**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**SMALL INDUSTRIES DEVELOPMENT BANK OF INDIA**

**(AS PEA)**

**AND**

**[**⚫**]**

**(AS PFI)**

**Dated [**⚫**], 2015**

**MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding("**MOU**") is made at [*insert place of execution*] on the [⚫] day of [⚫], 2015

**BY AND BETWEEN**:

**SMALL INDUSTRIES DEVELOPMENT BANK OF INDIA**, a corporation established under the Small Industries Development Bank of India Act, 1989, having its 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, (hereinafter referred to as "**SIDBI**" or "**PEA**", which expression shall, unless repugnant to the context thereof, include its successors, transferee, novatees and permitted assigns) of the **FIRST PART**;

**AND**

[[*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, having its registered office at [⚫], (hereinafter referred to as the "**Participating Financial Institution**" or "**PFI**") which expression shall, unless repugnant to the context thereof, include its successors, transferees, novatees and permitted assigns) of the **SECOND PART**][[1]](#footnote-1);

**OR**

[[*Name of the NBFC*], a non-banking financial company ("**NBFC**") with CIN No. [•], registered with the Reserve Bank of India, having its registered office at [⚫], (hereinafter referred to as the "**Participating Financial Institution**" or "**PFI**") which expression shall, unless repugnant to the context thereof, include its successors, transferees, novatees and assigns) of the **SECOND PART**][[2]](#footnote-2);

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 16 million (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 the 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 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 PEA is 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) Now, the scheduled commercial/NBFC has fulfilled the eligibility criteria to become PFI for the Programme to the satisfaction of the PEA. Accordingly, the PEA has agreed to execute this MOU with the selected PFI and the PFI agrees to perform the preparatory activities specified in this MOU for empanelment under the Programme.

1. **DEFINITIONS**

 For purposes of this MOU, the following capitalised terms (unless contrary to the context) shall have the following meanings:

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

(i) controls, or

(ii) is controlled by, or

(iii) is under common control with,

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

1.2 "***Borrower***" means entities to whom a PFI as lender intends to provide term loan with respect to an EE Project;

1.3 "***Cooperation Agreement***" means the agreement executed amongst Republic of India and the World Bank with respect to the execution of the Programme;

1.4 "***CTF***" means the Clean Technology Fund;

1.5 "***CTF Guarantee Agreement***" means the agreement signed between the World Bank (acting as implementing agency of the CTF) and SIDBI for providing CTF Guarantee;

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

1.7 "***Effective Date***" means the date of execution of this MOU by the Parties;

1.8 "***EE Project***" means the energy efficiency project against which EE Loan has been provided by the PFI to a Borrower;

1.9 "***Energy Efficiency Cell***" means a unit comprising of more than one person, belonging to the PFI empanelled with the PEA, for the purpose of the Programme and which persons have knowledge with respect to energy efficiency projects and have understood the objectives and modalities of the Programme and have thoroughly publicised the same within their organization;

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

1.11 "***ESCO***" means an energy service company that offers energy efficiency improvement services which may also include guarantee of the savings;

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

1.13 "***GEF***" means the Global Environment Facility;

1.14 "***GEF Grant Agreement***" shall have the meaning ascribed to it in Recital A.

1.15 "***Host***" means entities including, but not limited to, large industrial concerns, micro, small or medium enterprises, commercial buildings, municipal bodies, which enter into ESPCs with ESCO for the EE Project;

1.16 "***Master Guarantee Agreement***" shall have the meaning as defined in the CTF Guarantee Agreement;

1.17 "***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;

1.18 "***Preparatory Activities***" shall mean and include the activities set out in Clause 3.1 of this MOU;

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

1.20 "***Programme Contributors***" means the World Bank, Global Environment Facility and Clean Technology Fund, which are contributing funding or guarantee support for the Programme;

1.21 "***Term***" shall have the meaning ascribed to it under Clause 2.1 of this MOU;

1.22 "***USD***" means United States Dollars, the lawful currency of the United States of America; and

1.23 "***World Bank***" means International Bank for Reconstruction and Development.

2. **Term**

2.1 This MOU will become effective from the date of its execution by both the Parties ("**Effective Date**") and will remain in force for a period of [⚫][[3]](#footnote-3) days from the Effective Date ("**Term**"), unless terminated earlier in terms of Clause 3.4.

2.2 This MOU is not a binding legal agreement, and unless expressly provided herein, does not create any rights in favour of the PFI or give rise to any obligations on part of the PEA till such time the PFI completes the Preparatory Activities to the reasonable satisfaction of the PEA and executes the Master Guarantee Agreement. In the event of any conflict between the provisions of this MOU and the Master Guarantee Agreement, the provisions of the Master Guarantee Agreement will apply.

3. **Conditions to be satisfied by the PFI to participate in the Programme**

3.1 The PFI at its sole cost and expense is required to complete the following Preparatory Activities within [⚫] days from the Effective Date to the reasonable satisfaction of the PEA in order to become eligible to participate in the Programme:

(i) carry out capacity building of its staff on appraisal of energy efficiency financing;

(ii) prepare and adopt a policy for proper appraisal of EE Projects for the purpose of lending to ESCO/Host entities in relation to such EE Projects;

(iii) create an Energy Efficiency Cell to ensure that the objectives and modalities of the Programme are well understood by its employees and have been thoroughly publicised within its organisation;

(iv) appoint an employee as a 'single point of contact' within its organization for all Programme related activities who has been thoroughly briefed about the Programme;

(v) provide commitment to cover significant number of EE Projects;

(vi) ensure that its appraisal policy for EE Projects and other procedures in relation to financing of EE Projects are consistent with the Operational Guidelines or any other guidelines issued by PEA from time to time.

3.2 Upon the PEA being satisfied with the completion of the Preparatory Activities undertaken by the PFI within the time specified in Clause 3.1 (or the extended period in terms of Clause 3.3), the PEA shall issue a letter to the PFI within [⚫] days from the date of such completion confirming the successful completion of the Preparatory Activities by the PFI. Within [⚫] days from the receipt of the letter from the PEA, the PFI and the PEA shall execute the Master Guarantee Agreement in the format prescribed by the PEA.

3.3 If the PFI is unable to complete the Preparatory Activities to the reasonable satisfaction of the PEA within the time specified in Clause 3.1, then the PEA upon receiving a written request from PFI, may extend the time period for completion of the Preparatory Activities by an additional [⚫] days at its sole discretion.

3.4 In case the PFI is unable to fulfill the Preparatory Activities to the reasonable satisfaction of the PEA within the period specified in this MOU (including the extended period pursuant to Clause 3.3 above), then this MOU will automatically terminate. Neither Party shall be liable to the other for any direct, indirect, consequential, punitive or similar indirect loss or damage, including loss of profit or loss of business opportunity, or for any other costs or expenses of any nature arising out of or in connection with this MOU (including as a result of termination or expiry of this MOU).

3.5 The PEA and the Programme Contributors shall have the right to perform due diligence on the applicant PFI at any time until the signing of the Master Guarantee Agreement, either by itself or through the Programme Contributors, and the PFI agrees to provide all such assistance and support that may be required by the PEA and/or the Programme Contributors in carrying out such due diligence exercise on the PFI.

4. **PFI’s Responsibilities**

4.1 After completion of the Preparatory Activities to the reasonable satisfaction of the PEA, the PFI undertakes to perform all such activities necessary for better and efficient implementation of the Programme, including:

 (i) execute the Master Guarantee Agreement with PEA to participate in the Programme;

(ii) provide quarterly forecast to the PEA of possible lending to EE Projects;

(iii) evaluate the energy savings loan applications by using prudent banking judgment and use their business discretion/due diligence in selecting commercially viable applications and conduct of the account(s) of the Borrowers;

(iv) conduct technical and commercial appraisal of energy savings loan applications;

(v) ensure compliance by the ESCO and the Host on the applicable Environment and Risk Management Framework (ERMF);

[(vi) execute loan agreements with the Borrowers;

(vii) execute the trust and retention account agreement (in the format specified by the PEA) with the ESCO and the Host and the trustee bank and monitor the trust and retention account for the energy savings loan account;

(viii) enter the guarantee application details in PRSF website using proper link and user ID and password;

(ix) pay the guarantee fee to the PEA in accordance with the terms of the Master Guarantee Agreement;

(x) submit to the PEA, for its records, the hard copy of the print-out of the guarantee application duly signed by its authorised signatory along with the other supporting documents as may be specified by the PEA;

(xi) enter the information in the format in the PRSF website for the EE Loan and generate the quarterly progress report;

(xii) conduct measurement and verification (M&V) through a third party agency hired/empanelled by the PEA and selected by an independent technical evaluation committee, on a sample basis, for the projects where guarantees have been issued by the PEA under the Programme.

(xiii) in the event of delays in the payments/defaults in repayment of EE Loans, get the M&V conducted on the project through a third party agency hired/empanelled by the PEA and selected by such committee for all such cases;

(xiv) ensure that the guarantee claim is lodged with SIDBI in the form and in the manner and within such time as may be specified by the PEA in the Master Guarantee Agreement;

(xv) facilitate inspection/audit of its records, statement of accounts, and visits to or M&V of the facility of the Host entity where a EE Project has been implemented, as may be desired by the PEA/World Bank/any third party agency;

(xvi) in respect of any guaranteed account, exercise the same diligence in recovering the dues, and safeguarding the interest of the PEA through all available means as it might have exercised in the normal course if no guarantee had been furnished by the PEA;

(xvii) refrain from taking or omitting to take any action, either before or subsequent to invocation of a guarantee under the Master Guarantee Agreement, which may adversely affect the interest of the PEA as the guarantor;

(xviii) ensure, either through a stipulation in an agreement with the Borrower or otherwise, that it shall not create any charge on the security held in the account covered by the guarantee for the benefit of any account not covered by the guarantee, with itself or in favour of any other creditor(s) without intimating the PEA;

(xix) secure for the PEA or its appointed agency, through a stipulation in an agreement with the Borrower or otherwise, the right to list the defaulted Borrowers' names and particulars on the Website of the PEA / CIBIL / other credit bureaus;

(xx) submit annual statement of the loan account to the PEA till the loan account is closed in full, even post-settlement of claim by the PEA; and

(xxi) comply with guidelines related to PRSF as may be issued by the PEA, from time to time.

5. **Assignment**

5.1 Subject to Clause 5.2, neither Party may assign or otherwise transfer any of its rights or obligations under this MOU, in whole or in part, to a third party.

5.2 Notwithstanding Clause 5.1, the PFI may assign any of its rights or obligations under this MOU to an Affiliate or other third party which agrees to finance EE Projects and perform the Preparatory Activities, provided that it gives the PEA at least thirty (30) days' prior written notice and subject to the PEA approving such Affiliate or other third party, such approval to be at the PEA’s absolute discretion.

5.3 This MOU shall be for the benefit of and be binding upon the successors and permitted assigns of the Parties.

6. **Representation by the PFI**

The PFI represents that neither it nor its employees or any of its Affiliates or their employees has offered, promised or given any undue pecuniary or other advantage, whether directly or through intermediaries, to any official, employee or agent of the PEA or to any third party to ensure that such official, employee or agent of the PEA or such third party acts or refrains from acting in relation to the performance of official duties, in order to obtain any improper advantage in connection with matters relating to this MOU.

7. **Miscellaneous Terms**

7.1 The rights and obligations of the Parties under or pursuant to this MOU shall be governed by and construed according to the laws of India.

7.2 Any dispute arising out of or in connection with this MOU shall be settled by an amicable effort by the Parties. If the Parties fail to amicably resolve the dispute, the Parties agree to submit such dispute, to the exclusive jurisdiction of the competent courts of [New Delhi].

7.3 All data and information disclosed by any Party pursuant to this MOU shall be kept confidential by the receiving Party during the Term of this MOU and shall not be divulged to any third party (other than to the PEA Contributors) without the prior written consent of the disclosing Party, except to the extent required to comply with applicable laws, unless such data becomes part of the public domain through no fault of the receiving Party or unless such data were known by the receiving Party before the Effective Date. The confidentiality obligation contained in this Clause 7.3 shall survive the termination of this MOU.

7.4 The Parties neither intend that this MOU creates a partnership, association or trust nor authorises either Party to act as agent, servant or employee for the other Party.

7.5 This MOU constitutes the whole agreement between the Parties relating to its subject matter, and does not constitute an agreement or acceptance of the PFI’s proposal for enrolment under the Programme.

7.6 No amendments, changes or modifications to this MOU shall be effective unless agreed by the Parties, made in writing and signed by the duly authorised representatives of the Parties.

7.7 This MOU may be executed by one or more Parties to any counterpart, each of which shall be deemed an original and all of which together shall constitute one and the same MOU.

7.8 Any notice or other communication to be given under this MOU must be in writing and may be delivered or sent by post, fax or email to the Party to be served at its address as follows:

|  |  |
| --- | --- |
| 1. To PEA at:
 | To PFI at: |
| [⚫] | [⚫] |
| 1. Fax: [⚫]
 | 1. Fax: [⚫]
 |
| 1. E-mail: [⚫]
 | 1. Email: [⚫]
 |
| 1. Attention: [⚫]
 | 1. Attention: [⚫]
 |

IN WITNESS whereof this MOU has been duly executed by the properly appointed representatives of the Parties hereto on the day and year first above written.

**For PEA For PFI**

[⚫][⚫]

**Authorised Signatory Authorised Signatory**

**Witness: 1.** [⚫] **Witness: 1.** [⚫]

 **2.** [⚫] **2.** [⚫]

1. *Drafting Note: To be used if the Applicant PFI is a Scheduled Commercial Bank.* [↑](#footnote-ref-1)
2. *Drafting Note: To be used if the Applicant PFI is a NBFC.* [↑](#footnote-ref-2)
3. To be inserted by SIDBI [↑](#footnote-ref-3)