**AGREEMENT**

THIS AGREEMENT made on this……day of…………….2017 between;

**Energy Efficiency Service Limited** a company incorporated under the Companies Act 1956 with its corporate office located at…………….. and registered office at……….. , which expression shall, unless the context otherwise requires, include its administrators, successors and assigns (hereinafter referred to as EESL) and

**Power Grid |Corporation of India Ltd.** a **Govt. of India Enterprise**, with its principal place of business located at **B-9, Qutab Institutional Area, Katwaria Sarai, New Delhi-110016**, which expression shall, unless the context otherwise requires, include its administrators, successors and assigns \_ (hereinafter referred to as Service Provider)

WHEREAS EESL is desirous of procuring certain services and Service Provider engaged in the business of providing such services and/or material as per the scope of work under this Agreement.

AND WHEREAS EESL has decided to procure the said services and/or material from Service Provider and Service Provider is willing to provide the said services and/or services to EESL on the terms and conditions hereinafter appearing;

NOW THEREFORE THIS AGREEMENT WITNESSETH and it is hereby agreed by and between the parties hereto as under:

1. **Scope of Work:**

Service Provider shall provide the EESL the services and/or equipment defined and described in **Annexure A** (hereinafter referred to as “Services and/or Material”). Annexure A provides for the entire scope of work as scope of work under the terms of this agreement. Any change in the scope of Services shall be handled through agreed change management process.

2. **Acceptance Criteria:**

Deliverable delivered by SERVICE PROVIDER which is subject to the mutually agreed acceptance criteria shall be reviewed and accepted by EESL within a period of 15 business days working days’ from the date of delivery. The review comments shall be provided within a period of 15 working days from the date of delivery. All Deliverable(s) will be deemed accepted by EESL on successful closure of all review comments, whereupon EESL shall provide the sign-off letter to SERVICE PROVIDER. However, if EESL does not provide any review comments within the above mentioned period of 15 days, then Service Provider will send a communication or notice for the same to EESL and if EESL do not respond to the Service Provider within 5 working days form the date of receipt of this notice or communication , then it shall be deliveries shall be deemed to have been accepted/. However, if EESL provides the review or comments within the above mentioned period of 15 days then, SERVICE PROVIDER shall answer the question/concerns of EESL with 5 working days. This process of review will continue not more than 30 days’, ~~if Service Provide is unable to cure the concerns during this 30 days period then EESL reserves the right to termination this Agreement at the risk and cost of Service, including invoking of performance of bank guarantee.~~ EESL will issue acceptance certificate to the Service Provider after successful completion of acceptance criteria process.

~~All costs and expenses of correction and resubmission of the Deliverable(s) shall be to the account of SERVICE PROVIDER if the defects or non-conformities are due to any reasons attributable to SERVICE PROVIDER. In all other cases, SERVICE PROVIDER shall be granted additional time for completing the work to be mutually agreed to between the parties.~~

3. **Payment of Invoice:**

(a) SERVICE PROVIDER shall be entitled to raise invoices after completion of each quarters per the payment schedule specified in **Annexure-B**. All invoices shall become due for payment within thirty days of their presentation. In the event that EESL disputes any invoiced amounts, EESL shall notify SERVICE PROVIDER with the reasons for disputing any amount within fifteen (15) days after receipt of applicable invoice, where upon Parties shall promptly seek to resolve the dispute by mutual discussion. Any such dispute shall not relieve EESL from paying when due any undisputed portion of the invoice

(b) EESL shall be responsible to all taxes, duties, levies such as sales tax, VAT, service tax or any other tax, levy or duty of similar nature as applicable for the transaction under this Agreement

4. **Performance Bank Guarantee:**

Service Provider will provide Performance Bank Guarantee for the value of 10% of yearly order value of the agreement within 15 (fifteen) days from effective date of this Agreement and will remain valid for 3 months beyond term of the Agreement. If Service Provider fails to issues the Performance Bank Guarantee in favour of EESL, then EESL reserves the right terminate this Agreement ~~at the risk and cost~~ of the Service Provider, including invocation of Bank Guarantee. This right of termination of Agreement at the risk and cost of the Service Provider, including the right to invoke the Performance Bank Guarantee is without prejudice to other available rights of EESL.

5. **Confidentiality:**

a) Both parties agree that they may, in the course of their business relationship with the other, acquire or be exposed to information that is proprietary or confidential to the other party, its affiliates or its or their respective clients or vendors. Both parties undertake, to hold all such information in strictest confidence and not to disclose such information to third parties nor to use such information for any purpose other than the purpose for which it is given under this Agreement.

However, nothing in this clause shall prevent the receiving party from treating confidential information as non-confidential, if such information is:

i) in the possession of, or was known to receiving party prior to its receipt, without an obligation to maintain its confidentiality;

ii) or subsequently becomes generally known to the public without violation of this provision by the receiving party;

iii) obtained by receiving party from a third party (i) who the receiving party does not know to have violated , or to have obtained such information in violation of any obligation to the disclosing party with respect to such information, (ii) who does not require the receiving party to refrain from disclosing such information and (iii) who has the right to disclose it, without the obligation to keep such information confidential;

iv) independently developed by receiving party without the use of confidential Information and without the participation of individuals who have had access to confidential information;

v) required to be disclosed by the receiving party under the compulsion of law, or by order of any court or government or regulatory body to whose supervisory authority the receiving party is subject.

b) The Confidentiality obligation under this Agreement shall survive the termination or expiration, as the case may be.

6. **Indemnities:**

(a) ~~Service Provider hereby indemnifies EESL from and against all claims, actions, damages, demands, liabilities, costs and expenses, including reasonable legal fees and expenses, arising out of any act or omission of the Service Provider or its employees, servants, agents or representatives causing or resulting in damage or loss to or destruction of data or otherwise unless caused by the gross negligence of other party’s personnel.~~

~~(b) Service Provider warrants that it has requisite authorization/licenses to provide all services under this Agreement, other assistance as may be required by the Service Provider for providing Deliverables and/or Services under this Agreement. Service Provider shall indemnify EESL against all claims, actions, damages, demands, liabilities, costs and expenses, including reasonable legal fees and expenses arising out of the use or possession of any material supplied by Service Provider in connection with the provision of Services.~~

* EESL warrants and undertakes that it shall not use the usage right/Bandwith/services for any illegal or immoral purpose and shall ensure the compliance of the applicable laws and regulations arising out of this agreement. SERVICE PROVIDER shall not be held liable or responsible for the same. EESL shall be solely responsible with regard to contents/data/information transmitted and any breach of any law in this respect shall be the responsibility of EESL and SERVICE PROVIDER shall be in no way liable for the same.
* .
* EESL shall be solely responsible for the safety and security of its personnel and equipments and further agrees and accepts that SERVICE PROVIDER shall be in any way responsible for any loss to life, property and equipments suffered by M/s EESL for the works undertaken by Service provider under this Agreement, unless such claim is caused by the negligence or misconduct of the Service Provider. ..
  1. The responsibility of the safety of the Service Provider equipment installed at EESL’S premises, shall be the responsibility of the EESL and EESL has to make good the loss suffered by POWERGRID/SERVICE PROVIDER in this regard. EESL shall return all the terminal equipments in working condition to Service provider on expiry or termination of the agreement within 7 days.

7. **Limitation Of Liability:**

(a) SERVICE PROVIDER shall not be liable or responsible for any delay or failure to perform or failure of the services or the Deliverable under this Agreement to the extent that such delay or failure has arisen as a result of any delay or failure by EESL or its employees or agents to perform any of its duties and obligations as set out in this Agreement. In the event that SERVICE PROVIDER is delayed or prevented from performing its obligations due to such failure or delay on the part of EESL, SERVICE PROVIDER 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 SERVICE PROVIDER is delayed or prevented from performing its obligations due to such failure or delay on the part of EESL.

(b) The total cumulative liability of each party under the terms of this Agreement shall not exceed Agreement value.

(c) In no event shall each party be liable to the other party for any indirect, incidental, consequential, special or exemplary damages, nor for any damages as to lost profit or business, even if that party was advised about the possibility of the same.

8. 8. **Term and Termination:**

8.1 This agreement shall be effective from \_\_\_\_\_\_\_\_\_\_\_\_ and shall continue for a period of 05 years unless earlier terminated as per section mentioned herein below.

8.2 This Agreement may be terminated by written notice:

(a) forthwith if either party commits any material breach of any term of this Agreement and which in the case of a breach capable of being remedied shall not have been remedied within 30 working days of receipt of written notice from the non-breaching party to remedy the same;

(b) forthwith by either party if the other party shall convene a meeting of its creditors or if a proposal shall be made for a declaration as insolvent or a proposal for any other composition scheme or arrangement (or assignment for the benefit of its creditors), or if a trustee receiver, administrative receiver or similar officer is appointed in respect of all or any part of the business assets of the other party or if an order is made or a resolution is passed for the purpose of the winding-up of the other party or for the making of an administration order (otherwise than for the purpose of amalgamation or reconstruction) which proceedings are not vacated within sixty days of filing;

(c) EESL may exit from the contract if overall average availability is below 85% continuously for one quarter

(d) by either party pursuant to Force Majeure.

(e) Termination shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into force or continuation in force of any provision hereof which is expressly intended to come into force or continue in force on or after such termination.

(f) In the event of this Agreement being terminated by either party, then EESL shall be liable to make payments of all the amount due under this Agreement up to the effective date of termination. ~~for which deliverables and/or Services (including parts thereof) have been rendered by the Service Provider to the satisfaction EESL, subject to the deduction as provided under this Agreement including invocation of Performance Bank Guarantee. The deduction shall be without any prejudice of EESL’s rights available under the law.~~

~~Forthwith~~ on the expiry or earlier termination of this Agreement, each party shall, return to the other party all documents and materials, belonging to the other party with regard to this Agreement, or shall at the option of the disclosing party destroy under written certification all documents or materials in connection with this Agreement have been returned or destroyed, if requested the disclosing party.

9. **Force Majeure**

Neither party shall be liable for any delays or failures in performance in whole or in part if such delay or non-performance is due to any cause beyond its reasonable control, including but not limited to delays caused by the other party’s delay or failure to perform, Act of God, war, insurrection, riot, civil disturbance, rebellion, government regulations, embargoes, explosions, fires, floods, tempest, strikes, failures in hardware, media, heating, lighting, air-conditioning, telecommunications equipment or public supply of electrical power. However if such an event lasts for a continuous period of 30 days or more then either party shall have an option to terminate the Agreement forthwith without any liability after intimating the other party of the same. EESL shall however be liable to pay the Service Provider for all the services rendered by it to the satisfaction of EESL under this Agreement till the actual termination date. Further, EESL reserve the right to take service from any other service provider, in case Service Provider is unable to provide service or deliverable as per the Agreement for a continues period two working days due to Force Majeure events or occurrences and EESL will be liable to commence the receiving the service from the Service Provider under this Agreement, only when Service Provider gives written communication that Service Provider can commence to provide the service as “business as usual” .

10. **Nonexclusively:**

EESL shall be free to avail similar service from other service provider during the tenure or after the termination or expiration of this Agreement.

11. **Service Assurance**:

The Service Provider guarantees that client relation department, as a part of its administrative organization, will be responsive to the request of the EESL or any other department of the Service Provider within a period of less than ~~2 (two) hours~~. Non-conformity of this will provide EESL a right to levy liquidated damages @ of 0.5% of the value of the contract for ~~every two hours~~ till the time response is not provided to the request or query raised by EESL. The liquidated damages will be subject to upper limit of 10% of the value of the Agreement. Further, any disruption in service will have to be cured within03 hrs from the time of receipt of such complaint or any other issues, including the issues pertaining to the latency.

12: **MISCELLANEOUS PROVISIONS**

12.1. **Independent Contractor.** In making and performing this Agreement and each Statement of Work, Service Provider shall be deemed to be acting as an independent contractor of EESL and shall not be deemed an agent, legal representative, joint venturer or partner of EESL. Neither party is authorized to bind the other to any obligation, affirmation or commitment with respect to any other person or entity.

12.2. **Assignment; Binding Effect**. Neither party may assign, delegate or transfer this Agreement including any Statement of Work, or any obligations hereunder, without the prior written consent of the other party, except as provided under this Agreement, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, either party may assign, delegate or transfer this Agreement to any affiliate of such party for so long as such assignee, delegatee, or transferee remains an affiliate of such party. Any assignment, delegation, or transfer in violation of this provision shall be void and without legal effect.

12.3. **Third Party Beneficiaries.** Except as expressly stated herein, nothing in this Agreement or any Statement of Work shall confer any rights upon any person other than the parties hereto and their respective successors and permitted assigns.

12.4 **Governing Law.** In the event of a dispute or difference, of any nature whatsoever, between the parties during the course of this agreement, the same will be first escalated to the top management of the two companies for appropriate resolution. Failing such mutual settlement, the aggrieved party shall invoke the Arbitration clause, thereby ~~If still unresolved, the same will be referred for Arbitration to a Board of Arbitration. This board will be constituted before the commencement of the Arbitration and will comprise of a Sole Arbitrator appointed by mutual concurrence of the parties. The Arbitration proceedings shall be governed by the provisions of the Arbitration and Conciliation Act 1996.~~referring the dispute to Arbitration under the Arbitration and Conciliation Act 1996 as amended from time to time. The party invoking the Arbitration clause shall specify the details, nature and extent of the dispute. The Arbitration will be adjudicated by the mutually agreed Sole Arbitrator. The fee to be payable to Sole Arbitrator, so appointed, shall be shared equally between EESL and service provider. In case, there is no agreement on appointment of mutual agreed sole Arbitration, the aggrieved party shall be free to approach the concerned High Court, for appointment of sole Arbitrator. The fee to be payable to the Arbitrator shall be equally shared by the parties to this agreemen~~t~~The Arbitration proceedings will be carried out at Noida/New Delhi. This Agreement and each Statement of Work shall be governed by and interpreted in accordance with the laws of India and the courts in New Delhi shall have jurisdiction to try disputes under this Agreement.

12.5 **Notices.** All notices provided for or permitted under this Agreement shall be deemed effective upon receipt, and shall be in writing and (i) delivered personally, (ii) sent by commercial overnight courier with written verification of receipt, or (iii) sent by certified or registered mail, postage prepaid and return receipt requested, or (iv) or via email to the party to be notified, at the address for such party set forth below. Notices to Service Provider shall be sent to the attention of its **Chief Manager, Mr. Sanjay Kumar Singh** - Fax: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and to EESL to the attention of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Fax\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

12.6. **Entire Agreement; Amendment.** This Agreement, together with each Statement of Work, set forth the entire understanding of the parties with respect to the subject matter hereof and thereof. Each party acknowledges that it has not relied on or been induced to enter into this Agreement by a representation or warranty other than those expressly set out in this Agreement. To the extent permitted by Applicable Law, a party is not liable to another party in contract or tort or in any other way for a representation or warranty that is not set out in this Agreement. This Agreement supersedes all prior or simultaneous representations, discussions, negotiations, letters, proposals, agreements and understandings between the parties hereto with respect to the subject matter hereof, whether written or oral. This Agreement and each Statement of Work may be amended, modified or supplemented only by a written instrument duly executed by an authorized representative of each of the parties.

12.7. **Severability**. Any provision of this Agreement or any Statement of Work that is determined to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability in such jurisdiction, without rendering invalid or unenforceable the remaining provisions of this Agreement or such Statement of Work, or affecting the validity or enforceability of such provision in any other jurisdiction.

12.8. **Waiver.** No term or provision of this Agreement or any Statement of Work will be considered waived by either party, and no breach consented to by either party, unless such waiver or consent is in writing signed on behalf of the party against whom it is asserted. No consent to or waiver of a breach of this Agreement or any Statement of Work by either party, whether express or implied, will constitute a consent to, waiver of, or excuse for any other, different, or subsequent breach of this Agreement or any Statement of Work by such party.

12.9. **Counterparts.** This Agreement and any Statement of Work may be executed in two or more counterparts, all of which shall constitute one and the same instrument. Each such counterpart shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

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| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (EESL)  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | ­­­­­­­­­­­­­­­­­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (PGCIL)  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: Sanjay Kumar Singh  Title: Chief Manager |

**Annexure-B**

**PAYMENT TERMS**

1. Total cost (excluding firewalls) for 5 years**- Rs. 6,96,74,503**/-
2. Lumsum Charges for Firewall at Noida (2 Nos.)- **Rs**. **1,00,00,000**/-

Firewall will be provided by PGCIL on actual procurement cost plus additional 20% (DOT:- 8% + 12% admin charges) on actual price OR 1,00,00,000/- whichever is lesser.

1. Total financial implication on EESL for 5 years –**Rs**. **7,96,74,503**/- (Seven Crore Ninety Six Lakhs Seventy Four Thousand Five Hundred Three)(excluding taxes)
2. Charges of firewall shall be paid within 30 days after submission of invoices with related documents on procurement and successful installation of firewall at EESL corporate office.
3. Total sites for provision of MPLS and internet under this agreement – 19
4. First commission date for payment of recurring charges of MPLS shall be counted after successful commission of 10 sites. Charges shall be paid quarterly as arrear within 30 days after submission of invoice (of commissioned sites) with related documents.
5. Second commission date for payment of recurring charges shall be counted after successful commission of subsequent sites. Invoice for the second phase commissioned sites should be calculated on pro rata basis to combine with invoice of first phase sites.
6. Commission date for payment of recurring charge of internet service shall be counted from the date of actual commissioning.