rights

The rights and remedies provided in this Tri-partite Agreement are cumulative and not exclusive of any other rights or remedies provided by law or equity.

16.9. Survival

Termination of this Tri-partite Agreement shall not affect the survival of any continuing obligations for which this Tri-partite Agreement provides, and all terms which either expressly or by necessary implication or by their nature, shall continue and survive any expiry or termination of this Tri-partite Agreement.

17.0 NOTICES

Notices, demands or other communication required to be given under this Tri-partite Agreement shall be in writing and delivered personally or sent by prepaid registered post with recorded delivery, addressed to the intended recipient at its address set forth below, or to such other address as either Party may from time to time duly notify to the other:

If to State Government:

Kind attention: Principal Secretary
Address: Urban Development to Government of _____

Ph. No.: +91 _____
Fax No.: +91 _____
Email: _____

If to EESL:

Kind attention: Managing Director
Address: Energy Efficiency Services Ltd.
4th Floor, IWAI Building
A-13, Sector - 1, Noida - 201301 (UP)
Ph. No.: +91 (120) 4908000
Fax No.: +91 (120) 4908049
Email: skumar@eesl.co.in

If to ULB:

Kind attention: _____
Address: _____

Ph. No.: +91 _____
Fax No.: +91 _____
Email: _____

A notice shall be deemed to have been received, if sent by fax on the working day next following a successful transmission as evidenced by the telefax confirmation sheet of the sender or, if delivered or sent by registered mail with return receipt, to have been delivered and received on the date of such delivery.

IN WITNESS WHEREOF, the Parties have entered into this Tri-partite Agreement on the day and year first above written.

For and on behalf of Energy Efficiency Services Ltd.	For and on behalf of <u>ULB</u>	For and on behalf of <u>Department Name,</u> Government of _____
Name _____	Name _____	Name _____
Designation _____	Designation _____	Designation _____

Witnesses:

- 1.
- 2.
- 3.

SCHEDULE '1' - DEFINITIONS AND INTERPRETATIONS

1. Definitions

In this Tri-partite Agreement, unless the context otherwise requires, the following terms shall have the meanings assigned to them herein below:

- 1.1. **"Tri-partite Agreement"** shall mean this Tri-partite Agreement and includes its recitals and the schedules appended hereto, as may be amended (or revised) from time to time in accordance with the provisions contained in this Tri-partite Agreement;
- 1.2. **"Annuity Payment(s)"** shall have the meaning ascribed thereto in Clause 6.4 of this Tri-partite Agreement;
- 1.3. **"Applicable Law(s)"** shall mean all applicable laws, bye-laws, statutes, rules, regulations, orders, ordinances, notifications, protocols, treaties, codes, guidelines, policies, notices, directions, writs, injunctions, judgments, decrees or other requirements or official directive of any court of competent authority, or of any competent governmental authority, or of any person acting under the authority of any court of competent authority or of any competent governmental authority, that are effective and in force during the subsistence of this Tri-partite Agreement and are applicable to this Tri-partite Agreement;
- 1.4. **"Billing Date"** shall have the meaning ascribed thereto in Schedule 5 of this Tri-partite Agreement;
- 1.5. **"Change in Law"** means the occurrence of any of the following events after the date of this Tri-partite Agreement:
 - 1.4.1. the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Applicable Law, including rules and regulations framed pursuant to such Applicable Law;
 - 1.4.2. a change in the interpretation or application of any Applicable Law by any Governmental Instrumentality or any competent court of law having the legal power to interpret or apply Applicable Laws;
 - 1.4.3. the imposition of a requirement for obtaining any consents and Clearances which was not required earlier under Applicable Law;
 - 1.4.4. a change in the terms and conditions prescribed for obtaining any consents and Clearances or the inclusion of any new terms or conditions for obtaining such consents and Clearances under Applicable Law; and

- 1.4.5. any change in tax on, or introduction of any new tax or levy on, the supply of EEPS by the Identified Supplier(s) as per the terms of this Tri-partite Agreement, but shall not include any change in any withholding tax on income or dividends replaced to the shareholders of the suppliers;
- 1.6. **"Default Interest"** shall have the meaning ascribed thereto in Schedule 5 of this Tri-partite Agreement;
- 1.7. **"Dispute"** shall have the meaning ascribed thereto in Clause 15.2 of this Tri-partite Agreement;
- 1.8. **"Dispute Notice"** shall have the meaning ascribed thereto in Clause 15.2 of the Tri-partite Agreement;
- 1.9. **"Effective Date"** shall have the meaning ascribed thereto in Clause 3.1 of this Tri-partite Agreement;
- 1.10. **"Force Majeure"** shall have the meaning ascribed thereto in Clause 14.1 of this Tri-partite Agreement;
- 1.11. **"Payment Due Date"** shall have the meaning ascribed thereto in Schedule 5 of this Tri-partite Agreement;
- 1.12. **"Implementation Project"** shall have the meaning ascribed thereto in Clause 4.1 of this Tri-partite Agreement;
- 1.13. **"Implementation Project Area"** shall have the meaning ascribed thereto in Clause 4.2 of this Tri-partite Agreement;
- 1.14. **"Implementation Project Cost"** shall have the meaning ascribed thereto in Clause 6.4 of this Tri-partite Agreement;
- 1.15. **"Rupees"** or **"Rs."** shall mean the lawful currency of India;
- 1.16. **"Replacement"** shall mean the installation of EEPS, handover of the old pump sets to the ULB, pre and post implementation measurements as per M&V methodology and signing of M&V format;
- 1.17. **"Term" or "Term of the Tri-partite Agreement"** shall have the meaning ascribed to it in Clause 3.2 of this Tri-partite Agreement;
- 1.18. **"Year"** shall mean a period of 12 months according to the English calendar system;
- 1.19. **Day** – Day means a calendar day
- 1.20. **Corrupt Act** – the act of promising, giving, receiving, or agreeing to receive money or some other item of value with a corrupt aim, or perceived aim, of influencing a public official in the discharge of his official duties; and acts giving rise to criminal liability under Indian Laws
- 1.21. **Termination Date** – any date of early termination of this Tri-partite Agreement pursuant to Clause 13 of this agreement.

2. Interpretations

- 2.1. Heading and bold typeface are only for convenience and shall be ignored for the purpose of interpretation.

- 2.2. In this Tri-partite Agreement, unless the contrary intention appears:
- 2.2.1. references to Clauses, Schedules and Appendixes are to the clauses, schedules and appendixes of this Tri-partite Agreement and references to paragraphs are to paragraphs of Schedules;
 - 2.2.2. references to an enactment include references to any subordinate legislation made under that enactment and any amendment to, or replacement of, that enactment or subordinate legislation;
 - 2.2.3. references to a rule or procedure include references to any amendment or replacement of that rule or procedure;
 - 2.2.4. the terms "hereof", "hereto" and derivative or similar words refer to this entire Tri-partite Agreement or specified Clauses of this Tri-partite Agreement, as the case may be;
 - 2.2.5. Any reference to time shall, except where the context otherwise requires, be construed as a reference to the time in India. Any reference to calendar shall be construed as a reference to the Gregorian calendar;
 - 2.2.6. Words importing the singular shall mean the plural and *vice versa*;
 - 2.2.7. A reference to any gender includes the other and neuter gender;
 - 2.2.8. A reference to "writing" or "written" includes printing, typing, lithography and other means of reproducing words in a visible form;
 - 2.2.9. Reference to the word "include" shall be construed without limitation;
 - 2.2.10. Any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days or dates; and
 - 2.2.11. in the event of any inconsistency between the text of the Clauses of this Tri-partite Agreement and the Schedules or Appendixes hereto, the text of the Clauses of this Tri-partite Agreement shall be controlling.

SCHEDULE '2' - M&V Protocol with correction factors

1. Measurement and Verification (M&V) is the term given to the process for quantifying savings delivered by an Energy Efficiency Measure (EEM). It includes energy saving verification process involving measurements and reporting methodology.
2. M & V methodology followed in this project includes following measurement schedule
 - 2.1. Measurement of parameters pre EEM implementation (just before installation of EEPS) for all operating combinations using portable instruments
 - 2.2. Measurement of parameters post EEM implementation for all operating combinations using portable instruments.
3. Energy savings are calculated as the difference in power drawn (in pre and post implementation scenario) multiplied by the operating hours mentioned in IGEA.
4. These energy savings shall be verified in accordance with M&V plan presented in the final report by EESL and as agreed upon by the ULB. The energy savings will be determined and signed by EESL, Pump Supplier and the ULB. EESL shall submit a report as per the reporting template attached to this agreement verifying the savings mentioned in the agreement.
5. The report shall be submitted by EESL to all the ULB within 15 days of the completion of the verification

6. Definition of possible and operating combinations

- 6.1. In ULBs, especially in case of pumping stations, where the pumps are connected in parallel, the pump operated in various combinations. For the purpose of this document, these combinations are defined as possible combinations. For example, for if 3 pumps are connected in parallel, there are 7 possible combinations considering three different pumps i.e.

Pump 1	Pump 1+ Pump 2	
Pump 2	Pump 2+ Pump 3	Pump 1+Pump 2+Pump 3
Pump 3	Pump 3 +Pump 1	

- 6.2. However, the ULB might be operating the pumps only in three combination, depending on the flow requirement, from the one discussed above. For the purpose of this document, these combinations are defined as operating combinations.

Operating Combination 1	Operating Combination 2	Operating Combination 3
Pump 1	Pump 1+ Pump 2	Pump 1+Pump 2+Pump 3

7. Flow of activities under M & V process

- First, measurements of old pump would be carried out by the supplier when new pump is ready to be installed at ULB.
- Instantaneous measurement of parameters like flow, head (both at suction and discharge) and power of old pump would be carried out for all operating combinations after stabilisation using portable meters. These parameters will be called pre implementation parameters
- Pre implementation parameters will be verified by EESL, ULB and Supplier.

- Then, old pump will be replaced by new pump and instantaneous measurements of parameters mentioned above will be carried out on new pump after stabilisation for same operating combinations. These parameters will be called post implementation parameters.
- Energy savings of a pump for each combination would be determined by multiplying the difference in instantaneous power consumption in pre and post EEM implementation scenario with corresponding operating hours mentioned in IGEA. Total savings of a pump will be the summation of energy savings in each operating combination (i.e. weighted average savings of a pump would be estimated)
- The flow and head of new pump i.e. post implementation parameters should match pre implementation parameters.
- Post implementation parameters will be verified by EESL, ULB and supplier.
- Penalty would be imposed on pump supplier if energy savings, at ULB level, are less than 20% of existing energy consumption.

8. Pre and post implementation assessment

To determine savings, the following parameters would be measured during pre and post implementation for each operating combination,

8.1. Power Consumption, voltage, frequency (kW, Volt, Hz)

Data Unit	kW, Volt, Hz
Description	Voltage, frequency and power consumption of all operating combinations (pre and post implementation)
Source of Data	On site measurement using calibrated portable instrument (power analyzer)
Description of measurement methods and procedures to be applied	Instantaneous onsite measurement using portable power analyzer
QA/QC procedures to be applied	Calibrated instrument from a NABL accredited laboratory

8.2. Flow rate (m³/hr)pre

Data Unit	m ³ /hr
Description	Flow rate delivered for all operating combinations (pre and post implementation)
Source of Data	On site measurement using calibrated portable instruments (flow meter)
Description of measurement methods and procedures to be applied	Instantaneous onsite measurement using portable flow meter
QA/QC procedures to be applied	Calibrated instrument from a NABL accredited laboratory

8.3. Head (Hpre)

Data Unit	meters (m)
Description	Average head delivered for all operating combinations (pre and post implementation)
Source of Data	On site measurement using calibrated instruments
Description of measurement methods and procedures to be applied	Instantaneous onsite measurement using pressure gauge installed at both the suction and discharge side of the pump
QA/QC procedures to be applied	Calibrated instrument from a NABL accredited laboratory

9. Correction Factors and adjustments

In case of deviation in frequency and voltage at the time of post implementation parameter measurements, following correction factors would be applied on parameters of new pump to determine actual. Adjustments factors to be used during M&V are provided in table below:

Factor Affecting	Rationale for adjustment	Adjustment to be made
Variation in supply frequency	As per pump affinity law	$\frac{Q_1}{Q_2} = \frac{N_1}{N_2}$ $\frac{P_1}{P_2} = \left(\frac{N_1}{N_2}\right)^3$ Where, Q is the flow of the meter N is the speed of the shaft P is the power drawn
Voltage Variation	As per BEE guidelines	If the post implementation voltage is 10% higher than pre implementation voltage, power consumption will increase by 0.75% If the post implementation voltage is 10% lower than pre implementation voltage, power consumption will increase by 2%

10. Determination of Savings

- Based on this data, the energy savings would be calculated as given below:

$$\% \text{ savings } (s1) = \frac{((kW_{pre1} - kW_{post1}) \times h1) + ((kW_{pre2} - kW_{post2}) \times h2) + \dots}{(kW_{pre1} \times h1) + (kW_{pre2} \times h2) + \dots}$$

- Where, 1, 2.... represents parameter for different operating combinations of a pump
- h1, h2 represents annual operating hours of a pump in different combinations
- kWpre – Instantaneous power consumption of old pump in a particular combination
- kWpost – Instantaneous power consumption of new pump in a particular combination

- o s1 represents percentage savings of a pump
- Further, aggregate savings at a ULB level would be determined based on weighted average for all pumps:

The aggregate percentage savings at ULB would be

$$\text{aggregate \% savings at ULB} = \frac{s_1 \times e_1 + s_2 \times e_2 + s_3 \times e_3 \dots \dots \dots}{e_1 + e_2 + e_3 \dots \dots \dots}$$

Where, e represents energy consumption of one pump in all combination

$$e_1 = kW_{pre1} \times \text{hour1} + kW_{pre2} \times \text{hour2} + \dots \dots \dots$$

- s1, s2, s3, s4, s5..... are percentage savings for individual pumps replaced at ULB
- e1, e2, e3, e4, e5..... are annual energy consumption of each pump

Format for M&V of savings

Sr. No.	Pumping Station Reference	Operating Combination Reference	Description	kW _{pre EEM} (kW)	kW _{post EEM} (kW)	Hours of Operation (Hrs)	% savings	kWh (Savings)

The total savings as the result of this project is ____kWh corresponding to ____ % (weighted average value)

Signature	Signature	Signature
Name: _____	Name: _____	Name: _____
(EESL)	(ULB)	(Technology Supplier)



SCHEDULE '3' - Payment Schedule

Year	Quarter	Quarterly Amount (INR lakhs)	Yearly total (INR lakhs)
1	1		
	2		
	3		
	4		
2	5		
	6		
	7		
	8		
3	9		
	10		
	11		
	12		
4	13		
	14		
	15		
	16		
5	17		
	18		
	19		
	20		
6	21		
	22		
	23		
	24		
7	25		
	26		
	27		
	28		

Note:

1. The payment schedule will be re-calculated based on the actual tendering cost.
2. Annual reimbursement of insurance cost on the basis of invoice raised by EESL at actual, is additional to above payment schedule as per clause no. 12 of this agreement.

SCHEDULE '4' - Financial Calculation Sheet
To be changed after tendering and during replacement

Financial Assumptions and Inputs

Project Details		
City Name		
State Name		

Capital Cost Related assumption		
Number of Pumps	No.	
Total Cost of Equipment including accessories	INR lakhs	
Cost of pump including motor	INR lakhs	
Cost of NRV	INR lakhs	
Cost of Gate valve	INR lakhs	
Cost of web-based dashboard	INR lakhs	
Installation and Commissioning Cost including testing charges	INR lakhs	
EESL's administrative and establishment charge	%	
Cost of preparation of IGEA report including EESL's service charges (@15%) & applicable GST	INR lakhs	
Total Project Cost w/o Capitalized sheet	INR lakhs	

Commissioning Details		
Total Months for Commissioning	months	
Capitalized interest		
Capitalized interest	INR lakhs	
Total Project Cost	INR lakhs	

Term of the project	years	
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Financing Details		
Debt Percentage	%	
Cost of Debt	%	
Equity Percentage	%	
Cost of Equity (post-tax)	%	

Operational Details		
EESL's administrative and establishment charges	%	
Annual escalation in EESL's administrative and establishment charges	%	

Tax Details		
Income Tax Rate		
Income Tax Rate		
Surcharge		
Education Cess		
GST		

Annuity paid to EESL		
Guaranteed energy savings to ULBs	%	

Year		1	2	3	4	5	6	7	Total
Calculations of annuity payment									
Total Debt to be repaid	<i>INR lakh</i>								
Principal Repayment	<i>INR lakh</i>								
Interest	<i>INR lakh</i>								
Total Equity Repayments	<i>INR lakh</i>								
Recovery of equity investment	<i>INR lakh</i>								
Return on equity	<i>INR lakh</i>								
R&M Charges	<i>INR lakh</i>								
EESL's administrative and establishment charge	<i>INR lakh</i>								
Annuity Payment to EESL	<i>INR lakh</i>								
GST on annuity payment	<i>INR lakh</i>								
Annuity Payment to EESL incl. GST	<i>INR lakh</i>								
ULB Savings									
Total Savings	<i>INR lakh</i>								
Profit to ULB	<i>INR lakh</i>								
% of savings with ULBs	%								

SCHEDULE '5' - Billing Procedure, Payments to EESL and Default Interest

Billing Procedure

1. EESL shall manage and finance the Implementation Project and shall raise its invoices to the ULB towards the fixed annuity amount on quarterly basis (hereinafter referred to as "**Quarterly Payment**") as agreed in this Tripartite Agreement.
2. EESL shall raise the Quarterly Invoice after the "**Commissioning Date**" as defined in the Clause 3.3.
3. EESL shall raise invoices to the ULB on quarterly basis, within fifteen (15) days at the end of each quarterly billing cycle, in respect of the immediately preceding billing quarter (hereinafter referred to as "**Quarterly Invoice**"). Quarterly Invoice shall be raised for completed pumping station/ pumping house in the preceding quarterly billing cycle. The date of EESL's invoice shall be the "**Billing Date**".

Payment mechanism and payment security mechanism

4. State Government shall, no later than 90 days from the Effective Date, provide to EESL, an unconditional, revolving and irrevocable Letter of Credit for an amount equivalent 2 times the Quarterly Invoice (hereinafter referred to as "**Letter of Credit**"), which may be drawn upon by EESL for recovery of the Annuity Payments in accordance with the provisions of this Agreement. The Letter of Credit shall have a validity of twelve (12) months, which has to be extended on year to year basis throughout the Repayment Period;
5. The Letter of Credit is subject, pursuant to its terms, to a fixed expiry date, the State Government shall, not less than thirty (30) days prior to such expiry date, amend or replace or extend the Letter of Credit.
6. The Letter of Credit shall be procured by the State Government from a scheduled/ nationalized bank (other than co-operative banks). All costs and expenses related to opening, operation, maintenance, correspondence, etc. of the Letter of Credit shall be borne by the State Government.
7. ULB shall make the payments, either through Real Time Gross Settlement (RTGS), to EESL for the Annuity Payments as per the Quarterly Invoices within thirty (30) days from the receipt of the Invoice by the ULB (hereinafter referred to as "**Payment Due Date**").
8. If the Payment Due Date is a public holiday, the payment of the invoice shall be made by the ULB on the next working day.

9. A hard copy of such Invoice shall be sent by through person or through prepaid registered post/speed post/courier to the address set out in Clause 17.
10. ULB shall not retain any amount due to EESL under this Tri-partite Agreement or set-off any amount due to it from EESL against any other Implementation Project.
11. If the payment of any amount is disputed related to this Tri-partite Agreement, then the entire undisputed element of that amount shall be paid and the disputed element shall be dealt with in accordance with Clause 13 and 15. Further, ULB/State shall notify the disputed portion or amount of the invoice in writing within 14 (fourteen) days of receipt of the invoice. ULB/State shall identify the specific cause of the disagreement and shall pay the undisputed portion of the invoice. If no such dispute is raised within 14 (fourteen) days from the receipt of invoice, then the entire invoice shall be deemed to be undisputed.
12. In the event of the ULB's failure to pay the Annuity Payments within thirty (30) days from the **Payment Due Date**, EESL may, in its discretion, invoke the Letter of Credit for recovery of the amount due, whereupon the bank shall, without any reference to the State Government/ULB and disputing EESL's claim, pay the amount due upon ULB, presenting the following documents:
 - 12.1. Copy of the quarterly invoice in accordance with Schedule 3 – (Payment Schedule) which has remained unpaid; and
 - 12.2. Certificate from EESL to the effect that the quarterly invoice and that the amount due has remained unpaid.
13. In the event that the amount covered by the Letter of Credit is at any time less than that of the Annuity Payments or is insufficient for recovery of payment due, State Government shall within a period of fifteen (15) days from the date on which such shortfall occurred, cause the Letter of Credit to be replenished and reinstated to the extent specified in Point 4 of this Schedule.

Default interest on late payment

14. If monies due under the Invoice is not paid in full by the **Payment Due Date**, interest equivalent to the prevailing MCLR of State Bank of India (hereinafter referred to as "**Default Interest**") shall be payable additional on the outstanding amount to EESL for the duration starting from the **Payment Due Date** to the actual date of credit of funds and Default Interest into EESL's bank account. **Default Interest** will be calculated on day to day basis (and compounded with monthly rest) on per annum basis, for each day of the delay. EESL will adjust the amount of Default Interest in the subsequent invoice(s). EESL's right to claim Default Interest is without prejudice to any of its right to terminate this Tri-partite Agreement in accordance with this Schedule or any other right or remedy available to it under this Tri-partite Agreement or applicable laws.

SCHEDULE '6' - Reporting Requirement

1. EESL shall intimate/ inform to the nodal officers of ULB and State Government on the following major milestones after the Effective Date:
 - Publishing/ releasing of the tender,
 - Completion of the technical evaluation, and
 - Financial bid opening and final selection of the Identified Supplier(s)
2. After these milestone, EESL shall report to ULB and/ or the State Government as per the mutual consent.
3. After the Project Implementation Period, EESL will submit the "**commissioning report**" to the ULB and/ or the State Government.
4. EESL shall submit the quarterly R&M reports to the ULB and/ or the State Government.

SCHEDULE '7' - Technical Specifications and Service Level Agreements

TECHNICAL SPECIFICATION

1. 3 phase pump sets with rated frequency of 50 Hz at required line to line voltages (415 V, 1.1 kV, 2.2 kV, 3.3 kV, 6.6 kV, 11 kV) shall be supplied.
2. EESL shall replace the existing old pump sets with Energy Efficient Pump Sets/ Bureau of Energy Efficiency (BEE) Star Rated (3 star or above rating) Pump Sets, wherever applicable.
3. The name plate of the EEPS shall mention the make, type of pump set, serial number, nos. of stages (wherever applicable), rating of pump set (in HP and/ or kW), power factor, rated head, rated flow, rated efficiency, phases, connection type, duty, frequency, voltage range, maximum current, BEE star rating (wherever applicable), etc.
4. Material of Construction (MoC) shall be selected so as to maximize and improve the overall efficiency of the EEPS, reduce the input power of the EEPS and increase the life and ruggedness of the EEPS.
5. Nuts, bolts, rivets, adhesives & washers would be of good quality and of suitable size and length. Wherever there is a risk of corrosion, nuts, bolts, rivets, adhesives & washers shall be designed in such a manner that the maximum stress does not exceed the yield stress of the material under any condition.
6. All materials used in the manufacturing of EEPS, shall be free from imperfections and selected for long life and minimum maintenance.
7. Workmanship and general finish shall be of first class quality and in accordance with the best workshop practices.

Service Level Agreements for R&M

1. The authorized representative of the ULB will register a complaint on the complaint number/ email providing details of the fault/ malfunctioning of EEPS or the reason of failure and related details;
2. EESL shall ensure that the complaint is attended within 24 hours from the time of intimation by ULB and fault / reason for failure of the EEPS is verified through the Identified Supplier(s) and the findings will be intimated to the ULB;
3. EESL will not provide R&M of installed EEPS in case the defect is due to improper operation and conditions mentioned in Schedule 8 – (Negative list for R&M). Otherwise, EESL shall repair the defects in EEPS within 48 hours from the intimation and maintain a record of all such R&M activities;

4. EESL shall be liable for penalty if it fails to comply the above timeline, then quantum of penalty will be decided as per the below formula.

For delay of 2 to 5 days

Penalty for delay in R&M = Delay in number of days (48 hours from the intimation to 120 hours from the intimation) X 2 times of per day annuity amount of a pump set

For delay beyond 5 days

Penalty for delay in R&M = Delay in number of days (120 hours from the intimation to till the repair of defects) X 4 times of per day annuity amount of a pump set

Note: The maximum penalty amount per pump set will be equivalent to 4 months annuity amount of a pump set.

5. In the event that EESL fails to repair in above defined timeline, the ULB may perform such repairs to EESL-owned EEPS and other related components and charge the EESL for such repair charges as mutually agreed between EESL and the ULB. The ULB will send the demand note in writing of such repair charges to EESL, with the details of repairs and cost incurred for the same. The ULB will recover such costs of repairs by deductions from the EESL's subsequent invoice(s).

SCHEDULE '8' - Negative list for R&M services

This section presents such possible conditions/ constraints in which R&M services cannot be provided by EESL, in cases where:

1. The EEPS, or part thereof, is transferred and/or operated at a location other than the original place of installation without the prior approval of EESL;
2. The EEPS, or part thereof, is not installed, housed, started, operated (including dry run), and stopped in accordance with the instruction guide provided with the EEPS;
3. The EEPS, or part thereof, is used for a purpose other than the intended use at the time of installation – municipal water pumping and/or sewerage treatment plant;
4. The EEPS, or part thereof, is used for unreasonable periods, and/or under unreasonable conditions, and/or subject to abuse;
5. The EEPS, or part thereof, is subject to misapplication, i.e. outside the guidelines that are specified in the operating and installation manual provided with the product;
6. The EEPS, or part thereof, is used for medium (liquid) other than the intended use at the time of installation. This also applies to operating conditions where operating conditions have been changed due to presence of sludge, foreign bodies, etc.;
7. The EEPS, or part thereof, is operated on voltages or frequencies other than indicated on the rating plate;
8. The EEPS, or part thereof, is run over-loaded.
9. The EEPS, or part thereof, is found subjected to unauthorized tampering including missing or altered serial numbers and/or relocation and/or transfer from the originally installed location
10. The EEPS , or part thereof, is modified or adjusted wholly or in parts as compared to the original EEPS;
11. The EEPS, or part thereof, is serviced or repaired by a person not authorized by the EESL;
12. The EEPS, or part thereof, is run in case of drying of bore/well;
13. The EEPS, or part thereof, is repaired using non-genuine spare parts or components;
14. The EEPS, or part thereof, is affected by storms, flood, draught or infestation by insects or vermin;
15. The EEPS, or part thereof, is affected by any accident or negligence which is not attributable to EESL alone;
16. The EEPS, or part thereof, is stolen;

17. The EEPS, or part thereof, is subject to damage, fault, failure or malfunction caused by external causes;
18. The EEPS, or part thereof, is subject to electrical connection without any proper safeguard for electrical surges, spike and dips, etc.;
19. Any other cause which does not relate to a product defect in materials or workmanship;
20. The EEPS, or part thereof, is damaged due to improper matching of system components;
21. The EEPS, or part thereof, is damaged due to effects of any chemical or electrolytic action;
22. The EEPS, or part thereof, is damaged by excessive physical or electrical stress.