##### MASTER GUARANTEE AGREEMENT

**BETWEEN**

**SMALL INDUSTRIES DEVELOPMENT BANK OF INDIA**

**(AS PEA)**

**AND**

**[•]**

**(As PARTICIPATING FINANCIAL INSTITUTION (PFI))**

**Dated [•]**

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**MASTER GUARANTEE AGREEMENT**

This Master Guarantee Agreement ("**Agreement**" or "**MGA**") dated [*insert date of execution*], entered intoby and between:

[*Insert name of the Scheduled Commercial Bank*], a scheduled commercial bank,a body corporate, constituted by and under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, with its registered office at [*insert registered office address*], and corporate office at [•], [•] (hereinafter referred to as "**PFI**", which expression shall, unless it be repugnant to the subject or context thereof, include its successors, transferees, novatees and permitted assigns) of the **FIRST PART**;][[1]](#footnote-2)

[*Insert name of the NBFC*], a non-banking financial company ("**NBFC**") with CIN No. [•], registered with the Reserve Bank of India with its registered office at [*insert registered office address*],(hereinafter referred to as "**PFI**", which expression shall, unless it be repugnant to the subject or context thereof, include its successors, transferees, novatees and permitted assigns) of the **FIRST PART**;][[2]](#footnote-3)

**AND**

**SMALL INDUSTRIES DEVELOPMENT BANK OF INDIA**, a corporation established under the Small Industries Development Bank of India Act, 1989 and having is Head Office at SIDBI Tower, 15, Ashok Marg, Lucknow – 226001 and an office at 12th  Floor, Videocon Tower, E-1 Rani Jhansi Road, Jhandewalan Extension, New Delhi – 110055,acting in its capacity as the guarantor (hereinafter referred to as "**Guarantor**" or "**SIDBI**" or "**PEA**", which expression shall, unless repugnant to the context thereof, include its successors, transferee, novatees and assigns)of the **SECOND PART.**

Each of the parties mentioned above, are hereinafter collectively referred to as the "**Parties**" and individually as a "**Party**".

**WHEREAS**:

 (A) The International Bank for Reconstruction and Development ("**World Bank**") acting as implementing agency of the Global Environment Facility has executed the Global Environment Facility Grant Agreement dated 31 March, 2015 with SIDBI ("**GEF Grant Agreement**") for providing grant of USD 16million (USD sixteen million) for carrying out certain activities stipulated under the GEF Grant Agreement for the Programme (as defined later). A Cooperation Agreement dated 31 March, 2015 ("**Cooperation Agreement**") has also been executed between Republic of India and World Bank with respect to implementation of the Programme.

(B) The World Bank acting as implementing agency of the Clean Technology Fund ("**CTF**") has executed the Clean Technology Fund Guarantee Agreement dated 31 March, 2015 ("**CTF Guarantee Agreement**") with PEA, providing a guarantee ("**CTF Guarantee**") for an aggregate amount not exceeding USD 25 million (USD twenty five million) for the Programme to cover the capital shortfall and to meet guarantee calls from PFI (excluding SIDBI Loans) under the Programme.

(C) SIDBI is the project execution agency for the Programme. For execution of the Programme, SIDBI as PEAis required to empanel the eligible PFIs willing to provide EE Loans (as defined later) to EE Projects and execute a memorandum of understanding ("**MOU**") to carry out the preparatory activities. Upon completion of the preparatory activities, in terms of the MOU, a master guarantee agreement is to be executed between the PEA and the PFI to guarantee the EE Loan.

(D) Accordingly a MOU dated [•]was executed between the PFI and the PEA and the PFI has performed the preparatory activities specified in such MOU for empanelment under the Programme.

(E) Now, the PEA, at the request of the PFI, and in consideration of the PFI having performed the preparatory activities specified in the MOU and having agreed to grant or having granted loans for development of EE Projects, has agreed to enter into this Agreement on the terms and in the manner hereinafter appearing.

**NOW, THEREFORE, FOR THE CONSIDERATIONAS AFORESAID, THE SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED BY THE PARTIES, THE PARTIES AGREE AS FOLLOWS**:

**ARTICLE I**

**DEFINITIONS**

1. **Definitions**

The following capitalized terms used in this Agreement shall have the meanings ascribed to them as below:

"***Affiliate***" shall mean a company that either directly or indirectly:

(i) controls, or

(ii) is controlled by, or

(iii) is under common control with,

another company and "**control**" means ownership by one company of at least twenty six percent (26%) of the voting rights of the other company;

“***Anti-Corruption Guidelines*”** shall mean the World Bank Guidelines on Preventing and Combating Fraud and Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants dated October 15, 2006 and revised in January 2011;

"***Authorisation***" means all necessary authorizations, approvals, consents, licenses, rulings, permits, certifications, exemptions, certificates, filings, registrations or other similar actions from, by, with or involving any Government Instrumentality, which is or was necessary in connection with the EE Project, or which is or was necessary for the performance by the PFI of any covenant or obligation in accordance with any Transaction Documents or this Agreement;

"***BEE***" means the Bureau of Energy Efficiency.

"***Borrower***" is to whom the PFI has provided an EE Loan for an EE Project;

"***Business Day***" shall mean a day (other than a Saturday and Sunday or a public holiday) on which the banks and financial institutions at Delhi are ordinarily open for transaction of business;

"***Cooperation Agreement***" shall have the meaning ascribed to it in Recital A;

"***CTF***" shall have the meaning ascribed to it in Recital B;

“***CTF Ledger Account***” means a ledger account established and maintained by PEA for the purposes of the Programme in accordance with the terms of the CTF Guarantee Agreement and the GEF Grant Agreement for the purpose of receiving amounts of the CTF Guarantee;

"***CTF Guarantee***" shall have the meaning ascribed to it in Recital B;

"***Demand***" means an application, by means of a Demand Notice, by the PFI to the PEA, for payment of the an amount up to the Maximum Guarantee Amount by the PEA in relation to an Eligible Guarantee Claim or restructured EE Loan under this Agreement;

"***Demand Notice***" means the notice issued by the PFI to the PEA(completed as appropriate) in, or substantially in the form set out in Schedule 1in relation to an EE Loan which has become an NPA or in the form set out in Schedule 2in relation to a restructured EE Loan, pursuant to the terms of this Agreement;

"***Dollar****,*""***$***" and "***USD***" means the lawful currency of the United States of America;

"***EE Loan(s)***" means loan provided by the PFI to an ESCO or a Host for an EE Project, and guaranteed by the PEA in terms of this Agreement;

"***EE Project(s)***" means an energy efficiency project against which EE Loan has been provided by the PFI to an ESCO or a Host;

"***Eligible Borrower***" means a borrower of an EE Loan, which shall be: (a) an ESCO borrowing to finance implementation of an EE Project, or(b) a beneficiary Host entity borrowing to hire an ESCO to implement an EE Project, each of whom(as the case may be) satisfies the eligibility criteria set out in the Operational Guidelines;

 "***Eligible Guarantee Claim***" means, any claim made by the PFI under this Agreement, at any time after the expiry of the initial period of 18 months from the date of last disbursement of any EE Loan or the completion of the EE Project, whichever is later and subject to satisfaction of the following conditions in relation to such EE Loan:

 (a) the Master Guarantee Agreement read with Guarantee Letter with respect to such EE Loan for such EE Project is in effect and full force;

 (b) The PFI has disbursed the entire EE Loan to the Borrower within a period of 18 months from the Effective Date of the Guarantee Letter issued in relation to such EE Loan or within such extended period as approved by PEA at its discretion after receiving additional guarantee fee for the portion of the loan disbursed after 18 months;

 (c) Such EE Loan has turned into NPA and the PFI has initiated appropriate proceeding for legal action for recovery of the such EE Loan or such EE Loan has been restructured by the PFI; and

 (d) All necessary/appropriate recovery measures in relation to the NPA EE Loan has been/is being taken by the PFI.

"***Energy Savings Performance Contract***" or "***ESPC***" means an energy savings performance contract as defined in the GEF Grant Agreement

"***Energy Service Company***" or "***ESCO***" mean an energy service company registered with BEE that offers energy efficiency improvement services through an underlying ESPC;

"***Environmental Risk Management Framework***" or "***ERMF***" means Environmental Risk Management Framework as defined in the GEF Grant Agreement

"***Environmental and Social Laws***" means any laws and regulations in effect in India or in the state where an EE Project is being undertaken, relating to the environment, occupational and community health or safety, ERMF guidelines or laws and regulations relating to usage of land/premises, including, as they relate to the foregoing: (i) the Constitution of India; (ii) the laws of India(and all of their implementation regulations, where applicable); and (iii) all other international conventions and treaties to which India is a party and which have been ratified by India and are in full force and effect, to the extent such laws and regulations are applicable to the PFI or any EE Project financed by the PFI;

"***Final Demand Date***" shall have the meaning ascribed to it in Clause 4.4 (iii);

"***Fiscal Year***" means India’s fiscal year starting on April 1 each calendar year and ending on March 31 the following calendar year;

"***GEF Grant Agreement***" shall have the meaning ascribed to it in Recital B;

**"*Government Instrumentality***" means the Government of India, Governments of state where the EE Project is located in India, where the ESCO, Host, PFI or the PEA are located or any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or any of the above such State Government(s) or both, any political sub-division of any of them including any court or regulatory commission or tribunal or judicial or quasi-judicial body in India;

"***Guarantee***" means the undertaking provided by the PEA to pay to the PFI an amount up to the Maximum Guarantee Amount subject to the terms of this Agreement and the relevant Guarantee Letter;

"***Guarantee Letter***" means a letter instrument issued by the PEA evidencing a Guarantee in terms of this Agreement for a specific EE Loan in relation to a specific EE Project;

"***Guarantee Coverage Percentage***" means percentage of the EE Loan Guaranteed under the Guarantee Letter for a particular EE Project;

"***Guarantee Fee***" has the meaning ascribed to the term in Article VI (*Guarantee Fee*);

"***Guarantee Fee Payment Date***" has the meaning ascribed to the term in Clause 6.2;

"***Guarantee Period***" has the meaning assigned thereto in Clause 3.4 (*Guarantee Period*);

"***Host***" means an entity including, but not limited to, large industrial concerns, micro, small or medium enterprises, commercial buildings, municipal bodies, which enter into an ESPC with an ESCO for implementation of EE Project;

"***Limitation Notice***" has the meaning ascribed to the term in Clause7.4 (*Limitation of PEA Guarantee*);

### "***Material Adverse Effect***" means any event, condition or circumstance (or any combination of events, conditions or circumstances) occurring (or any effect or consequence thereof) that have had or reasonably could be expected to have a material and adverse effect on: (a) the ability of any party to any of the Transaction Documents to observe or perform any of its payment or other obligations in accordance with the terms of the Transaction Documents to which it is a party; (b) the legality, validity, binding nature or enforceability of any of the Transaction Documents; provided that if a Material Adverse Effect is indicated in a specific instance to relate to a specific party, then the term "party" as used herein shall in such instance only be read to include such indicated party;

"***Maximum Guarantee Amount***" shall have the meaning ascribed to it in Clause 3.3 (a);

"***Memorandum of Understanding***" or "***MOU***" means the memorandum of understanding that the PFI had executed with the PEA;

"***Measurement and Verification*"** or "***M&V***” means the process agreed to be carried out post implementation of the EE Project for assessing the actual energy saving achieved and an exercise to verify the claims made by PFI;

"***MVA***" shall have the meaning ascribed to it in Clause 7.3 (*Eligible Guarantee Claim Verification*);

"***NPA EE Loan***" means an EE Loan which has become an NPA and against which the PFI is entitled to make an Eligible Guarantee Claim;

"***NPA EE Project***" means the EE Project in relation to which the PFI has provided an NPA EE Loan;

"***Non-Performing Assets***" or "***NPA***" means an asset in the books of the PFI, required to be classified as non-performing based on the instructions and guidelines issued by the Reserve Bank of India from time to time;

"***Operational Guidelines***" means a document containing the set of policies, rules, procedures, and protocols derived from the Operations Manual as defined in the GEF Grant Agreement, in order for the PEA to issue guarantees to PFIs for EE Loans.;

“***PFI Risk Coverage Ledger Account***” means a ledger account called PFI Lending Window established and maintained by PEA for the purposes of making payments on Eligible Guarantee Claims to PFIs under the Programme,

"***Programme***" means the project titled as "Partial Risk Sharing Facility for Energy Efficiency" implemented by the PEA with the support of the GEF and the CTF with an objective to transform the energy efficiency market in India;

"***Programme Contributors***" means the World Bank GEF and CTF which are contributing funding or guarantee support for the Programme;

"***Sanctionable Practice***" means any Coercive Practice, Corrupt Practice, Collusive Practice, Obstructive Practice and Fraudulent Practice, as such terms are defined and interpreted in accordance with the Anti-Corruption Guidelines;

"***Termination Events***" shall have the meaning ascribed to it in Clause 8.1;

"***Transaction Documents***" means, collectively, this Agreement, the Guarantee Letter(s) issued under this Agreement, Trust and Retention Account Agreement, the MOU, the ESPC, the financing agreement executed by the PFI and the Borrower and any other document in relation to an EE Loan and EE Project; and

"***World Bank***" shall have the meaning ascribed to it in Recital A.

**Article II**

## Effectiveness &Term

2.1 **Effectiveness & Term**

This Agreement shall come into force and effect upon execution of this Agreement by both the Parties, and shall continue to remain in force till such time the GEF Grant and CTF Guarantee are available to the PEA.

## Article III

## Guarantee Letter, Guarantee Payment and Guarantee Period

3.1 **Guarantee Letter**

 Subject to the conditions of this Agreement and the Operational Guidelines, for each EE Loan provided by the PFI, the PEA shall issue a guarantee letter ("**Guarantee Letter**") to the PFI. Such Guarantee Letter shall *inter alia* specify the details of the specific EE Loan, details of the EE Project for which such EE Loan has been provided, EE Loan Guarantee Coverage Percentage and special condition (if any) for such Guarantee to be read with this Agreement. In case of conflict between the terms of the Guarantee Letter and the terms of this Agreement, the terms of this Agreement shall prevail.

3.2 **Guarantee Payment**

 Subject to the submission by the PFI of a Demand in relation to an Eligible Guarantee Claim in accordance with Article IX(*Filing of Demands*) and other provisions of this Agreement, and in consideration of the payment of the Guarantee Fees to the PEA under Article VI (*Guarantee Fees*), the PEA hereby agrees to pay an amount not exceeding the Maximum Guarantee Amount (calculated in accordance with Clause 3.3 (*Maximum Guarantee Amount*) below) to the PFI pursuant to such Demand in relation to an Eligible Guarantee Claim during the Guarantee Period.

3.3 **Maximum Guarantee Amount**

(a) The maximum guarantee amount under this Agreement shall be lowest of the following ("**Maximum Guarantee Amount**"):

 (i) Guarantee Coverage Percentage multiplied to principal outstanding as on date the relevant EE Loan account turning into an NPA;

 (ii) Guarantee Coverage Percentage multiplied to principal plus interest of the NPA EE Loan as on date of the Eligible Guarantee Claim is lodged with the PEA; and

 (iii) Guarantee limit (if any) specified for such EE Loan under the relevant Guarantee Letter.

### For avoidance of doubt, it is clarified that no other charges (such as penal interest, commitment charges, service charges or any other levies/expenses) shall qualify towards calculation of the Maximum Guarantee Amount.

(b) If the PFI has not disbursed the entire EE Loan within the period of 18 (eighteen) months from the Effective Date of the Guarantee Letter, the Maximum Guarantee Amount shall be calculated in proportion to the EE Loan Amount disbursed during the period of 18 (eighteen) months from the Effective Date of the Guarantee Letter. The Guarantee for the undisbursed part of the of the EE Loan for which the Guarantee Letter has been issued, may be revalidated by the PEA at its sole discretion upon receipt of fresh Guarantee Fee for the same from PFI.

(c) Any payment made or to be made by the PEA under Clause3.2(*Guarantee Payment*) will be funded out of the facilities made available to the PEA under the GEF Grant Agreement, CTF Guarantee Agreement for the Programme, and therefore, it is clarified by the PEA (and acknowledged by the PFI) that the PFI's right to receive payment of any Eligible Guarantee Claim shall always be subject to availability of funds in the PFI Risk Coverage Ledger Account (including any facility income transferred thereto), CTF Ledger Account, or under the CTF Guarantee.

3.4 **Guarantee Period**

(a) The maximum tenure of any Guarantee issued under this Agreement will be 5 (five) years or the Guarantee Period specified in the Guarantee Letter issued for the specific EE Loan (whichever is shorter), and shall be calculated from the date of effectiveness of such Guarantee Letter ("**Guarantee Period**").The effective date of each Guarantee Letter shall be the later of: (a) the date of first disbursement of the relevant EE Loan by the PFI to the ESCO or Host (as the case maybe),and (b) start of the operational period of the relevant EE Project undertaken by the ESCO or Host (as the case maybe)("**Effective Date**"). However, it is clarified that in no event shall the Guarantee Period under a Guarantee Letter exceed the tenure of the relevant EE Loan for which such Guarantee Letter is issued. It is also agreed and acknowledged by the PFI that receipt of Guarantee Fee by the PEA against a Guarantee Letter issued under this Agreement shall be the condition precedent for effectiveness of such Guarantee Letter.

(b) A Demand Notice in relation to any Guarantee issued under this Agreement may be submitted by the PFI to the PEA any time during the Guarantee Period.

(c) A Demand Notice received by the PEA after [5:00] p.m. (Indian Standard Time) on the last day of the Guarantee Period ("**Final Demand Date**") shall be void and have no effect. Except for any obligations arising as a result of the delivery of a Demand Notice prior to such time on the Final Demand Date under which payment is required to be made on or after the Final Demand Date, the PEA's obligations under the Guarantee Letter read with this Agreement shall terminate at such time on the Final Demand Date.

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## Article IV

## Currency

4.1 All payments under this Agreement and Guarantee Letter shall be made in Indian Rupees.

**Article V**

## EE Loans

5.1 Guarantees under this Agreement shall be available to the PFI only for EE Loans to ESCOs or Hosts (as the case may be) for EE Projects to be implemented through ESCOs. A loan for any EE Project to qualify as EE Loan under this Agreement must satisfy the criteria set out in the Operational Guidelines.

## Article VI

## Guarantee Fee

6.1 In consideration of the PEA undertaking its other obligations under this Agreement by issuing a Guarantee for an EE Loan under this Agreement, for each EE Loan provided by the PFI and in relation to which an Guarantee has been issued by the PEA, the PFI shall pay to the PEA an annual non-refundable fee ("**Guarantee Fee**") at the rate prescribed by the PEA from time to time in the Operational Guidelines.

6.2 The Guarantee Fee in respect of an EE Loan for the first year from the date of issuance of the Guarantee Letter for such EE Loan shall be payable by the PFI to the PEA within 30 days of issuance of the Guarantee Letter for such EE Loan by the PEA. The Guarantee Fee shall be due and payable by the PFI in respect of an EE Loan to the PEA during the Guarantee Period on each subsequent year in advance on or before April 30 of that year ("**Guarantee Fee Payment Date**"). The payment of Guarantee Fee by the PFI towards each Guarantee Letter issued under this Agreement by PEA shall be a condition precedent for effectiveness of such Guarantee Letter.

6.3 The Guarantee Fee shall be paid by the PFI to the PEA by electronic transfer in immediately available freely transferable funds in INR before close of business on the relevant Guarantee Fee Payment Date, as the case requires, to:

 Bank: [*insert bank details*]

 Address: [*insert address of the bank*]

 SWIFT Code: [*insert SWIFT Code*]

 With written notice of the amount and value date to:

 PEA

 [*insert address*]

 Tel:

 Fax:

 [with copies to:

 [*insert details if required*]]

6.4 If the PFI fails to pay the Guarantee Fee with respect to any Guarantee in accordance with the terms of this Article VI (*Guarantee Fee*), the obligations of the PEA in relation to such Guarantee shall be immediately released.

## Article VII

## Eligible Guarantee Claim

7.1 **Exclusion to Eligible Guarantee Claim**

Without limitation of the PEA's rights under Article VIII (*Termination by the PEA*)and notwithstanding anything contrary contained in this Agreement, the PEA shall not be liable to pay any Eligible Guarantee Claim demanded by the PFI where:

1. a non-conforming Demand is made under this Agreement for payment of any Guarantee (but without prejudice to the PFI’s right to re-submit a conforming Demand); or
2. the Eligible Guarantee Claim, in respect of which a Demand has been made, is not in compliance with the terms of any Transaction Documents;
3. the Eligible Guarantee Claim, in respect of which a Demand has been made, is connected to any act that constitutes a Sanctionable Practice, or non-compliance with the ERMF or any environmental and social due diligence required thereunder, engaged in by:

(i) the PFI, or

(ii) ESCO or Host (as the case maybe), or any person acting on its behalf in connection with the NPA EE Project or any transaction contemplated by this Agreement, where the Sanctionable Practices or above-described non-compliance were (A) known by the PFI, or (B) could reasonably expected to be discovered by the PFI through the exercise of reasonable due diligence;

1. prior to the Eligible Guarantee Claim having been made by the PFI, any amendment, modification, change, variation to, or transfer or assignment of, or waiver of breach, under any Transaction Document is made without the PEA’s prior written consent as required under Clause18.1(*Amendment*) of this Agreement; provided that where the PFI has remedied any such breach under this Clause7.1(d) to the satisfaction of the PEA within a [thirty (30)] day cure period that may have been granted by the PEA in its sole discretion, the exclusion of coverage under this Agreement shall no longer apply to such Eligible Guarantee Claim;

(e) If, during the Guarantee Period in relation to an EE Loan under this Agreement, there is a change in the management of the Borrower under the EE Loan Agreement, the Guarantees under this Agreement shall remain in force only if the new promoters/management of such Borrower meets/satisfies the conditions set out in the Operational Guidelines and continues to perform the existing activities of the Borrower or undertakes new activities which are otherwise eligible as EE Project under this Agreement. However, if the new promoter/management do not satisfy any of the norms of the EE Project as per the conditions set out in the Operational Guidelines, the Guarantee in respect of that EE Loan covered under this Agreement shall be deemed to be terminated from the date of said change in promotors/management of the ESCO or Host (as the case may be).

7.2 **Eligible Guarantee Claim in the event of restructuring of an EE Loan**

(a) During the Guarantee Period if:(i) energy saving from EE Project is lower than the anticipated energy saving as stipulated under the ESPC between ESCO and the Host for such EE Project, and (ii) the PFI is of the opinion that by restructuring the EE Loan, the repayment of the EE Loan may become regular and timely, the PFI will have the option to restructure such EE Loan.

(b) After restructuring the EE Loan, the PFI shall have the option of lodging a Demand by filling a Demand Notice in term of this Agreement for a claim to the extent of unsustainable portion of the restructured EE Loan, with or without writing off a part of the restructured EE Loan and without going through any proceeding for recovery of the EE Loan against the Borrower.

(c) If the PFI exercises the option of lodging a Demand by filling a Demand Notice for the unsustainable portion of a restructured EE Loan in terms of Clause 7.2(b) above, the Guarantee under this Agreement shall come to an end, and the Demand under Clause 7.2 (b) [will be paid by the PEA at the rate of 75% (seventy five percent) of the Maximum Guarantee Amount][[3]](#footnote-4). However, the PEA shall make payment of such claim only upon satisfying itself regarding the genuineness and reasonableness of such guarantee claim:(i) through a due diligence conducted by an external independent agency of the books of accounts of the PFI, and (ii) by measurement and verification of such EE Project (for which EE Loan has been restructured and claim has been made) through an independent agency by the PEA.

(d) The decision of the PEA with respect to the payment of any claim under Clause 7.2(b) shall be final and binding on the PFI.

(e) Once a Demand in terms of Clause 7.2(b) has been made by the PFI for a restructured EE Loan, the Guarantee under this Agreement and Guarantee Letter under for such EE Loan shall come to an end irrespective of whether the Demand amount has been admitted and paid by PEA or rejected by PEA. For avoidance of doubt, it is clarified that if the PFI chooses to restructure the EE Loan and/or make a Demand in terms of Clause 7.2(b) above, the Guarantee under this Agreement for such EE Loan shall come to an end and the PFI shall not be entitled to make further Demand in relation to such restructured EE Loan under this Agreement.

(f) In case the performance of an EE Project against which Demand under Clause 7.2(b) has been made and has been paid by the PEA to the PFI subsequently becomes better or generates higher energy saving than the energy saving anticipated and agreed upon in the Demand Notice:

(i) the PFI shall be obliged to compensate the PEA, even after payment of the Demand has been made by PEA in terms of Clause 7.2(c);

(ii) the amount of the compensation shall be equal to the amount paid by the PEA to the PFI for the Demand made in terms of Clause 7.2(b) and cost incurred by the PEA for making payment in terms of Clause 7.2(c).

(g) The PFI shall provide an annual declaration every year for any amount recovered by the PFI after the lodgment of Demand Notice for a restructured EE Loan. The obligation of the PFI to provide annual declaration every year (whether any amount has been recovered in any given year or not) shall start from date of issuance of Demand under Clause 7.2(b) and shall continue until 10 (ten) years from the date of payment in relation to such Demand was made by the PEA in terms of Clause 7.2(c).

7.3 **Eligible Guarantee Claim Verification**

The Independent Measurement and Verification Agency ("**MVA**"), appointed by PEA, shall carry out due diligence exercise of any Demand for an Eligible Guarantee Claim. The Independent MVA shall conduct assessment of the Eligible Guarantee Claim and Maximum Guarantee Amount by conducting detailed audit of the Host premises, and prepare a report and submit the same to the PEA for taking a decision on the admissibility of the Eligible Guarantee Claim and the Maximum Guarantee Amount. The payment obligation of the PEA against a Demand in terms of this Agreement shall be (in addition to other conditions specified in the Agreement) subject to the satisfactory report from the MVA regarding the appropriateness of the Eligible Guarantee Claim and Maximum Guarantee Amount.

7.4 **Limitation of PEA Guarantee**

 Where either:

(a) any Government Instrumentality has taken any action for the dissolution or disestablishment of the PFI, the ESCO or the Host or for the suspension of its operations so as to materially and adversely affect the operations of NPA EE Project or the financial condition of the PFI, the ESCO or Host or the PFI’s, ESCO’s or Host’s ability to perform any of their obligations under the Transaction Documents; or

(b) the PEA has made a determination that the PFI/the ESCO or the Host has engaged in a Sanctionable Practice in connection with the NPA EE Project or any transaction contemplated by this Agreement, or has not complied with the requirements of Schedule 3 (*Environmental and Social Compliance*), the ERMF or any environmental and social due diligence required thereunder; or

(c) the PFI has breached any of its obligations to the PEA under this Agreement or a Guarantee Letter and, in the reasonable opinion of the PEA, such breach is continuing after the expiry of the relevant cure period (if any) specified herein;

then, the PEA may, by written notice to the PFI (a "**Limitation Notice**"), inform the PFI that no Eligible Guarantee Claim submitted after the effective date of the Limitation Notice shall be covered by this Agreement until the PEA issues a revocation notice, as referred to in Clause7.5 (*Revocation of Limitation Notice*).

7.5 **Revocation of Limitation Notice**

The PEA will, if the event giving rise to a Limitation Notice under Clause7.4(*Limitation of PEA Guarantee*) has been remedied (in the reasonable opinion of the PEA) or condoned, immediately and may, at any other time, revoke any Limitation Notice by written notice to the PFI stating the reinstatement of coverage under this Agreement.

## Article VIII

## Termination by the PEA

8.1 In addition to other provisions of this Agreement, the PEA may terminate its obligations under this Agreement by a written notice to the PFI, effective as of the date specified in the PEA’s notice of termination (which date must not be retrospective) if any of the following events occur ("**Termination Events**"):

(a) the PFI makes an untrue statement in, or omits material information or evidence in a Demand Notice with the intention of providing the PEA with misleading information;

(b) the Guarantee Fee is not paid in accordance with the requirement of Article VI (*Guarantee Fee*);

(c) the PFI has failed to cure its breach under Clause8.1(d) to the satisfaction of the PEA within [60 (sixty)]days (or such longer period as the PEA may agree in its sole discretion);

(d) the PFI has breached any of its material obligations under this Agreement, and such breach continues for a period of [60 (sixty)] days (or such longer period as the PEA may agree in its sole discretion) after receipt by the PFI of notice of the breach sent by the PEA;

1. the PEA has conducted a random due diligence on the hard copy of the documents submitted to the PEA by the PFI and the hard copy documents do not match (in part or full) the information furnished by the PFI in the web-based portal; and
2. the PEA has conducted a random due diligence and it is found out that the proposal for guarantee for an EE Loan does not meet the eligibility criteria as set out in the Operation Guidelines (as applicable on the date when the Guarantee Letter was issued for such EE Loan).

## 8.2 The provisions of Article XI (*Return of Recovered Funds*), Article XIII (*Confidentiality*), Article XV (*Indemnity and Costs and Expenses*) and Article XVII (*Dispute Resolution*) shall survive the termination of this Agreement.

8.3 **Transfer of the PFI's Rights and Obligations**

If, within a period of [60(sixty)] days (or such longer period as the PEA may agree in its sole discretion) from an event giving rise to termination under Clause 8.1, any scheduled commercial bank or NBFC, in each case acceptable to the PEA, has assumed all (and not part) of the PFI’s obligations under this Agreement and Guarantee Letters and the MOU, the PEA may agree that all (and not part) of the PFI’s rights and obligations under this Agreement and Guarantee Letters and the MOU may be transferred and assumed by such new entity on such terms and conditions as may be specified by the PEA, provided that such new entity shall not have been sanctioned or debarred under the Anti-Corruption Guidelines.

**Article IX**

**Procedure for filing of Demand for payment of Eligible Guarantee Claim**

9.1 Any Demand should be filed by the PFI online through the PEA's website at [*insert link to webpage*] in the form of a Demand Notice.

9.2 The Demand Notice, in respect of the Demand filed online through the PEA's website at [*insert link to webpage*],should be submitted to the PEA in hard copy duly signed by the authorized representative of the PFI within [(seven) 7] days of online filing of such Demand Notice.

9.3 The amount demanded under any Demand Notice shall be expressed in Rupees and such amount cannot exceed the Maximum Guarantee Amount or unsustainable portion of restructured EE Loan.

9.4 Each Demand Notice in relation to an NPA EE Loan shall be accompanied by the documents specified below:

(a) the PFI's certification that:

(i)  a valid Eligible Guarantee Claim is made under, and pursuant to, the terms of this Agreement and the Guarantee Letter issued for such NPA EE Loan;

(ii)  the Demand is in compliance with all relevant conditions under the Transaction Documents;

(iii) the Eligible Guarantee Claim, in respect of which the Demand is made, is less than the amount outstanding from the Borrower under the EE Loan Agreement;

(b) copies of documents demonstrating that NPA EE Loan has turned into NPA, and the PFI has initiated the proceeding for legal action for recovery of the NPA EE Loan or;

(c) the PFI's declaration with respect to the truth and continuing accuracy of each of the representations contained in Article XIV (*Representation and Warranties; Covenants*);

(d) evidence reasonably satisfactory to the PEA, of the authority of the signatory of the Demand Notice to sign the Demand Notice on behalf of the PFI; and

 (e) acknowledgement by PFI that admissibility of the any Demand Notice and payment of any Demand of an Eligible Guarantee Claim by PEA is subject to the M&V exercise to be conducted by PEA through an independent third Party MVA to its satisfaction and at its sole discretion.

9.5 Each Demand Notice in relation to a restructured EE Loan shall be accompanied by the following documents:

(a) the PFI's certification that:

(i)  a valid claim is made under, and pursuant to, the terms of Clause 7.2(b) of this Agreement and the Guarantee Letter issued for restructured EE Loan;

(ii)  the Demand is in compliance with all relevant conditions under the Transaction Documents; and

(iii) the claim, in respect of which the Demand is made, is unsustainable portion of the restructured EE Loan.

(c) the PFI's declaration with respect to the truth and continuing accuracy of each of the representations contained in Article XIV (*Representation and Warranties; Covenants*);

(d) evidence reasonably satisfactory to the PEA, of the authority of the signatory of the Demand Notice to sign the Demand Notice on behalf of the PFI;

(e) copies of the documents including TRA Account statement, EE Loan ledger accounts, justification for low energy savings from the EE Project from the concerned ESCO and any other documents demonstrating to the satisfaction of the PEA for calculating the unsustainable portion of the Restructured EE Loan; and

(f) a declaration from the PFI that the decision of the PEA with respect to the payment of any claim under Clause 7.2(b) shall be final and binding on the PFI.

9.6 The Demand Notice will be effective only when the hard copy of Demand Notice along with all supporting documents and particulars is actually received by the PEA at its address specified in Article XVI (*Notices*),and in the absence of manifest error, shall be conclusive and binding on the Parties to this Agreement in respect of all information set out in such Demand Notice.

9.7 **Additional Information**

The PEA may request additional information or documentation which is within the PFI's possession or control concerning the circumstances of the Demand any time before [15 (fifteen)] calendar days of the PEA's receipt of the Demand Notice.

9.8 **Failure to Comply**

If, in connection with a Demand Notice, the PFI fails to comply with any of the requirements or obligations set out in Article IX (*Procedure for filing of Demands*), the PEA shall be entitled to deny payment under the Demand Notice. If the PEA denies payment under a Demand Notice, the PFI may cure the non–compliance and submit a new Demand Notice; provided that such new Demand Notice is submitted prior to the Final Demand Date.

9.9 **Verification from MVA**

At the request of the PEA or the MVA the PFI will be required to provide additional information or documentation which in view of the MVA is in PFI's possession or control concerning the circumstances of the Demand and Eligible Guarantee Claim in respect of the NPA EE Loan or restructured EE Loan (as the case maybe).

9.10 **Withdrawal of Demand Notice**

(a) The PFI may withdraw a Demand Notice at any time before the PEA effects payment in respect of such Demand. Subject to other provisions of this Article IX, withdrawal of a Demand Notice shall be without prejudice to the right of the PFI to subsequently re-submit the Demand Notice with respect to the amount(s) demanded in the withdrawn Demand Notice.

(b) It shall be deemed that the PFI has withdrawn a Demand Notice if, within [15 (fifteen)]calendar days after a request by the PEA for additional information or documentation with respect to such Demand pursuant to Clause9.7, the PFI fails to:

(i) supply/or make reasonable efforts to supply, such information or documentation; or

(ii) communicate to the PEA that such information or documentation is in fact not within the PFI's control or possession and fail to show good cause why such information or documentation should not need to be supplied or such efforts undertaken.

9.11 **Cancellation of Demand**

(a) If, after the PFI has served a Demand Notice on the PEA pursuant to this Agreement, but before the PEA has paid the amount under the Demand Notice in whole or in part, the PFI recovers the whole or any part of any amount referred to in the Demand Notice from the Borrower, then the PFI shall promptly send to the PEA a request for the cancellation of the Demand Notice in whole or in part, as the case may be. In case of cancelation of the Demand in part, the PFI may submit a revised Demand Notice stating the amount of Eligible Guarantee Claim then due and payable by the PEA.

(b) In the event that the funds referred to under Clause 9.11(a)above were already paid by the PEA to the PFI (in whole or in part i.e. 75% (seventy five percent) or 100% (hundred percent)), the PFI shall deposit the same with PEA within [30 (thirty) days] of receipt of such amount after adjusting towards demonstrable legal cost for recovering the same from the Borrower.

(c) If the PFI recovers the whole or any part of any amount referred to in the Demand Notice and only 75% (seventy five percent) of the Maximum Guarantee Amount as stated in the Demand Notice has been paid by the PEA to the PFI, the PFI shall deposit such recovered amount with PEA before claiming the remaining 25% (twenty five percent) of the Maximum Guarantee Amount or within [30 (thirty) days] whichever is earlier.

## Article X

## Payment by the PEA and Release; Express Obligations Only

10.1 **Payment Mechanism for NPA EE Loan**

10.1.1 Without prejudice to its rights under Article VIII (*Termination by the PEA*), and subject to Article V (*EE Loan*), Article IX (*Procedure for filing of Demand for payment of Eligible Guarantee Claim*), and this Article X (*Payment by the PEA and Release; Express Obligations Only*), PEA shall make payment of 75% (seventy five percent) of the Maximum Guarantee Amount upon:

(a) Acceptance of the Demand Notice in terms of Article IX (*Procedure for filing of Demand for payment of Eligible Guarantee Claim*);

(b) PEA's satisfaction (at its sole discretion) regarding admissibility of the Eligible Guarantee Claim and Maximum Guarantee Amount; and

(c) Completion of the M&V exercise by the MVA, and confirmation and submission of a report from the MVA regarding reasonableness and genuineness of the Eligible Guarantee Claim and the Maximum Guarantee Amount.

Upon fulfilment of the above conditions to the satisfaction of PEA, the payment by PEA for 75% (seventy five percent) of the Maximum Guarantee Amount shall be made by [5:00 p.m. (IST)] within [ninety (90)] Business Days following the date when the last condition set out above have been fulfilled to the satisfaction of PEA, or if such date is not a Business Day, the next following Business Day.

10.1.2 The remaining 25% (twenty five percent) of the Maximum Guarantee Amount shall be paid by the PEA to the PFI within [90 (ninety)] Business Days of receipt of a notice from the PFI accompanied by:

(a) confirmation from PFI regarding closing of the NPA EE Loan account against which Eligible Guarantee Claim has been made to PEA;

(b) specified documents regarding the closing of the NPA EE Loan against which Eligible Guarantee Claim is being made to the PEA; and

(c) confirmation from PFI that any recoveries under the NPA EE Loan after the lodgment of the Demand Notice in terms of Article IX (*Procedure for filing of Demand for payment of Eligible Guarantee Claim*), has already been deposited with PEA.

10.1.3 It is clarified again that the PEA's obligation to pay any part of the Maximum Guarantee Amount shall be subject to the availability of funds in the PFI Risk Coverage Ledger Account (including any transfers of facility income thereto), CTF Ledger Account, or under the CTF Guarantee.

10.2 **Release**

Payments to the PFI by the PEA of amounts demanded from the PEA pursuant to the Demand Notice shall irrevocably and unconditionally release and discharge the PEA from its obligations under this Agreement in respect of such EE Loan.

10.3 **Payment without Deduction**

All payments to be made by the PEA pursuant to this Agreement shall be made without deduction for or on account of withholding, set-off, counterclaim or any other deduction, save that the PEA may make deductions from payments due to the PFI on account of any monies owing to the PEA by the PFI pursuant to this Agreement or on account of any requirement of applicable laws.

10.4 **Express Obligations Only**

The PEA shall incur no liability nor have any duties or obligations under this Agreement or any of the other Transaction Documents except to the extent expressly stated in this Agreement.

10.5 **No Prejudice**

Nothing in this Agreement shall prejudice or affect the exercise by the PEA of its rights and remedies under or pursuant to the MOU or any other agreement between the PEA and the PFI, or give the PFI any rights (by way of subrogation or otherwise) in respect of the PEA’s rights under the MOU or any other such agreement.

##  Article XI

## Return of Recovered Funds

11.1 If the PFI receives or recovers whole or any part of any amount referred to in a Demand Notice from the Borrower or any other entity in connection with a NPA EE Loan:

(a) **After the lodgment of the Demand Notice but before payment by the PEA**- then the PFI shall promptly send to the PEA a request for the cancellation of the Demand Notice in whole or in part, as the case may be, stating the revised amount of Eligible Guarantee Claim then due and payable by the PEA.

(b) **After the payment of the 75% (seventy five percent) of the Eligible Guarantee Claim** - the PFI shall deposit the recovery amount with PEA after adjusting towards demonstrable legal cost for recovering such amount before claiming the remaining 25% (twenty five percent) of the Maximum Guarantee Amount or 30 (thirty) days from receipt of such recovery amount, whichever is earlier. The PFI shall be liable to pay penal interest at the rate of 4% (four percent) over and above then prevailing Repo Rate of Reserve Bank of India in case of failure to deposit such recovered amount with the PEA within the timeframe specified in this Clause 11.1(b).

11.2 The PFI shall provide an annual declaration every year for any amount recovered by the PFI after the lodgment of a Demand Notice in relation to a NPA EE Loan. The obligation of the PFI to provide annual declaration every year (whether any amount has been recovered in any given year or not) shall start from date of issuance of a Demand Notice in relation to a NPA EE Loan and continue until the 10th (tenth) anniversary of the date of issuance of such Demand Notice.

## Article XII

## Access to EE Project, Records and Provision of Information

12.1 The PFI shall, and shall cause the Borrower to, upon reasonable notice and at no charge for access, provide the PEA and Programme Contributors access, during normal business hours, to:

(a) examine and visit all or any part of any facilities under the ownership or control of the PFI or an ESCO or Host being used for the purpose of an EE Project; and

(b) the managers and senior staff of the PFI and the Borrower, and such other staff as are designated by them as having knowledge of matters with respect to which the PEA and Programme Contributors seek information, and to the extent the PFI is reasonably able to procure such access, the managers and senior staff of the contractors, the Borrower;

provided that the representatives of the PEA and Programme Contributors comply with all applicable safety regulations and do not interfere with normal operations of the EE Project.

## 12.2 The PFI shall permit (and secure permission from the ESCO and the Host) the representatives of the PEA and Programme Contributors to examine and make copies of the operating records, books of account, and other records or documents relating to the EE Project maintained by or in the possession of the PFI, at reasonable times and frequency and upon reasonable notice, and shall provide, or procure to be provided, promptly upon written request by the PEA and Programme Contributors all financial, technical, environmental, social, and other information related to EE Projects, or the PFI’s compliance with applicable World Bank or CTF policies, as the PEA and Programme Contributors may from time to time reasonably request. The PFI shall ensure that such abovementioned rights are available to PEA and its Programme Contributors under the Transaction Documents.

## Article XIII

## Confidentiality

13.1 **Confidentiality**

Except as the PFI and the PEA may otherwise agree, the PFI waives any right it may have to prevent or restrict the PEA from disclosing (and hereby expressly agrees and confirms that the PEA has right to disclose) to any person:

(i) this Agreement and the transactions contemplated under this Agreement; and

(ii) such information on the nature of the EE Project (other than confidential financial or other proprietary information), reports furnished to the PEA and all other relevant documents in connection with monitoring of compliances with Environment &Social Laws that in accordance with the policies and practices on information disclosure is required to be disclosed by PEA (whether or not in response to a request therefore), to the Programme Contributors.

## Article XIV

## Representations and Warranties; Covenants

14.1 The PFI represents and warrants to the PEA that:

(a) the PFI is a [scheduled commercial bank]/[NBFC] (registered with RBI) duly established and validly existing under the laws of India and has the power and legal authority to enter into, observe and perform its obligations under this Agreement and the other Transaction Documents to which it is or shall be a party;

(b) this Agreement has been duly authorized, executed, and delivered by the PFI, and constitutes its valid and legally binding obligation enforceable against the PFI in accordance with its terms, and the PFI has taken all necessary action to authorize the execution, delivery, and performance of this Agreement;

(c) the execution, delivery, and performance by the PFI of, and the transactions contemplated by, the Transaction Documents to which it is a party does not violate or conflict with: (A) any applicable law, rule, regulation, governmental approval, or judicial or official order which is binding upon it (including any laws of India in effect as of the date hereof); (B) the constitutional documents of the PFI; or (C) any document which is binding upon the PFI or any of its assets (except, in relation to repetition of this representation in respect of performance, where such violation or conflict shall not materially prevent the performance by it of, and the transactions contemplated by, the Transaction Documents to which it is or shall be a party);

(d) all Authorisations have been obtained or effected to the extent they are required at the relevant time, and, as far as the PFI is aware, no reasonable basis exists for it to believe that the Authorisations which are not required at that time shall not be obtained when they are required (except, in relation to repetition of this representation in respect of performance, where such violation or conflict shall not materially prevent the performance by it, and the transactions contemplated by, the Transaction Documents to which it is or shall be a party);

(e) no litigation, arbitration, administrative, or other proceeding or investigation is: (A) pending or, to the best of its knowledge after careful and due inquiry, threatened, against it in connection with the EE Project or any of the transactions contemplated by the Transaction Documents; or (B) to the best of its knowledge has been started or threatened in a written communication, against a counterparty to a Transaction Document in connection with the EE Project or any of the transactions contemplated by the Transaction Documents, other than as have been disclosed to the PEA and do not and is not reasonably likely to result in a Material Adverse Effect;

(f) neither the PFI nor, to the best of its knowledge (after due diligence and inquiry in accordance with those employment, management and supervisory practices and policies which would reasonably and ordinarily be expected of an internationally reputable person engaged in the same type of undertaking as the EE Project), any of its shareholders, contractors, affiliates, ESCO or Host, nor any person acting on its or their behalf, has engaged in any Sanctionable Practice in connection with the EE Project or any transaction contemplated by this Agreement, or has failed to comply with the requirements of Schedule 3 (*Environmental and Social Compliance*), the ERMF or any environmental and social due diligence required thereunder;

(g) neither the PFI, nor contractors, nor any affiliates, nor any person acting on its or their behalf, has in connection with the this Agreement or any transaction contemplated by this Agreement, engaged or contracted any individual or firm sanctioned or debarred under the Anti-Corruption Guidelines or any other firm declared ineligible under applicable laws or regulations;

(h) it understands that, in addition to any contractual remedies in respect of fraud and corruption and other Sanctionable Practices that the PEA has in connection with the Project, the PEA will also have the right to sanction an individual or entity in accordance with the any applicable PEA’s then-prevailing sanctions policies and procedures.

(i) no representation or warranty or other statement made by it in this Agreement or in any other Transaction Documents contains any untrue statement of a material fact or omits to state any material fact, in each case as of the date made or furnished, necessary to make the statements herein or therein, taken as a whole, not materially misleading in light of the circumstances in which they were made; and

(j) there is no fact known to it or, to the best of its knowledge (after due diligence and inquiry in accordance with those employment, management and supervisory practices and policies which would reasonably and ordinarily be expected of an internationally reputable person engaged in the same type of undertaking as the EE Project), any of its shareholders, contractors, affiliates, nor any person acting on its or their behalf, on the date hereof that has not been disclosed in writing to the PEA which has had or in the future is likely to have a Material Adverse Effect.

14.2 Each of the representations and warranties of the PFI set out in Clause14.1 above shall be made on the date hereof and shall be deemed to be made to the PEA again on the issuance of each Guarantee Letter, and at filing of each Demand with the PEA with respect to the facts and circumstances then existing.

14.3 The PFI covenants and undertakes to the PEA that:

1. it shall, and shall cause the ESCO and Host to, carry out each EE Project with due diligence and efficiency and in accordance with sound technical, economic, financial, managerial, environmental and social standards and practices, including compliance with relevant terms and conditions of the Environmental Risk Management Framework, any environmental and social due diligence thereunder, and the Anti-Corruption Guidelines;
2. it shall comply with the requirements of Schedule 3 (*Environmental and Social Compliance*);
3. it shall not, and shall use all reasonable endeavors (consistent with employment, management, and supervisory practices and policies which would reasonably be expected of a reputable person engaged in the same type of undertaking as that contemplated hereunder) to ensure that its shareholders, contractors, any affiliates, ESCOs, Hosts and any person acting on its or their behalf do not engage in any Sanctionable Practice in connection with this Agreement, the relevant EE Project or any transaction contemplated hereunder or thereunder;
4. it shall not, and shall use all reasonable endeavors (consistent with employment, management, and supervisory practices and policies which would reasonably be expected of a reputable person engaged in the same type of undertaking as that contemplated hereunder) to ensure that its shareholders, contractors, any affiliates, ESCOs, Hosts and any person acting on its or their behalf do not, engage or contract any individual or firm sanctioned or debarred under the Anti-Corruption Guidelines;
5. it shall cause the ESCO for each EE Project to have its financial statements audited by independent auditors, and promptly furnish the statements so audited, to the PEA and, if so requested, to the World Bank;
6. it shall, and shall cause the ESCO for each EE Project to, prepare and furnish the PEA and the World Bank all such information as the PEA or the World Bank shall reasonably request relating to the foregoing;

## Article XV

**Indemnity, Costs and Expenses**

15.1 The PFI shall indemnify and reimburse the PEA promptly on demand in respect of:

(a) all actions, proceedings, liabilities, claims, losses, damages, costs and expenses brought against, suffered or incurred by the PEA directly or indirectly in relation to, arising out of, or in connection with a breach of any representation and warranty, covenant, undertaking or other obligation of the PFI set out in this Agreement;

(b) all reasonable out-of-pocket costs and expenses, supported by applicable documentation (including fees of legal counsel, consultants, and advisors, and traveling costs and expenses) incurred by the PEA in connection with:

1. PEA’s action in preparation for the exercise of, or the actual exercise, enforcement, or preservation of, any of PEA’s rights or interests under this Agreement or any other documents and instruments related hereto or thereto or at law, in the event of any breach by, or dispute with, the PFI hereunder or thereunder;
2. any action by the Borrower or any third party, to the extent it involves or pertains to the PEA in any way, in preparation for the exercise of, or the actual exercise, enforcement, or preservation of, any of its rights or interests pursuant to this Agreement any other document referred to, in relation to any breach by, or dispute with the PFI thereunder; and
3. the consideration of any requests for PEA’s consent to any amendment or waiver or other matter under this Agreement or any Transaction Document or any other document or instrument related thereto, where such waiver, amendment, consent or other matter is necessary or required or is a result of amendments, waivers, consents or other matters proposed, or consented to, by the PFI to or in respect of any Transaction Document.

## Article XVI

## Notices

16.1 Any notice, request, application, consent, approval or waiver (each referred to in this Article XVI (*Notices*) as a "***notice***") required or permitted to be given or made pursuant to this Agreement shall be in writing in the English language.

16.2 A notice shall be deemed to have been duly given or made when it has been delivered by hand or sent by mail or facsimile to the Party to which it is required or permitted to be given or made at such Party's address specified in this Article XVI(*Notices*) (or at such other address as the Party may designate from time to time, by giving not less than fifteen (15) days' written notice to the other Party).

16.3 Where expressly so specified, a notice given or made shall be effective only when received.

16.4 The addresses for notices (other than Demands, which shall be addressed as set forth in Schedules 1 and 2, respectively) given to any Party pursuant to this Agreement are as follows:

 (a) For the PEA:

 Address: [*insert address*]

 Attention: [•]

 Facsimile: [•]

With a copy to:

Attention: [•]

Facsimile: [•]

 (b) For the PFI:

Address: [**•**]

Attention: [**•**]

Facsimile: [**•**]

##

## Article XVII

## Dispute Resolution

17.1 **Arbitration**

Any controversy between the Parties to this Agreement, and any claim by any such Party against the other arising under this Agreement which has not been settled by mutual discussion between the Parties shall be submitted to arbitration in accordance with the Arbitration and Conciliation Act, 1996; *provided* that no award may require the PEA to pay to the PFI more than the Maximum Guarantee Amount in effect at the time of the award for any dispute arising out of or in connection with the commitment provided by the PEA under this Agreement.

17.2 **No Waiver of Immunity**

Nothing in this Agreement shall operate as or be construed to constitute a waiver, renunciation, or any other modification of any privilege or immunity of the PEA under any applicable law.

## Article XVIII

**Miscellaneous**

18.1 **Amendments**

No provision of this Agreement may be amended, modified or supplemented except in a written agreement executed by authorized signatories of each of the PEA and the PFI. All amendment, modification or waiver of any rights under the Transaction Documents shall require prior written consent of the PEA.

18.2 **Separate Contractual Rights**

Save as may be expressly provided herein, nothing in this Agreement shall limit or restrict the rights of the PEA pursuant to any other agreement.

18.3 **Counterparts**

This Agreement may be executed in separate counterparts and by each party separately on a separate counterpart, and each such counterpart, when so executed and delivered, shall be an original. Such counterparts shall together constitute one and the same instrument.

18.4 **Waiver**

Failure by any Party at any time to enforce any provision of this Agreement or to require performance by the other Party of any provision of this Agreement shall not be construed as a waiver of such provision and shall not affect the validity of this Agreement or any part of it or the right of the relevant Party to enforce any provision in accordance with its terms.

18.5 **Severability**

If any condition or provision of this Agreement not being of a fundamental nature is held to be illegal or unenforceable, the validity or enforceability of the remainder of this Agreement shall not be affected thereby.

18.6 **Governing Law and Jurisdiction**

(a) This Agreement and the rights and obligations of the Parties hereunder shall be construed in accordance with and be governed by the laws of India.

(b) The PFI irrevocably waive any objection now or in future, to the laying of the venue of any Proceedings in the courts and tribunals and any claim that any such Proceedings have been brought in an inconvenient forum and further irrevocably agree that a judgment in any proceedings brought in the courts at [New Delhi] shall be conclusive and binding upon them and may be enforced in the courts of any other jurisdiction, (subject to the laws of such jurisdiction) by a suit upon such judgment, a certified copy of which shall be conclusive evidence of such judgment, or in any other manner provided by law.

18.7 **No Assignment**

The PFI shall not assign or transfer all or any of its rights or obligations under this Agreement without the prior written consent of the PEA.

**IN WITNESS WHEREOF** the Parties to this Agreement have caused this Agreement to be duly executed by their duly authorized representatives on the date first above written.

|  |  |
| --- | --- |
| Signed and delivered by [•] acting as PFIBy: [•][Authorized Representative]Name:[•]Title: [•] |  |
|  |  |
| Signed and delivered by SMALL INDUSTRIES DEVELOPMENT BANK OF INDIA, acting as PEABy: [•][Authorized Representative]Name:[•]Title: [•] |  |

**SCHEDULE 1**

**Form of Demand Notice in CAse of NPA EE Loan**

To: SMALL INDUSTRIES DEVELOPMENT BANK OF INDIA

 [*Insert address*]

Attention: [•]

Facsimile: [•]

*with a copy to:* [•]

Facsimile: [•]

Sir/Madam,

**DEMAND NOTICE**

Under the Master Guarantee Agreement dated [*insert date*] and Guarantee Letter number [•] dated [*insert date*].

1. **Master Guarantee Agreement**

We refer to the Master GuaranteeAgreement dated [•]and Guarantee Letter number [●] dated [•]for EE Loan and EE Project (as defined in the Guarantee Letter), and Energy Service Performance Contract date [•] for the EE Project.

2. **Definitions**

Unless otherwise defined herein or the context so requires, all capitalized terms used in this Demand Notice shall have the meanings given to them in the Master Guarantee Agreement.

3. **Amount Demanded**

We hereby request you to pay us a guarantee amount of Rupees [*insert amount claimed in words*] (INR [*insert amount claimed in numbers*]) ("**Guarantee Demand**") in accordance with the terms of Master Guarantee Agreement.

4. **Payment Account**

We request you to please pay the amount demanded in this Demand Notice to the following Account:

Account holder's name: [•]

 Account name: [•]

 Account number: [•]

Account bank: [•]

Account bank's branch: [•]

5. **Grounds for issuing this Demand Notice**

We certify that:

1. a valid Eligible Guarantee Claim is made under, and pursuant to, the terms of the Master Guarantee Agreement read with the Guarantee Letter;
2. the Eligible Guarantee Claim, in respect of which Guarantee Demand is made in this Demand Notice, is sustained by the PFI and is outstanding from the Borrower; and

(d) we are entitled to issue this Demand Notice pursuant to the Master Guarantee Agreement and the Transaction Documents.

6. **Representations & Warranties**

In accordance with Clause14.2 (*Representations and Warranties; Covenants*) of the Master Guarantee Agreement, we hereby represent and warrant the truth and accuracy of each of the representations contained in Clause14.1 (*Representations and Warranties; Covenants*) of the Master Guarantee Agreement.

7. **Accompanying Documents**

As required under the Master Guarantee Agreement we enclose:

(a) a certificate signed by [•], a duly authorized representative, to the effect that:

(i)  a valid Eligible Guarantee Claim is made under, and pursuant to, the terms of the Master Guarantee Agreement and Guarantee Letter for the EE Loan;

(ii)  the Guarantee Demand is within the Maximum Guarantee Amount required to be paid by the PEA; and

(iii) the Eligible Guarantee Claim, in respect of which Guarantee Demand is made is in compliance with the requirements of the Transaction Documents;

(b) copies of documents demonstrating that the EE Loan has turned into NPA and the PFI has initiated the proceeding for legal action for recovery of the EE Loan;

(c) evidence reasonably satisfactory to the PEA of the authority of the signatory of the Demand Notice to sign the Demand Notice on behalf of the PFI.

We hereby agree and acknowledge that admissibility of this Demand Notice and the payment of the Guarantee Demand is subject to the completion of the M&V exercise by PEA in terms of the Master Guarantee Agreement.

Dated [*insert date*]

For and on behalf of [•]

**SCHEDULE 2**

**Form of Demand Notice in case of RestructurED EE Loan**

To: SMALL INDUSTRIES DEVELOPMENT BANK OF INDIA

 [*insert address*]

Attention: [•]

Facsimile: [•]

*with a copy to:* [•]

Facsimile: [•]

Sir/Madam,

**DEMAND NOTICE**

Under the Master Guarantee Agreement dated [*insert date*] and Guarantee Letter number [•] dated [*insert date*].

1. **Master Guarantee Agreement**

We refer to the Master Guarantee Agreement dated [•] and Guarantee Letter number [●] dated [•] for EE Loan and EE Project (as defined in the Guarantee Letter), and Energy Service Performance Contract date [•] for the EE Project.

2. **Definitions**

Unless otherwise defined herein or the context so requires, all capitalized terms used in this Demand Notice shall have the meanings given to them in the Master Guarantee Agreement.

3. **Amount Demanded**

We hereby request you to pay us a guarantee amount of Rupees [*insert amount claimed in words*] (INR [*insert amount claimed in numbers*]) ("**Guarantee Demand**") in accordance with the terms of Master Guarantee Agreement.

4. **Payment Account**

We request you to please pay the amount demanded in this Demand Notice to the following Account:

Account holder's name: [•]

 Account name: [•]

 Account number: [•]

Account bank: [•]

Account bank's branch: [•]

5. **Grounds for issuing this Demand Notice**

We certify that:

(a) a valid guarantee claim is made under, and pursuant to, the terms of the Clause 7.2(b) of the Master Guarantee Agreement read with Guarantee Letter; and

(b) we are entitled to issue this Demand pursuant to the Master Guarantee Agreement; and

6. **Representations & Warranties**

In accordance with Clause14.2 (*Representations and Warranties; Covenants*) of the Agreement, we hereby represent and warrant the truth and accuracy of each of the representations contained in Clause14.1 (*Representations and Warranties; Covenants*) of the Agreement.

7. **Accompanying Documents**

We enclose:

(a) a certificate signed by [•], a duly authorized representative, to the effect that:

(i)  a valid Demand is made under, and pursuant to, the terms of the Master Guarantee Agreement and Guarantee Letter for the EE Loan which is being restructured; and

(iii) the Guarantee Demand under this Demand Notice is equal to the amount of the unsustainable portion of the restructured EE Loan.

(b) evidence reasonably satisfactory to the PEA of the authority of the signatory of the Demand Notice to sign the Demand Notice on behalf of the PFI;

(c) copies of the documents including trust and retention account statement, EE Loan ledger accounts, justification for low energy savings from the EE Project from the concerned ESCO and any other documents demonstrating to the satisfaction of the PEA for calculating the unsustainable portion of the Restructured EE Loan; and

(d) a declaration from the PFI that the decision of the PEA with respect to the claim for the Guarantee Demand shall be final and binding on us.

We also hereby agree and acknowledge that admissibility of this Demand Notice and the payment of the Guarantee Demand is subject to the completion of the M&V exercise by PEA in terms of the Master Guarantee Agreement.

Dated [*insert date*]

For and on behalf of [•]

**SCHEDULE 3**

**ENVIRONMENTAL AND SOCIAL COMPLIANCE**

(A) The PFI shall ensure that each EE Project is to be carried out in accordance with the environmental and social standards, mitigation arrangements, and other requirements under the Environmental Risk Management Framework;

(B) Prior to the commencement of any activity under EE Project, the PFI shall ensure that (i) if an environmental impact assessment, or environmental management plan shall be required for any such activity, as applicable, in accordance with the provisions of the ERMF, that the ESCO or the Host, as the case may be, has such plan, as the case may be: (a) prepared in accordance with the provisions of the Environmental Risk Management Framework; (b) furnished to the PEA and the World Bank for review and approval; and (c) thereafter adopted and disclosed as approved by the World Bank, in a manner acceptable to the World Bank; (ii) the ESCO or the Host, as the case may be, establish and maintain appropriate monitoring systems, to the satisfaction of the World Bank; (iii) the agreements or documents for such EE Project and/or related EE Loan contain (a) the obligation of each ESCO or Host to comply with the applicable standards outlined in the relevant environmental documents and (b) rights and mechanisms applicable in the event of non-compliance therewith, consistent with the Environmental Risk Management Framework; and (iv) all relevant parties shall submit all such information as the PEA or the World Bank shall reasonably request relating to each EE Project regarding the Environmental and Social Compliance.

1. *Drafting Note: Use in case of a Scheduled Commercial Bank.* [↑](#footnote-ref-2)
2. *Drafting Note: Use in case of an NBFC.* [↑](#footnote-ref-3)
3. *Drafting Note: SIDBI to redraft/confirm post internal discussions.* [↑](#footnote-ref-4)