

A1: ANNEXURE-1: DRAFT AGREEMENT BETWEEN MSEDCL &
AGIA

DRAFT AGREEMENT

BETWEEN

MSEDCL and AgIA

For

“Agricultural DSM Pilot Project in Solapur Circle”

THIS AGREEMENT is made and executed on the day of, 2009.

BETWEEN,

Maharashtra State Electricity Distribution Company Limited (MSEDCL) a company incorporated under the Companies Act, 1956, and having its registered office at Prakashgad, G-9, Anant Kanekar Marg Bandra (E), Mumbai – 400 051 (hereinafter referred to as the MSEDCL, which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns) of One Part;

AND

....., a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at (hereinafter referred to as the “ AGIA” which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes) of the Other Part.

Each of MSEDCL and AgIA is referred to individually as a “Party” and collectively as the “Parties.”

WHEREAS:

- A. Maharashtra State Electricity Distribution Company Limited (MSEDCL) is a State-owned electricity distribution company serving over 17.11 million consumers in Maharashtra State except Mumbai with a committed pool of over 75000 employees.
- B. MSEDCL launched a number of initiatives, including the power supply quality enhancements measures like agricultural feeder separation, installation of capacitors on agricultural pump sets under pilot agricultural pump capacitor project in Dindori area of Nasik and pilot CFL program at Nasik.
- C. MSEDCL recognizes that India’s agriculture sector consumes 30% or more of electricity sold and represents as much as 40% of connected load. Electricity used for irrigation pumps (IPs) is highly inefficient with pump efficiencies of 30% and less very common. Pump sets are frequently oversized in order to extract water from ever greater depths and to withstand large voltage fluctuations. These arrangements are inefficient due to a) improper selection and installation, b) the use of high-friction piping, c) inadequate maintenance, d) poor quality of power supply and e) use of inefficient design of motors and pumps. Experience in India has demonstrated that the energy required to deliver a given amount of water can be reduced by about 40% to 60% simply by replacing the inefficient pump set with a smaller, more efficient and “right-sized” pump set and installing a low-friction foot valve and piping. However, farmers are unwilling to invest in these improvements

because the present tariff regime does not provide a financial incentive to do so and because poor voltage conditions preclude it.

- D. Identifying that the agricultural consumption in the company is of sizable amount and highly subsidized, BEE in co-ordination with MSEDCL has designed a demand-side management initiative specific to the agricultural sector. MSEDCL is planning Agriculture Demand Side Management project at Mangalwedha Sub-division (Pilot Ag DSM) as a pilot project with a view to implementing the model in other areas based on the success of the project under consideration.
- E. MSEDCL sought proposals from leading Energy Service Companies / Pump Manufacturers for participation in this pilot project. After evaluation of the bids received and holding discussions with successful bidder, MSEDCL accepted the bid of (‘ AGIA’ herein).
- F. The MSEDCL and AgIA agreed to enter into this Agreement for the execution of the Project, subject to and on the terms and conditions set forth hereinafter.

NOW THEREFORE in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the sufficiency and adequacy of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE – 1

SCOPE OF THE PROJECT

1.1 Project title

This program will be titled “Agricultural DSM Pilot Project in Solapur Circle ”

1.2 Proposed Project Work

In addition to the MSEDCL, AgIA, and consumers, the other important parties including, the Maharashtra Electricity Regulatory Commission (MERC) and any NGO shall be involved to confirm the value of energy saved as well as educating farmers and helping them maximize the benefits of this program and play crucial role in monitoring and verification.

The key elements of the pilot **Ag DSM (Agricultural Demand Side Management)** project are given below.

- i. Under the phase I of pilot Ag DSM project at Mangalwedha Subdivision, MITCON consultancy services Pvt. Ltd. has prepared a Detailed Project Report (DPR) and submitted it to BEE, MSEDCL and MERC in July, 2009. The DPR is prepared in a way to provide an insight to MSEDCL and AgIA for making investments in implementing energy efficiency measures on irrigation pump sets connected on agricultural segregated feeders.
- ii. The DPR is prepared after an exhaustive field study and detailed energy audit for pump sets connected on all the four project feeders considered under the pilot project. During the energy audit study detailed information (about all the agricultural consumers) such as details about pumps (number, Type, make, age and rating), water requirements / consumption, status of meter installation, number of harvesting cycles, cropping pattern, underground water level in different seasons, power supply pattern and socio-economic conditions etc. was collected and analyzed.
- iii. Implementation of pilot Ag DSM project shall benefit the following consumer categories
 - a. Tariff Category LT IV: Metered Agricultural Consumers
 - b. Tariff Category LT IV: Un-metered Agricultural Consumers
- iv. Under the pilot Ag DSM project, 3530 agricultural pump sets connected on five feeders (Bramhapuri, Nandeshwar, Borale, Bhose & Kharatwadi) in Mangalwedha & Pandharpur subdivisions shall be replaced with **Energy Efficient Pump Sets (EEPS)**. Table 1 below gives the feeder wise no. of pump sets that will be replaced:

Table 1: Pilot Ag DSM Project Feeder Details

Sr No.	Name of 11 kV Feeder	Total Agricultural Connections
1	Bramhapuri	580
2	Nandeshwar	884
3	Borale	852
4	Bhose	684
5	Kharatwadi	530

- v. The AgIA shall be responsible for dismantling the existing pump sets in the above mentioned feeders, procurement of EEPS (**Energy Efficient Pump Sets**), installation of EEPS, testing, maintenance and repair/replacement.
- vi. The AgIA shall finance, implement and operate the pilot project for the term of this agreement.
- vii. Farmers shall be provided (EEPS) free of cost. They will also be provided with free installation of the EEPS. The EEPS shall be procured with a minimum warranty of 12

months (1 year) by pump set manufactures. The total R&M of 60 months shall be provided with no cost to the farmers by the AgIA.

- viii. The AgIA shall dismantle the existing pumps and keep an inventory of old pumps (with proper tagging of consumer ID) for the first year. Disposal of old pumps should then be undertaken in a manner that precludes their use or reinstallation in any form anywhere in India. The AgIA shall provide a written assurance to MSEDCL describing the manner of disposal. MSEDCL shall have the right to audit or hire a third-party auditor to confirm the appropriate disposal of all old pumps. The disposal of old pumps shall be carried out in the following manner:
 - 1. Photograph of old and new pump-set with consumer details shall be taken
 - 2. Before disposal of old pump sets, a hole of appropriate size shall be made in the pump set in the presence of Third Party
- ix. The term of the project shall be for a period of five years from the Effective Date of completion of replacement of all the existing pumps with EEPS. The start date shall be when all EEPS have been commissioned by AgIA.
- x. The AgIA shall be responsible for dismantling the existing pump sets, procurement of EEPS (**Energy Efficient Pump Sets**) and installation from the date of signing of the contract with MSEDCL.
- xi. MSEDCL shall provide the data and support necessary for the AgIA to achieve desired results. MSEDCL shall be responsible for operation, maintenance and repair/replacement of power supply system to EEPS.

ARTICLE 2

SPECIFICATIONS

- 2.1 SPECIFICATIONS of Energy Efficient Pump Sets (EEPS) installed:**
The AgIA shall install EEPS as per the specifications specified as below:
- a. BEE Star rated Pump sets (4star & above) subject to availability of EEPS in the Market
 - b. Wide-voltage (should be operating at low voltage) Monoblock and open well & bore well Submersible pump sets.
 - c. The discharge rate of the EEPS shall not be lower than the existing pump sets of the farmers.
 - d. EEPS installed shall be of the same type (Monoblock / Open well Submersible / Bore well Submersible) as the existing pump sets.
 - e. Low-friction foot valve, conforming to relevant ISI Standard & specification.
- 2.2** The AgIA shall install EEPS with capacitor banks of relevant ratings as per the pump set requirement.

ARTICLE 3

MEASUREMENT AND VERIFICATION OF ENERGY SAVINGS

3.1 Measurement of Energy savings

- a A Third Party agency shall test all the existing pump sets as well as the EEPS at the time of replacement.
- b A Third Party agency in the presence of AgIA and MSEDCL shall test all the existing pump sets as well as the new EEPS at the time of replacement. The base-line and energy savings for the first six months shall be estimated based on this initial testing & average annual hours of operation of pump sets - 1640 Hrs (deemed savings approach).
- c For subsequent period of the project, a stratified random sampling technique shall be used to select the pump sets to be tested. Stratification criteria shall be the type and the rating of the pump sets. An estimated size of 10% of the total no. of pump sets shall be tested randomly every year.
- d The sample pump sets shall be tested by Third Party in the presence of MSEDCL and AgIA annually for demonstrating the savings. The pump sets shall be selected randomly every year based on the approach mentioned in above clause.
- e This information is then be used to stipulate annual savings based on the estimate of the average operating hours / annum (1640 Hrs) (Deemed Saving Approach)
- f Third party monitoring and verification agency could be a local NGO / Technical Institute etc. and will be appointed by BEE with a prior approval of MSEDCL.
- g In addition to the above, a Third party shall also conduct meter reading which can be verified or audited by MSEDCL.
- h Many factors affect the baseline and performance of the EEPS installed over time during the course of the project. Baseline established in the first year (during replacement of pump sets) will not be adjusted for any change in parameters affecting the baseline. There shall also not be any adjustments /corrections (resulting from change in parameters) made to the annual performance of the pump sets demonstrated by the AgIAs.

- i In the first six months of the project, performance of EEPS installed shall be demonstrated at the time of replacement where as in subsequent years performance of EEPS shall be demonstrated annually.
- 3.2 Energy savings shall be priced at Rs 2.70 / kWh for all the years of the project cycle.

ARTICLE 4

WORK COMPLETION SCHEDULE

- 4.1 The work relating to invitation of tenders, finalization of terms and conditions including project conditions, supply of new pump sets, execution of ownership agreements with farmers / consumers, replacement of existing pump sets and Installation of EEPS shall be completed within six months after commencement of the agreement, as per the program given in Bid /Schedule.

ARTICLE 5

DUTIES, RESPONSIBILITIES AND OBLIGATIONS OF AgIA

TheAgIA shall be responsible for planning, financing, implementing and operating the Project as per the terms and conditions indicated below:

5.1 Arranging for finance

- (a) AgIA to arrange finance for the initial capital investment required for purchase of EEPS, dismantling and installation, replacement of foot valve and bends and testing of old & EEPS.
- (b) Submit details to MSEDCL regarding arrangement of finance and detailed terms and conditions therefore

5.2 Equipment procurement / purchase of new pump sets

- a) TheAgIA will be responsible for planning the EEPS procurement and submit a detailed plan (giving the time frame) required to replace existing pump sets (Dismantle and Install) to MSEDCL for its approval.
- b) AgIA to purchase all the pumps after finalizing terms and conditions with MSEDCL including the terms for the project
- c) Check each of the Pump Sets received to ensure they are as per specifications and in working order
- d) Ensure that the new EEPS meet the mandatory specifications. TheAgIA shall provide a protective system for preventing any damage to the EEPS resulting from voltage fluctuations. In case, EEPS burn out due to low voltage, AgIA shall repair the EEPS free of cost.

- e) Ensure that the R&M period is for minimum of 60 months (5years).AgIAhas to ensure that the minimum warranty period of 12 months will be provided by pump manufacturer.
- f) Assigning separate serial numbers and markings in the casting are recorded and maintained.
- g) Ensuring that all new EEPS installed have a unique serial number on the name-plate in addition to the marking in the castings for identification with the program and for project obligations. Such markings shall be readily visible above ground and duplicated if necessary.
- h) Providing the customer with a letter indicating the date of service, serial number, capacity, make and the program under which it is installed. A copy of the letter shall be provided to MSEDCL.

5.3 **Interaction and agreement with farmers / consumers**

- (a) Finalize with MSEDCL, initiate and implement the process of
 - Publicity, education, training and motivation of farmers / consumers regarding benefits of replacement of old pump sets with new pump sets.
 - Explaining the terms and conditions for use and maintenance of the new pump sets.
- (b) Collect the consumer details like serial number for the new EEPS, identification details and customer name, contact number and address.
- (e) Execute the Ownership Agreement with farmers. AgIA shall ensure that the agreement bet. Farmer & AgIA is translated in Marathi & approved by MSEDCL before the agreement is duly signed by both the parties. After signing of the Agreement, AgIA shall provide a copy of the Agreement to the farmer/Consumer.
- (f) Send reports to MSEDCL along with copies of the agreements executed with the farmers/consumers.

5.4 **Training / education of farmers / consumers in the proper use and maintenance of new pump sets**

- (a) Organize continuous periodical process of training and education for farmers / consumers for proper use and maintenance of the new pump sets, during the term of this Agreement.
- (b) Obtain regular feedback regarding operation of the NEW EEPS.
- (c) Send monthly reports to MSEDCL with feedback and remedial action, if any, to be taken as also suggestions / recommendations.

5.5 **Removal and disposal of existing pump sets**

After execution of Agreement with Farmers / Consumers, for replacement of existing pump sets with new ones, ensure timely removal and disposal of old pump sets as per agreed time schedules with MSEDCL

- (a) Remove the existing old pumps sets and keep an inventory of old pumps (with proper tagging of consumer ID) for one year.
- (b) Dismantle and dispose off the old pump sets to preclude their use or installation anywhere in India.
- (c) Ensure that the disposed off pumps or any other old pump sets are not reinstalled / used by the participating farmers/customers.
- (d) Give written assurance and report to MSEDCL describing the manner of disposal of old pump sets.
- (e) The disposal of old pumps shall be carried\ out in the following manner:
 - Photograph of old and new pump-set with consumer details shall be taken
 - Before disposal of old pump sets, a hole of appropriate size shall be made in the pump set in the presence of Third Party
- (f) Assist MSEDCL's representative / appointed auditor to conduct audit to confirm the appropriate disposal of all old pumps and steps to ensure that they are not re-installed.

5.6 **Installation & commissioning of new pump sets**

AGIA shall ensure that:

- a. The work shall be started within fifteen days from the date of signing the contract with MSEDCL.
- b. Ensure replacement by and installation of all the new EEPs, after execution of individual agreements, as per agreed time schedule and ensure that they are in proper working order and properly handed over to the concerned customer/farmer, and receipt obtained.
- c. Ensure that all EEPs installed have a unique serial number on the name plate in addition to the marking in the casting for identification with the program and for project obligations. Such markings shall be readily visible above ground and duplicated if necessary.
- d. After installation, provide the customer with a letter indicating the date of service, serial number, capacity, make and the program under which it is installed. A copy of the letter is to be provided to MSEDCL.
- e. Send timely reports to MSEDCL as per the prescribed procedure.

5.7 **Operation & Maintenance (O&M) program / services**

O&M services by AgIA shall be provided for 60 months and include, but not be limited to,

- (a) Establish and maintain an office at the site in Solapur & Pandharpur to provide O&M Services with posted hours of opening along with posted procedures and phone numbers to obtain off-hours support.
- (c) Maintenance and repair or replacements of defective pump sets; maintenance of records regarding replacements; return of defective pump sets to the suppliers.
- (d) Customer support to farmers to ensure optimum performance of pumps.
- (e) Monitoring of pump operation and efficiency.
- (f) On-call emergency service.
- (g) Maintaining inventory of spare pumps to be installed in the event of pump failure. In case of failure of any EEPS, the AgIA shall be responsible for servicing/replacement of the pumps as the case may be.
- (h) Manage an ongoing communication and education program to encourage correct behaviours from farmers.
- (i) Develop, obtain consent / approval from MSEDCL and farmers and manage a protocol to ensure that the initial efficiency gains are sustained.
- (j) Ensuring regular O&M works relating to pump set maintenance during the contract and project period.
- (l) Provide monthly reports to MSEDCL on the progress of the Ag DSM project, problems that arise and corrective action taken as well as any recommended actions for MSEDCL. Also follow up to ensure that MSEDCL responds to such recommendations in a timely manner to ensure efficiency gains are sustained.

5.8 Procedure for replacement under project

AgIA has an obligation to ensure that the project or extended project given on the EEPS installed under this program is honored. The procedures for EEPS replacement are as follows:

- a) The customer shall be required to return the failed EEPS to the AgIA, providing the reason of failure and submit the proof of installation as made under above scheme. A copy of the agreement between AgIA and farmer shall be considered as a valid proof of installation.
- b) The AgIA shall replace the EEPS (within 48 hours after returning the failed EEPS) and shall mark in the original letter confirming the issue of the replaced EEPS number and the date.
- c) The AgIA is required to promptly replace any EEPS that fails during the project or extended project period and inform MSEDCL accordingly.

- d) The AgIA shall keep a record of the new EEPS and provide this information to the MSEDCL program administrator / Project Manager monthly as per agreed report Performa and procedure.

5.9 **Conducting periodic performance demonstration**

- (a) Third Party Agency shall carry out periodic performance demonstration of sample (10% selected randomly every year) pump sets of different type and size during the contract period. The periodic performance shall be demonstrated in the presence of AgIA and MSEDCL representative.
- (b) Provide reports to third party monitoring and verification agency and MSEDCL regarding periodic performance findings and their impacts on the energy savings.
- (c) Suggest improvements, if any, required in the program as also help required from MSEDCL.

5.10 **Bank Guarantee**

As security against project obligations, AgIA (Successful Bidder) shall provide a bank guarantee to MSEDCL of Rs. 18,00,000/- (Rupees eighteen lakhs only), from the Bank and in the form, as acceptable to MSEDCL. The Bank guarantee shall be returned to AgIA at the end of the term of project.

The following shall cause the forfeiture of the Bank Guarantee

1. If the successful Bidder fails to executes the Agreement within the stipulated time or any extension thereof provided by MSEDCL;
2. If any information or document furnished by the Bidder turns out to be misleading or untrue in any material respect.

ARTICLE 6

MSEDCL'S DUTIES, RESPONSIBILITIES AND OBLIGATIONS

6.1 Project initiation & development

MSEDCL shall provide all the data to the AgIA to identify the agricultural consumers connected on the pilot project feeder lines and to achieve desired results.

6.2 Ensuring quality of supply

MSEDCL shall ensure good power supply quality and load management system in the pilot area. MSEDCL also shall install meters on all EEPS installed to continuously monitor their operation.

6.3 Field support

MSEDCL shall provide necessary support to the AgIA at the field level, as may be required by AgIA from time to time, including, amongst others, regarding access to consumer premises, replacement of existing pump sets, recovering old pump sets and signing ownership agreement with the farmer/consumer.

6.4 Maintenance of Power Supply System (line, transformer, meter etc)

MSEDCL shall be responsible for operation and maintenance of power supply system. MSEDCL shall promptly attend to any break down including repair or replace or replacement of any equipment used/needed for maintaining electricity supply.

MSEDCL shall have the right to reconfigure the feeders and to implement the power supply quality enhancement measures in order to improve network efficiency, load balancing, feeding sub-stations etc. MSEDCL shall update AgIA of all such changes. However, MSEDCL shall not change the relationship between distribution transformers and EEPS covered in this project.

6.5 Measurement & verification of savings

MSEDCL shall make payments on quarterly basis to the AgIA based on “guaranteed energy savings” derived through deemed saving approach and any related negotiations as per the details given in this Agreement.

ARTICLE 7

CARBON CREDITS

- 7.1 The Parties recognize that CDM benefits are necessary for the viability of the Agricultural DSM Pilot Project.
- 7.2 The AgIA shall have the total responsibility and shall bear all costs relating to all activities for registration and issuance of Certified Emission Reductions (or Verified Emission Reductions as applicable) from the Agricultural DSM Pilot Project. These activities shall include preparation of Project Design Document, conducting local stakeholder consultation, obtaining host government approval, validation, registration, monitoring and verification, issuance, appointment of consultants and validators/verifiers, legal counsels, etc.
- 7.3 The revenues derived from the carbon credits will be shared between MSEDCL and the AgIA on equitable basis, after adjusting the costs incurred pursuant to Clause 7.2.
- 7.4 Any further issues regarding the realization of benefits from carbon credits shall be mutually negotiated between both MSEDCL & AgIA

ARTICLE 8**TERMS AND CONDITIONS OF PAYMENT**

- 8.1 MSEDCL shall be obliged to pay, on a quarterly basis after successful installation of all the EEPS within the stipulated time period of six months.
- 8.2 The annual payment from MSEDCL to the AgIA shall be the sum of following two components:
- 1) INR 141.26 lakhs from the LMC fund – subject to ‘guaranteed annual energy savings’ derived from competitive bidding
 - 2) The monetized value of annual energy savings to be shared with the AgIA as determined in clause 8.3
- 8.3 **The basic elements of the calculation are as follows:**

No.	Particulars	Remarks																					
1	Contract Term: 5 yrs	The term of the project shall be for a period of five years from the Effective Date of completion of replacement of all the existing pumps with EEPS.																					
2	Target feeders	<table border="1"> <thead> <tr> <th colspan="3">Sub Station Details</th> </tr> <tr> <th>Name</th> <th>Code</th> <th>Name</th> </tr> </thead> <tbody> <tr> <td>Bathan</td> <td>274028</td> <td>Bramhpuri</td> </tr> <tr> <td>Hunnur</td> <td>274032</td> <td>Bhose</td> </tr> <tr> <td>Mangalwedha</td> <td>274033</td> <td>Borale</td> </tr> <tr> <td>Nimboni</td> <td>274034</td> <td>Nandeshwar</td> </tr> <tr> <td>Mendhapur</td> <td></td> <td>Kharatwadi</td> </tr> </tbody> </table> <p>All the five feeders belong to Mangalwedha & Pandharpur sub-divisions of MSEDCL.</p>	Sub Station Details			Name	Code	Name	Bathan	274028	Bramhpuri	Hunnur	274032	Bhose	Mangalwedha	274033	Borale	Nimboni	274034	Nandeshwar	Mendhapur		Kharatwadi
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Nimboni	274034	Nandeshwar																					
Mendhapur		Kharatwadi																					
3	No. Targeted Pump-sets	3530																					
4	Energy savings sharing %	The percentage sharing between MSEDCL and AgIA shall be as follow,																					

		<p>% retained with MSEDCL:70%.....</p> <p>% shared with AgIA:30%.....</p>
5	Base level energy consumption	Baseline energy consumption is estimated based on KW measured at the motor input terminal of all the pumps prior to the replacement of the existing Pump sets multiplied by operating hours of 1640 Hrs per annum as specified in bidding documents / DPR. The baseline established remains same for 5 years of the project.
6	Energy consumption by EEPS	<p>For first six months of the term - based on the initial testing & average annual hours of operation of pump sets of 1640 Hrs.</p> <p>For subsequent period of the project – based on the testing of sample of 10% of EEPS selected randomly every year & average annual hours of operation of pump sets of 1640 Hrs.</p>
7	Quantum of energy saved or “guaranteed annual energy savings”	Base level energy consumption minus the Energy Consumption by EEPS (Item no.5-Item no.6)
8	Periods for Demonstration of “guaranteed annual energy savings	<p>a. Initially, at the time of replacement of all the old pumps by EEPS</p> <p>b. After a period of six months from the start date of the project</p> <p>c. Then every year from the second demonstration for the balanced project period</p>
9	Pricing of energy savings	"Energy savings shall be priced at Rs 2.70 / kWh for a project period of five years”

10	Monetized value of annual energy savings to be shared with the AgIA	<p>Energy savings (Item No.7) times the price of energy saved (Item No.9), times percentage of energy savings to be shared with AgIA (Item No. 4)</p> <p>This may be expressed as:</p> $= E \times T \times 30\%$ <p>Where, E = Energy Savings (kWh) – item no. 7 T = Average power tariff charged by MSEDCL (Rs / kWh) – item no. 9 30% = Percentage of savings shared with the AgIA</p>
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8.4 The quarterly payment from MSEDCL to the AgIA shall be determined on a pro rata basis based on the annual payment mentioned as per clause-8.2. This payment shall be subject to demonstration of energy savings committed by the AgIA derived from competitive bidding. However, the payment from LMC fund shall be proportionately increased/decreased as per the actual no. of pump sets replaced & operational as certified by the Third Party.

8.5 Penalty for Non-performance

- a) In case the AgIA shall achieve less energy savings with respect to the committed % derived from competitive bidding, the annual payment from LMC fund (INR 120 lakhs) shall be reduced in the same proportion of reduction in the energy savings achieved. E.g. in case the guaranteed energy savings is 35% and achieved energy saving is 28%, then the annual payment from LMC fund (INR 120 lakhs) shall be reduced by 20% i.e. by 24 lakhs.
- b) In addition, if the EEPS are not installed and operated at the end of the initial six month period, the AgIA shall pay penalty of Rs 100 per day per EEPS not installed, with a maximum limit of 5% of cost of balanced pump sets which are not installed subject to the operational condition of old pumps that are not working.

8.6 Payment Mechanism

- a) The AgIA shall raise an invoice (3 copies) to SE, Solapur, MSEDCL for the agreed amount as per the contract on the 7th (seventh) working day (excluding weekends and holidays) of every quarter detailing the following.
 - i. Target feeder details
 - ii. Number of targeted pump sets

- iii. Energy savings sharing percentage with AgIA
 - iv. Base level energy consumption
 - v. Energy consumption by EEPS in the current quarter
 - vi. Quantum of energy saved (guaranteed energy savings)
 - vii. Pricing of energy savings
 - viii. Amount payable to the AGIA for the quarter
- b) MSEDCL shall arrange payment to the AgIA every quarter within 30 (Thirty days) of the receipt of invoice from the AgIA.

ARTICLE 9

COVENANTS, REPRESENTATIONS AND WARRANTIES

9.1 Representations and Warranties of the AgIA

The AgIA represents and warrants to the MSEDCL that:

- (a) 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 Agreement and to carry out the transactions contemplated hereby;
- (b) It has taken all necessary corporate and other actions under Applicable Laws to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) It has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (d) This Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement shall be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (e) The information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- (f) The execution, delivery and performance of this 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 Memorandum and Articles of Association {or those of any member of the Consortium} 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;

- (g) 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 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 Agreement;
- (h) It shall at no time undertake or permit any Change in Ownership except with prior permission from MSEDCL;
- (i) It has the financial standing and resources to fund the required for undertaking and implementing the Project in accordance with this Agreement;
- (j) It has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (k) All its rights and interests in the Project Works shall pass to and vest in the MSEDCL on the expiry of the term of this Agreement free and clear of all liens, claims and encumbrances, without any further act or deed on its part or that of the MSEDCL;
- (l) No representation or project by it contained herein or in any other document furnished by it to the MSEDCL contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or project; and
- (m) The AgIA acknowledges that prior to the execution of this Agreement, it has, after a complete and careful examination, made an independent evaluation of the Request for Proposals (RFP), Scope of the Project, Specifications and Standards, Site, local conditions, and all relevant information provided by the MSEDCL 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.

The AgIA makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it.

9.2 Representations and Warranties of the MSEDCL

The MSEDCL represents and warrants to the AgIA that:

- (a) It has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein

and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;

- (b) It has taken all necessary actions under the Applicable Laws to authorize the execution, delivery and performance of this Agreement;
- (c) It has the financial standing and capacity to perform its obligations under the Agreement;
- (d) This Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) There are no actions, suits or proceedings 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 default or breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform its obligations under this Agreement;
- (f) It has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on it's ability to perform its obligations under this Agreement;

The MSEDCL makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it.

9.3 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 untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or project that has been found to be untrue or incorrect nor shall it adversely affect or waive any obligation of either Party under this Agreement.

9.4 Indemnitees

Each party shall release, defend, indemnify, and hold harmless the other party and their respective directors, officers, agents, and employees (each individually an "Indemnitee" and collectively "Indemnities"), from and against any and all losses, claims, demands, costs, damages, liabilities (joint and several), reasonable expenses of any nature (including attorney's fees and disbursements and expenses incident to establishing the right to indemnification), judgments, fines, settlements, and other amounts, whether or not arising out of the negligence of the Indemnities, to the extent arising out of or related to any products, services, operations of each party, the conduct of business or from any other activity, work, or thing done, permitted or suffered by the party under this agreement including without limitation: (i) injury to or death of any person or persons, including

employees of the party , or loss, damage, or destruction of any property, and (ii) each Party's provision of any personnel, services, and facilities under this agreement; provided, that no such right of indemnification shall exist in any case where the act or failure to act giving rise to the claim to indemnification is finally adjudicated to have constituted willful misconduct or recklessness on the part of the party seeking indemnification and further provided that the right of indemnification shall not apply to the extent of each party's indemnity obligations to the other party pursuant to the provisions of this agreement.

In case of any insurance undertaken by the owner, any liability or obligation that may arise due to any loss, damage, liability, payment, obligation or expense which is insured or for which the owner can claim compensation, under any Insurance shall not be charged to or payable by MSEDCL.

If a Natural Force Majeure Event renders the EEPS no longer economically and technically viable and the insurers under the Insurances make payment on a "total loss" or equivalent basis, MSEDCL shall have no claim on such proceeds of such Insurance.

ARTICLE 10

MONITORING OF THE PROJECT

10.1 Monthly progress reports

During the term of this Agreement, the AgIA shall, no later than 7 (seven) days after the close of each month, furnish to the MSEDCL a monthly report on progress of the Project in the prescribed form, besides other reports as provided in this Agreement, by MSEDCL as in Scheduleand shall promptly give such other relevant information as may be required by MSEDCL or its authorized representatives or agents.

10.2 Inspection and Tests

- a) During the term of this Agreement, MSEDCL's Project Manager or any other authorized representative of MSEDCL shall inspect the Project from time to time without any prior notice.
- b) For determining that the Project Works conform to the Specifications and Standards, the MSEDCL Project Manager or any of its authorized representatives shall require the AgIA to carry out or cause to be carried out tests, at such time and frequency and in such manner as may be specified by the MSEDCL Project Manager or any of its authorized representative from time to time, in accordance with Good Industry Practice for quality assurance. The AgIA shall, with due diligence, carry out or cause to be carried out all the tests in accordance with the instructions of the MSEDCL Project Manager or any of its authorized representatives and furnish the results thereof to him.
- c) The MSEDCL Project Manager or any of its authorized representatives shall make a report of such inspection and Tests stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Scope of the Project and Specifications and Standards. It shall send a copy of the Inspection Report to the MSEDCL and the AgIA within 7 (seven) days of such inspection.
- d) Upon receipt of the Inspection Report, the AgIA shall rectify and carry out remedial measures of the defects or deficiencies, if any, stated in the Inspection Report and furnish a report to the MSEDCL in this behalf.
- e) Such inspection or submission of Inspection Report by the MSEDCL Project Manager shall not relieve or absolve the AgIA of its obligations and liabilities hereunder in any manner whatsoever.

ARTICLE 11

INTELLECTUAL PROPERTY AND CONFIDENTIALITY

11.1 Intellectual Property

- (a) Each Party represents warrants and agrees to the other Party that it shall:
 - (i) Not use nor represent (in any manner whatsoever) the other Party's Intellectual Property as their own;
 - (ii) Treat the other Party's Intellectual Property as Proprietary Information, and use and disclose it only as set forth herein; and
 - (iii) Not do anything which, in the opinion of either Party, may bring the interests of such Party or any of its Affiliates into disrepute or damage the interests of such Party or any of its Affiliates in any way; and
 - (iv) Formulate ways in which a record is maintained giving details of a Party's Intellectual Property made available to the other party.

11.2 Confidentiality

- (a) Each Party shall keep confidential all information and other materials passing between it and the other Party in relation to the transaction contemplated by this Agreement that is provided to the other Party that is technical information in the form of designs, concepts, requirements, specifications, software, interfaces, components, processes, or the like, as well as all the information concerning the parties (including all information concerning the business transactions and the financial arrangements (" Proprietary Information")), shall not without the prior written consent of the other Party, divulge the Information to any other Person, and shall use it only as necessary to accomplish the scope of work as set forth in this Agreement.
- (b) A receiving Party shall limit access to Proprietary Information it receives to its employees who have a "need-to-know" the Proprietary Information for the purposes of this Agreement, provided that such employees and affiliates are under an obligation to hold such information in confidence under confidentiality obligations at least as restrictive as those in this Agreement.
- (c) Proprietary Information is and remains the property of the originating Party. Except as set forth herein, the receiving Party receives no right or license under any patents, copyrights, trade secrets, or the like of the originating Party.
- (d) A receiving Party shall satisfy its obligations to protect Proprietary Information from misuse or unauthorized disclosure. Such care will include protecting Proprietary Information using those practices the receiving Party normally uses to restrict disclosure and use of its own information of like importance. A receiving Party shall be liable if it accidentally discloses

Proprietary Information while exercising reasonable care, provided that, upon discovery of such disclosure, the receiving Party attempts to retrieve the Proprietary Information and reviews its practices to attempt to prevent any further accidental disclosures.

- (e) This Agreement does not restrict disclosure or use of information otherwise qualifying as Proprietary Information if the receiving Party can show that any one of the following conditions exists:
- (f) The receiving Party knew the information and held it without restriction as to further disclosure when the originating Party disclosed the information under this Agreement;
 - (i) The receiving Party develops the information independently;
 - (ii) Another source lawfully disclosed the information to the receiving Party and did not restrict the receiving Party in its further use or disclosure;
 - (iii) The information was already in the public domain when the originating Party disclosed it to the receiving Party; entered the public domain after the originating Party disclosed it under this Agreement, but through no fault of the receiving Party; or became generally known, but through no fault of the receiving Party;
 - (iv) The information is approved for release by written authorization of the originating Party; or
 - (v) The information was disclosed in response to a subpoena or court order duly issued in a judicial or legislative process, provided that the subpoenaed Party notified the originating Party of the subpoena as soon as is reasonably possible to the disclosure, unless such notice could not reasonably be extended.

ARTICLE 12

TERMINATION

12.1 In the event that any of the defaults specified below shall have occurred, and the AgIA fails to cure the default within a Cure Period of 60 (sixty) days, the AgIA shall be deemed to be in default of this Agreement (the “ AgIA Default”), unless the default has occurred solely as a result of any breach of this Agreement by the MSEDCL or due to Force Majeure. The defaults referred to herein shall include but not be restricted to:

- (i) The AgIA has failed to procure and arrange requisite finances for the implementation of the project within 30 days from the execution of this Agreement;
- (ii) The AgIA abandons the implementation of the Program;

- (iii) The AgIA repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (iv) AgIA fails to procure new EEPS in accordance with the specifications and standards as provided under this Agreement ;
- (v) AgIA fails to provide substantial O&M support in accordance with the terms of this Agreement;
- (vi) AgIA fails to provide Bank Guarantee of Rs. 18,00,000/- (Rupees eighteen Lakhs Only) from a Bank acceptable to the MSEDCL within the specified period;
- (vii) The AgIA is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for theAgIAor for the whole or material part of its assets that has a material bearing on the Project;
- (viii) The AgIA has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the MSEDCL, a Material Adverse Effect;
- (ix) A resolution for winding up of the AgIA is passed, or any petition for winding up of theAgIAis 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 theAgIAis ordered to be wound up by Court;
- (x) Any representation or project of the AgIA herein contained which is as of the date hereof, found to be materially false or the AgIA is at any time hereafter found to be in breach thereof.

Without prejudice to any other rights or remedies which the MSEDCL may have under this Agreement, upon occurrence of an AgIA Default, the MSEDCL shall be entitled to terminate this Agreement by issuing a Termination Notice to the AGIA.

12.2 In the event that any of the defaults specified below shall have occurred, and the MSEDCL fails to cure such default within a Cure Period of 90 (ninety) days, the MSEDCL shall be deemed to be in default of this Agreement (the “MSEDCL Default”) unless the default has occurred as a result of any breach of this Agreement by theAgIAor due to Force Majeure. The defaults referred to herein shall include:

- (a) The MSEDCL commits a material default in complying with any of the provisions of this Agreement and such default has a material adverse effect on the AgIA;
- (b) The MSEDCL has continuously failed to make any payment on more than three occasions to the AgIA within the period specified in this Agreement;

- (c) The MSEDCL repudiates this Agreement

ARTICLE 13

FORCE MAJEURE

- 13.1 If either Party is prevented, directly or indirectly, from performing any obligation under this Agreement or arising in connection herewith, by reason of Acts of God, 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 “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 twenty four (24) hours of the occurrence of any such circumstances with all pertinent facts relating thereto.
- 13.2 Non-performance of an obligation pursuant to this section shall not terminate this Agreement in respect of the obligations affected by the event of Force Majeure; they shall be resumed upon the cessation of the event of Force Majeure. In respect of the obligation not affected by the event of Force Majeure, the parties shall perform them as if no event of Force Majeure had occurred.
- 13.3 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 minimise the consequences of such Force Majeure.

ARTICLE 14

GOVERNING LAW AND DISPUTE RESOLUTION

- 14.1 This Agreement and all disputes, claims or controversies arising out of, in connection with or relating to this 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 within the jurisdiction of the court of Mumbai city.
- 14.2 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “Dispute”) shall, in the first instance, be attempted to be resolved amicably
- 14.3 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this 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.

- 14.4 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.
- 14.5 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 under the provisions of Arbitration & Conciliation Act, 1996
- 14.6 The venue of such arbitration shall be Mumbai, and the language of arbitration proceedings shall be English.
- 14.7 There shall be a Board of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the provisions of the Arbitration & Conciliation Act, 1996 and the Rules made there under.
- 14.8 The arbitrators shall make a reasoned award (the “**Award**”). Any Award made by the Arbitral Tribunal shall be final and binding on the Parties as from the date it is made, and the parties agree and undertake to carry out such Award without delay.
- 14.9 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

ARTICLE 15

DEFINITIONS AND INTERPRETATIONS

15.1 DEFINITIONS

The following terms used in this Agreement shall have the following meanings:

Ag DSM: Agricultural Demand Side Management refers to a type of utility program designed to reduce power demand on the utility by changing the existing pump set with energy efficient one. The objective is to reduce the maximum demand (i.e. peak load) by either an absolute reduction in demand or by shifting it to off-peak periods.

“Applicable Law(s)” shall mean laws of the Republic of India including, among other things, all applicable statutes, enactments, acts of legislature, ordinances, rules, by-laws, regulations, notifications, guidelines, policies, directions, directives and orders of any governmental authority, tribunal, board or court;

Bureau of Energy Efficiency (BEE): A statutory body formed under the energy conservation act 2001.

Bureau of Indian Standards (BIS): Bureau of Indian Standards is the National Standards Body of India, involved in the development of technical standards (also known as Indian Standards), product quality and management system certifications and consumer affairs. Within the purview of Mechanical Engineering, it also lays down the basic standards for energy efficient irrigation pumps-sets.

“Business Day” shall mean a day other than Saturday and Sunday on which banks are open for normal banking business in India;

Carbon Credits: Carbon credits are Certified Emission Reduction (CERs) issued by the Clean Development Mechanism (CDM) Executive Board for emission reduction achieved by CDM projects and verified by a DOE under the rules of the Kyoto Protocol. For trading purposes, one CER is considered equivalent to one metric tonne of carbon emitted by the burning of fossil fuels. These allowances can be sold privately or in the international market at the prevailing market price. These trade and settle internationally and hence allow allowances to be transferred between countries.

Clean Development Mechanism (CDM): A Kyoto Protocol program that enables industrialized countries to finance emissions-avoiding projects in developing countries and receive credit for reductions achieved against their own emissions limitation targets.

Energy Service Company: A Company accredited by Bureau of Energy Efficiency as ESCO. It is involved in developing, installing, and financing projects designed to improve energy efficiency, usually featuring sustainable energy sources. In the RFP the AgIA has been used for the company/consortium who intends to submit a proposal in response to the RFP. It includes pump manufacturers.

Feeder line: An electrical line that extends radially from a distribution substation to supply electrical energy within an electric area or sub-area.

HVDS: High Voltage Distribution System is upgrading the existing low and medium voltage Distribution system to higher voltage and then installing a suitable capacity Transformer near to load end to cater to supply requirement of individual pump set to provide good quality power supply and reduce the losses.

Irrigation Pump-sets: In this case refers to mono-block or submersible irrigation pumping sets required for correct functioning of the set.

Meter: An instrument for measurement of electric power used.

Metered data: End-use data obtained through the direct measurement of the total energy consumed for specific uses for the individual connection.

M&V Protocol: Monitoring & Verification Protocol is a process or protocol, capable of keeping an Energy Performance Contract fair to all parties by, confirming the actual energy savings realized from a DSM project once the project.

Pump Set: A device coupled with electric motor which increases the water pressure or moves water.

Pump Set efficiency: Ratio of the water power produced by the pump, to the power delivered at the input terminals of motor by the power unit.

Transformer: A transformer is a device that transfers electrical energy from one circuit to another through inductively coupled electrical conductors.

15.2 INTERPRETATIONS

Preamble / Recital: The preamble / Recital forms an integral part of this Agreement.

Exhibits and Schedules: The Exhibits and Schedules attached hereto form an integral part of this Agreement as though set forth herein.

Precedence: In the event of conflict between this Agreement and its Exhibits and Schedules, the terms of the Agreement will prevail, unless specifically otherwise provided for in the relevant Exhibit or Schedule.

Headings: The division of this Agreement into clauses, sub-clauses and other subdivisions and the insertion of headings, are for convenience of reference only and will not affect the construction or interpretation of this Agreement.

In the event of any undefined terms, to the extent reasonable, the term shall be defined with reference to the language contained in the four corners of this Agreement and any other attachments or Exhibits hereto.

ARTICLE 16

MISCELLANEOUS AND NOTICES

16.1 Amendment:

No change to this 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:

In the event that any term, condition or provision of this Agreement is held to be a violation of any applicable mandatory law, statute or regulation, the same shall be deemed to be deleted from this Agreement and shall be of no force and effect and this Agreement shall remain in full force and effect as if such term, condition or provision had not originally been contained in this Agreement. Notwithstanding the foregoing, in the event of any such deletion the Parties shall negotiate in good faith in order to agree the terms of a mutually acceptable and satisfactory alternative provision to be substituted for the provision so deleted which comes as close as possible to the economic intent of the deleted provision. The foregoing shall also apply in case of an unintended, material omission in this Agreement.

16.3 Compliance with applicable laws

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

16.4 Counterparts:

This Agreement may be executed in two counterparts, both of which shall constitute one and the same agreement.

16.5 No Partnership

The Parties do not intend to be partners to one another or partners as to any third party, or create any fiduciary relationship among themselves, solely by virtue of their status as parties to this agreement.

16.6 No agency: assignment

No Party, acting solely in its capacity as a party to this agreement shall act as an agent of the other or have any authority to act for or to bind the other Party. Except as specifically provided in this Agreement, no rights, liabilities or obligations under this Agreement shall be assigned by any Party hereto without the prior written consent of the other Party hereto.

16.7 TAXES

Each party shall bear all taxes for which it is liable under Applicable Law for which it may be liable in connection with its activities pursuant to this Agreement.

16.8 Entire Agreement:

This Agreement cancels and supersedes any prior understandings and agreements between the Parties with respect to the subject matter hereof. There are no prior representations warranties, conditions or other agreements among the Parties, express or implied except as set forth herein. This Agreement, together with all Exhibits and attachments hereto, represents the entire agreement and understanding between the Parties with respect to the subject matter of this Agreement and supersedes any prior agreement or understanding, written or oral, that the Parties may have had.

16.9 Waiver

No exercise, or failure to exercise, or delay in exercising any right, power or remedy vested in any Party under or pursuant hereto shall constitute a waiver by that Party of that or any other right power or remedy and a waiver shall only be deemed duly given if done unambiguously and in writing.

16.10 NOTICES

- a. Notices, demands or other communication required to be given under this 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:

(i) If to **MSEDCL**:

Attention: _____
 Address : _____

 Phone : _____
 Fax : _____

(ii) If to **AGIA**:

Attention: _____
 Address : _____

 Phone : _____
 Fax : _____

b. 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 Agreement on the day and year first above written.

For and on behalf of MSEDCL	For and on behalf of AGIA
Authorized Signatory Name: <i>[Insert]</i> Designation: <i>[Insert]</i>	Authorized Signatory Name: <i>[Insert]</i> Designation: <i>[Insert]</i>
In the presence of	In the presence of
WITNESS In presence of Name: <i>[Insert]</i> Address: <i>[Insert]</i>	WITNESS In presence of Name: <i>[Insert]</i> Address: <i>[Insert]</i>

In the presence of

By: *[Insert]*

Name: *[Insert]*

Address: *[Insert]*

A4: ANNEXURE-2: DRAFT AGREEMENT BETWEEN AGIA AND FARMER

DRAFT AGREEMENT

BETWEEN

AgIA and FARMER

For

“Agricultural DSM Pilot Project in Solapur Circle ”

THIS AGREEMENT is made and executed on the day of, 2010.

BETWEEN,

_____, Son /daughter of _____, aged about ___ years, Resident of House No. _____, village _____, District (hereinafter referred to as the “**Consumer**” which expression shall, unless repugnant to the context or meaning thereof, include his / her successors) of the One Part;

AND

....., a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at (hereinafter referred to as the “ **AGIA**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes) of the Other Part.

Each of Consumer and AgIA is referred to individually as a “Party” and collectively as the “Parties.”

WHEREAS:

- A. Maharashtra State Electricity Distribution Company Limited (MSEDCL) is a State-owned electricity distribution company serving over 17.11 million consumers in Maharashtra State except Mumbai with a committed pool of over 75000 employees.
- B. MSEDCL launched a number of initiatives, including the pilot CFL program at Nasik, power supply quality enhancements measures like agricultural feeder separation and installation of capacitors on agricultural pump sets under pilot agricultural pump capacitor project in Dindori area of Nasik.
- C. MSEDCL recognizes that India’s agriculture sector consumes 30% or more of electricity sold and represents as much as 40% of connected load. Electricity used for irrigation pumps (IPs) is highly inefficient with pump efficiencies of 30% and less very common.
- D. Identifying that the agricultural consumption in the company (MSEDCL) is of sizable amount and highly subsidized, BEE in co-ordination with MSEDCL has designed a demand-side management initiative specific to the agricultural sector. MSEDCL is implementing Agriculture Demand Side Management project at Mangalwedha Sub-division (Pilot Ag DSM) as a pilot project with a view to implementing the model in other areas based on the success of the project under consideration.
- E. MSEDCL has entered into an Agreement dated ----- with AgIA for the execution of the project.

- F. In furtherance of the above said Agreement, the AgIA and the Consumer have agreed that AgIA may remove the existing / old pump set installed at the Consumer's premises and install the new high-efficiency pump-set on the agreed terms and conditions
- G. AgIA and the Consumer have agreed to accordingly enter into this Agreement for recording the terms and conditions of the said transaction set forth hereinafter.

NOW THEREFORE in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the sufficiency and adequacy of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1. ARTICLE – 1

SCOPE OF THE PROJECT / PROGRAM, PRICE & TERMS

- 1.1 The Consumer agrees that this Programme initiated by MSEDCL is very useful and it will be in his own interest as also the overall interest of the State and the Nation to avoid wastage of the valuable energy, savings of which can be utilized for overall development and for other productive purposes, by allowing removal of his existing / old pump set and installation of the new energy efficient pump set. He has, therefore, voluntarily and heartily accepted to participate in this programme.
- 1.2 The Consumer has fully understood the terms and conditions of this Agreement including the conditions, under which the new high-efficiency pumpset is being installed, the type of pump set to be installed and the manner of its use, operation and maintenance by the Manufacturer/AGIA and accepted the same.
- 1.3 The consumer has agreed to the following condition set below for installation of the new EEPS:

Farmers/Consumers shall be provided EEPS free of cost. They will be provided with free installation of the EEPS. The AgIA shall provide/execute for EEPS with a minimum Repair & Maintenance (R&M) of 60 months (5 years). The R&M shall be provided with no cost to the farmers.
- 1.4 The Consumer hereby undertakes that he will not henceforth during the term of this Agreement use either the existing / old pump set or any other pump set other than the new EEPS installed by AgIA
- 1.5 The Consumer also shall sincerely and diligently abide by the terms and conditions stated in this Agreement for use and maintenance of the new high-efficiency pump set installed by AgIA and fully cooperate with AgIA and MSEDCL officials to ensure that this Project becomes successful in the overall interest of the Consumer, the Mangalwedha Sub-Division and the Nation.
- 1.6 This Agreement shall establish the consumer to be the Co-owner of the EEPS with AgIA. The AgIA shall have the primary legal and accounting rights on the pumps (EEPS).

- 1.7 Upon the expiry of this Agreement or its earlier termination (except termination on account of Consumer's default), as the case may be, the ownership rights over EEPS installed in accordance with the terms of this Agreement shall stand transferred to the consumer. AgIA shall provide and execute all necessary documents to the Consumer confirming his ownership on such termination.

2. ARTICLE 2

DUTIES and RESPONSIBILITIES of AgIA and the Farmer

- 2.1 The AgIA shall be responsible for removal of the existing / old pump set, installation of the new EEPS with capacitor and its maintenance and repair / replacement and replacement of foot valve. The Consumer shall fully cooperate with AgIA, sincerely and diligently, follow the instructions of the officials / representatives of AgIA and MSEDCL to ensure that AgIA is able to perform its services in the best manner possible to achieve the objectives of the programme.

- 2.2 AgIA shall keep a record of photographs of the existing pumps & EEPS during the replacement. AgIA shall give receipts to the consumers for handing over of existing pump sets.

2.3 **Removal and disposal of existing / old pump sets**

The AgIA shall dismantle the existing pumps and keep an inventory of old pumps (with proper tagging of consumer ID) for one year. Disposal of old pumps should then be undertaken in a manner that precludes their use or reinstallation in any form anywhere in India. The AgIA shall provide a written assurance to MSEDCL describing the manner of disposal. MSEDCL shall have the right to audit or hire a third-party auditor to confirm the appropriate disposal of all old pumps.

2.4 **Installation & commissioning of new pump sets**

- i. AgIA shall ensure that new EEPS set installed will be capable of pumping the same quantity of water as compared to the old /existing pump set installed at the Consumer's premises.
- ii. AgIA shall ensure that the new EEPS will be handed over to the Consumer after installation in proper working order. AgIA shall give the Consumer a letter indicating the date of service, serial number, capacity, make and the programme under which it is installed.
- iii. The new EEPS set installed shall have a unique serial number on the name plate in addition to the marking in the casting for identification with the program and for project obligations. Such markings shall be readily visible above ground and duplicated if necessary.
- iv. The Consumer shall give the receipt for the same.

2.5 **Operation & Maintenance (O&M) programme / services**

- i. AgIA shall establish and maintain an office at the site in Magalwedha to provide O&M Services with posted hours of opening along with posted procedures and phone numbers to obtain off-hours support
- ii. AgIA shall maintain, repair and, if required, replace the defective pump sets during the term of this Agreement. Consumer shall fully cooperate and follow the instructions / guidance given for its proper maintenance on regular basis.
- iii. AgIA shall periodically give training and guidance to the Customer for the pump's proper operation and maintenance to ensure optimum performance of the new pump. The Consumer shall sincerely and diligently follow the instructions / guidance given for proper and efficient operation of the new pump set and give required feedback to AgIA.
- iv. AgIA shall periodically monitor the pump operation and efficiency
- v. AgIA shall arrange for on-call emergency service
- vi. AgIA shall maintain inventory of spare pumps to be installed in the event of pump failure

2.6 Action by AGIA during the project period

AgIA has an obligation to ensure that the services given on the new EEPS installed under this Agreement is honored during the project period.

- i. The AgIA shall be responsible for R&M servicing, during the project period. After R&M servicing, AgIA shall provide the Consumer with a letter indicating the date of service.
- ii. In case of failure of any New EEPS, during the project period, the Consumer will return the failed New EEPS to the AgIA, providing the reason of failure and submit the proof of installation as made under above scheme. A copy of this Agreement shall be considered as a valid proof for the purpose of proof of installation.
- iii. The AgIA will replace/repair the EEPS within 72 hours and will mark in the original letter confirming the issue of the replaced New EEPS number and the date.
- iv. During the entire project period the AgIA shall be solely responsible for remedying any and all defects in the EEPS without any cost to the Consumer.

**3. ARTICLE 3
OBLIGATIONS OF THE CONSUMER**

- 3.1 The Consumer shall only use the new EEPS installed by the AgIA and operate and maintain the same as instructed by AgIA and shall not cause it to be used in any other manner and by any other person other than the Consumer or under his instructions by his family members, or servants / agents.
- 3.2 The Consumer shall not interfere or permit any interference with the new energy efficient pump-set and supply line by any person other than the authorized representative of the AgIA. Only the AgIA's authorized representative shall have access to rectify any problem or any fault in the pump-set during the entire period of this Agreement.
- 3.3 The Consumer shall not tamper or relocate the new installed pump-set in any manner. Any such act by the Consumer shall be at the risk and cost of the Consumer.
- 3.4 The Consumer shall permit the AgIA's authorized representatives to check and rectify the pump-set as and when required and agrees to allow them to enter the site of installation for this purpose.
- 3.5 The Consumer shall discharge his obligations and follow the instructions and guidance of AgIA/ MSEDCL in good faith, sincerely and diligently and as a reasonable and prudent person.
- 3.6 The Consumers agree to transfer to MSEDCL / AgIA, without any conditions his total rights, as end consumer for claiming carbon credits arising out of this project.
- 3.7 The Consumer shall have no objection if MSEDCL /AgIA gets benefited due to carbon credits in this project, provided AgIA fulfills its obligations stated in this Agreement
- 3.8 In case the existing bores / wells get dry, the consumer shall bear the cost of new boring to ensure that the EEPS is operating.

**4. ARTICLE 4
PENALTY FOR NEGLIGENCE**

- 4.1 If the Pump set remains out of order and not operating for more than two days because of negligence on the part of AgIA, AgIA shall be liable to pay to the Consumer Rs.200/- (Rupees two hundred only) per day per pump set not operating with a maximum limit of Rs. 2000 per pump.

- 4.2 If the Pump Set breaks down because of negligence on the part of the Consumer, the Consumer shall be liable to pay to AgIA cost of repairs due to negligence on the part of the Consumer.
- 4.3 In case of any theft or the Pump Sets are stolen the owner shall be liable to replace the existing EEPS with a new EEPS conforming to the same standards and specifications at his/her own cost.

5. ARTICLE 5 DISPUTE RESOLUTION

- 5.1 If a dispute or difference ('dispute') arises between AgIA and the Consumer, the same shall be amicably settled by discussions between the Consumer and senior level AgIA officials within seven days from the date of dispute or such longer period as may be agreed between the parties.
- 5.2 If, however, the dispute remains unsettled for seven days, or such longer period as agreed between the parties, the dispute shall be referred to the CE Baramati / SE Solapur of MSEDCL by AGIA in writing giving the details of the dispute and the stand taken by both the parties. Thereafter, the dispute shall be settled by the CE Baramati / SE Solapur of MSEDCL, within a period of one month of the date of reference. The decision of the CE Baramati / SE Solapur of MSEDCL, shall be final and binding on both the parties.

6. ARTICLE 6 TERM & TERMINATION

- 6.1 The term of this Agreement shall be for 5 (five) years from the date of signing by the parties.
- 6.2 The term of this agreement shall be co-terminus with the Main Agreement dated _____ between MSEDCL and the AGIA.

7. ARTICLE 7

MISCELLANEOUS

7.1 All costs associated with the execution of this Agreement shall be borne by the AgIA.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE SET THEIR HANDS AND SEAL TO THESE PRESENTS ON THE DAY, MONTH & YEAR FIRST ABOVE WRITTEN IN THE PRESENCE OF THE FOLLOWING WITNESSES

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

For and on behalf of FARMER	For and on behalf of AGIA
Authorized Signatory Name: <i>[Insert]</i> Designation: <i>[Insert]</i>	Authorized Signatory Name: <i>[Insert]</i> Designation: <i>[Insert]</i>
In the presence of	In the presence of
WITNESS In presence of Name: <i>[Insert]</i> Address: <i>[Insert]</i>	WITNESS In presence of Name: <i>[Insert]</i> Address: <i>[Insert]</i>

In the presence of

By: *[Insert]*

Name: *[Insert]*

Address: *[Insert]*