

[To be stamped adequately]

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“**MoU**”) is entered into on this ___ day of _____, 2016 (“Effective Date”) at New Delhi

BY AND BETWEEN

Bureau of Energy Efficiency, a statutory body constituted under Energy Conservation Act, 2001 (hereinafter referred to as “**Act**”) having its registered office at 4th Floor, Sewa Bhawan, R.K. Puram, New Delhi -110066 (hereinafter referred to as “**BEE**”, which expression shall, unless contrary to the context, mean and include its successors and permitted assigns), of the First Part;

AND

_____, a company incorporated under the Companies Act, 1956 and a banking company within the meaning of the Banking Regulation Act, 1949, applying for empanelment for the guarantee facility under Partial Risk Guarantee Fund for Energy

Efficiency (“**PRGFEE**”) having its registered office at _____ (hereinafter referred to as “**Participating Financial Institution (PFI)**”, which expression shall, unless contrary to the context, mean and include its successors and assigns) of the Other Party;

Participating Financial Institution (PFI) means a financial institution empanelled with the Bureau, in accordance with the operations manual mentioned in clause (b) of sub-rule(3) of rule 7 of PRGFEE rules 2016, for participating in the Fund, such as scheduled commercial bank (other than regional rural bank) or public financial institutions (registered under section 4A of the Companies Act 1956 (1 of 1956)) or non-banking financial companies with the certificate of registration from Reserve Bank of India, registered under the category of non-deposit taking non-banking financial companies, Systemically Important Core Investment Company not raising public deposit or Infrastructure Finance Companies applying for guarantee facility under Partial Risk Guarantee Fund for Energy Efficiency. The PRGFEE Rules 2016 has been provided under **Annexure-A**.

BEE and PFI are individually also referred to as the “**Party**” and collectively as the “**Parties**”.

WHEREAS:

- A. BEE is a statutory body set up by the Government of India on 1st March 2002 under the provisions of the Act, with the aim to assist in developing policies and strategies with a thrust on self-regulation and market principles, within the overall framework of the Act with the primary objective of reducing energy intensity of the Indian economy.
- B. National Mission for Enhanced Energy Efficiency (“**NMEEE**”) is one of the eight National Missions, constituted under the National Action Plan on Climate Change (“**NAPCC**”), and is in pursuance of clause (l) of sub-section (2) of section 13 of the Act. BEE, in its efforts to create a market for energy efficiency projects, has set up, under the NMEEE the PRGFEE program, a fund being a risk-sharing mechanism to provide participating financial institutions with a partial coverage of risk involved in extending loans for energy-efficiency projects.
- C. PRGFEE is a risk sharing mechanism to provide Financial Institutions (Banks/ Non Banking Financial Companies) with a partial coverage of risk involved in extending loans for Energy Efficiency projects. The main objective of PEGFEE is to scale-up Energy Efficiency investments in India by providing Partial Risk Guarantee to the financing of Energy Efficiency projects proposed by ESCO.
- D. PRGFEE will directly support financing of energy efficiency projects by:
 - a) Addressing credit risk and barriers faced and/or perceived by the financial institutions in financing Energy Service Company (“**ESCO**”) which are empanelled with BEE, for implementing energy efficiency projects in India. A list of empanelled ESCOs is available on BEE’s website at www.beeindia.gov.in;
 - b) Structuring the transactions involved in financing energy efficiency projects by standardising appraisal and other supporting documents; and
 - c) Engaging participating financial institutions and building their capacity to finance energy efficiency projects on a commercially-sustainable basis.
- E. In order to promote the said objectives, BEE intends to get associated with various financial institutions and have invited applications from various financial institutions for

empanelling them under the PRGFEE via Expression of Interest (Eoi) dated [●]2015 released by BEE.

F. Accordingly PFI had submitted its application dated [●] for the empanelment of the PFI with BEE.

G. After scrutiny and detailed evaluation of the application received from PFI, BEE has accepted the application of PFI for empanelment with BEE and accordingly, BEE and PFI are desirous of entering in to this MoU to set out the terms and conditions as mutually agreed in relation to the empanelment of _____ as a PFI.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the Parties hereby agree to the terms and conditions as defined below:

1. Key Abbreviations used in the MoU

| | |
|--------|---|
| MoU | Memorandum of Understanding |
| BEE | Bureau of Energy Efficiency |
| NAPCC | National Action Plan on Climate Change |
| NMEEE | National Mission on Enhanced Energy Efficiency |
| ESCO | Energy Service Company |
| FEEED | Framework for Energy Efficient Economic Development |
| ESPC | Energy saving Performance Contracting |
| IA | Implementing Agency (Consortium of REC Power Distribution Company Limited, Rural Electrification Corporation Limited, Energy Efficiency Services Limited) |
| INR | Indian Rupees |
| M & V | Measurement and Verification |
| OM | Operations Manual |
| PFI | Participating Financial Institution |
| PRGFEE | Partial Risk Guarantee Fund for Energy Efficiency |
| SC | Supervisory Committee |
| TRA | Trust and Retention Account |
| PSU | Public Sector Undertaking |
| EE | Energy Efficiency |

2. PRGFEE Guarantee

This MoU pertains to the understanding arrived at between BEE and the PFI with respect to the PFI's participation in PRGFEE in order to enable the PFI to derive benefit of the PRGFEE guarantees. The OM *inter alia* details the procedure pertaining to the issuance of PRGFEE guarantees, handling of PFI's claims thereunder, approval/appraisal of projects/borrowers for the purposes of determining eligibility to receive benefit under PRGFEE, roles and responsibilities of various parties including the PFI, BEE and IA etc, and therefore, the Parties acknowledge and agree that the OM shall be the governing document as regards the operational and other modalities of PRGFEE and accordingly, hereby agrees to abide by the OM at all times during the subsistence of this MoU or any PRGFEE guarantee of which it is deriving the benefit of, whichever is later. In the event of any inconsistency between the terms of this MoU and the PRGFEE Rules 2016, the PRGFEE Rules 2016 as amended from time to time shall prevail and be followed.

3. Performance Review

- 3.1. PFI shall provide/submit progress report on a quarterly basis upon the written request to IA in the format prescribed by IA from time to time. Further, PFI shall also submit annual performance report to SC/ BEE, in the format as prescribed by BEE, from time to time. Further, PFI shall be required to attend annual meeting conducted by IA to soundboard their experiences and suggestions on successful running of PRGFEE, under the presence of BEE. The said meeting should be attended at least by a senior officer of the empanelled PFI not being below the rank of AGM of _____ Bank.

4. Amendment

- 4.1. BEE shall have the right to amend the terms and conditions defined in this MoU or in any document any time, at its sole discretion, subject to the same being notified to PFI within 30 (thirty) business days from the amendment to take effect.
- 4.2. BEE shall have right to create, organize new funds/programs which shall have the similar aim of promoting finance to EE projects. The terms and conditions applicable on the financing of the EE projects through the said new funds/programs shall be same except to modifications, as BEE considers necessary.

5. Term and Termination

- 5.1. This MoU shall become effective on the Effective Date and shall remain in force for 5 (five) years from date of signing the MoU with BEE or till the PRGFEE fund remains operational, whichever is earlier. If PRGFEE fund remains operational beyond 5 (five) years of empanelment tenure, same procedure for fresh empanelment of PFI shall be followed. However, the termination of this MOU (including pursuant to force majeure event or de-empanelment of PFI as specified in below Clause 5.2.1) shall only impact future Guarantee Application (s) for new EE Projects, while continuing with other existing EE Projects under PRGFEE with the PFI.
- 5.2. Same as otherwise provided in this MoU, in the event that any of the defaults specified below in Clause 5.2.1 or in the MoU, shall have occurred, and the PFI fails to cure the default within a cure period of 60 (sixty) days, the PFI shall be deemed to be in default of this MoU (the "PFI Default"), unless the default has occurred solely as a result of any breach of this MoU by BEE or due to any Force Majeure events. The defaults referred to herein shall include:

5.2.1. De-Empanelment of PFI

PFI would be de-empanelled by BEE on the occurrence of the following events,:

- (a) PFI is involved in any major litigation that may have an impact of affecting or compromising the delivery of services as required under this MoU;
- (b) PFI is black-listed by any Central/ State Government / Public Sector Undertaking (PSU) in India during the tenure of the project under PRGFEE scheme;
- (c) PFI deviates from the scope of work or the OM defined under PRGFEE;
- (d) PFI fails to comply with directions as may be issued by BEE/ IA/ SC from time to time; and

- (e) the Guarantee Claim submitted by PFI to IA is found to be fraudulent, or in the event of serious deficiencies, such as inadequate appraisal/ renewal/ follow-up/ conduct of the EE Project or multiple lodgement of claim, or suppression of any material information for the settlement of claims, etc.

5.2.2. In any other case either Party may terminate the Agreement at any time for any reasons whatsoever by giving the other Party forty five (45) days prior written notice of its intention to terminate this Agreement.

6. Co-operation

- 6.1. BEE and the PFI will consult each other, whenever it may be appropriate, on the matters covered by this MoU, and will use their best endeavor to ensure that staff of both the organizations cooperate in good faith with one another.
- 6.2. Parties should apprise / keep each other informed on EE Project related matters and shall provide support to BEE/ IA on such other activities as are necessary to achieve the objectives of PRGFEE underlined in this MoU.
- 6.3. PFI shall carry out capacity building programmes internally and shall also nominate its employees for participating in training programmes organized by BEE.
- 6.4. BEE for increasing awareness regarding funds like PRGFEE, VCFEE, etc. shall be circulating advertisement materials like brochures/ hoardings/ flyers etc. and the same shall be circulated internally by the PFI for making the drive more effective.

7. Confidential Information

- 7.1. Both the Parties shall be making available information to each other which at present is confidential and not in the public domain and shall ensure that it is kept confidential as between the Parties. The Parties undertake and declare that they shall not divulge, publish or reproduce the same before any party or person except in accordance with the terms of this MoU.
- 7.2. The Parties hereby agree that all confidential, proprietary or trade secret information disclosed by a Party in written form ("**Disclosing Party**"), including without limitation, information regarding the business operations, financial information and marketing strategies of such Disclosing Party and any notes, compilations, studies, interpretations, presentations, correspondence or other writings made available to the other Party ("**Receiving Party**") whether after the Effective Date or prior to the execution of this MoU shall be deemed to be Confidential Information ("**Confidential Information**"). The Receiving Party agrees that all Confidential Information shall be treated as absolute secret and the Receiving Party shall not disclose to any person such information otherwise than in terms of this MoU.
- 7.3. Both the Parties represent and warrant to each other that each Party has the right and authority to disclose the Confidential Information to other Party and that they are not a party to any agreement or under any obligation to any third party which would prevent either Party from entering into this MoU and complying with the terms and conditions as set forth herein.
- 7.4. The Receiving Party agrees that all Confidential Information shall remain the property of the Disclosing Party or its Affiliates, and that the Disclosing Party may use such Confidential Information for any purpose without any obligation to the Receiving Party. Nothing contained herein shall be construed as granting or implying any transfer of rights (including license rights) to the Receiving Party in the Confidential Information, or any patents or other intellectual property protecting or relating to the Confidential Information.

- 7.5. Both the Parties agree that during the continuance of this MoU the Receiving Party shall not without prior written consent of the Disclosing Party, disclose or enter into an agreement to supply all or any of the Confidential Information to any third person, except as specifically provided for in this MoU and shall be used by the Receiving Party, directly or indirectly, solely for the purpose of considering, evaluating and effecting the terms and conditions related to this MoU.
- 7.6. The Receiving Party shall not without prior written consent of the Disclosing Party:
- (a) Disclose to any person, directly or indirectly:
 - (i) The fact that the Confidential Information has been made available to the Receiving Party by the Disclosing Party or that the Receiving Party has inspected any portion of the Confidential Information; or
 - (ii) The fact that any discussion or negotiation is taking place concerning the terms and conditions related to this MoU; or
 - (iii) Any of the terms, conditions or other facts with respect to the terms and conditions related to this MoU, including the status thereof; or
 - (b) Make any private or public announcement or statement concerning or relating to the terms and conditions related to this MoU.
- 7.7. The Parties shall limit the access to the Confidential Information solely to those of its directors, officials, employees, contractors, sub-contractors or agents who have reason to require access for consideration or evaluation of the terms and conditions related to this MoU. The Receiving Party shall appropriately inform such recipients of the Confidential Information of its confidential nature and require them to maintain confidentiality of the Confidential Information in the manner and to the extent as provided under this MoU.
- 7.8. Notwithstanding anything contained herein the restriction on use and disclosure set out above shall not apply to any Confidential Information which:
- (a) At the date of its disclosure to the Receiving Party is public knowledge or which subsequently becomes public knowledge other than by way of a breach of the terms of this MoU; or
 - (b) Was available to the Receiving Party or becomes known to the Receiving Party prior to or subsequent to disclosure by the Disclosing Party from sources which are under no obligation of confidentiality to the Disclosing Party; or
 - (c) Is required to be disclosed by way of an order of a court of competent jurisdiction or by a statutory or regulatory authority or by way of any requirement of legal process, law or governmental order, decree, regulation or rule; or
 - (d) Information that is developed by the Receiving Party without access to the Confidential Information.
- 7.9. The Receiving Party shall immediately notify the Disclosing Party of any known or suspected breaches of this MoU and shall give the Disclosing Party full co-operation in any search or scrutiny.
- 7.10. If either Party decides that it does not wish to proceed with the terms and conditions related to this MoU, such Party will promptly advise the other Party of its decision.

Upon such occurrence, the Receiving Party shall forthwith return all Confidential Information to the Disclosing Party and shall not retain any copies of the same, in any form whatsoever.

- 7.11. The Receiving Party acknowledges that any breach of the terms and conditions of this MoU may cause the Disclosing Party irreparable damage for which recovery of money damages would be inadequate. Therefore, the Receiving Party agrees that the Disclosing Party shall be entitled, in addition to any other remedies available to it, to seek injunctive relief and/or other equitable relief to prevent or restrain any breach by the Receiving Party or its employees/officials, or otherwise to protect its rights, under this MoU.
- 7.12. In the event the Receiving Party is required to disclose Confidential Information upon an order of a court of competent jurisdiction by a statutory or regulatory authority or of any requirement of legal process regulation or governmental order, decree, regulation or rule, the Receiving Party will immediately notify the Disclosing Party of its having received a request to so disclose (along with the terms and circumstances thereof), unless otherwise prohibited by law and consult with the Disclosing Party on action or steps to be taken in response to such request.
- 7.13. The Receiving Party's obligations under this MoU shall survive termination of the MoU for a period of one(1) year from the termination date. Upon termination or expiration of the MoU, or upon written request of the Disclosing Party, the Receiving Party shall promptly return all documents and other tangible materials representing the Confidential Information and all copies thereof.

8. Representations and Warranties

- 8.1. Both Parties represent, warrant and confirm:
 - (a) They are duly organised and validly existing under the laws of the country where they carry on work and/or undertake business;
 - (b) They have the power to execute and deliver this MoU and to perform their obligations under this MoU and have taken all necessary actions to authorise such execution, delivery and performance;
 - (c) They have not made any misstatements and/or misrepresentations, while discharging their respective rights and obligations under this MoU; and
 - (d) This MoU has been duly executed and delivered by both Parties and constitutes a legal valid and binding obligation on both Parties, enforceable against Party in accordance with its terms.
- 8.2. The PFI hereby represents and declares that it has read and understood all the rules, regulations and guidelines pertaining to the PRGFEE Scheme including the OM and shall abide by all such rules, regulations, guidelines etc. including their modifications/amendments as may be issued by IA/BEE/SC or any such authority. The copy of which shall also be available on BEE's website.

9. Governing Law

This MoU is governed by and shall be construed in accordance with the laws of India.

10. Dispute Resolution

- 10.1. Any person aggrieved by an order made by the IA can approach the SC constituted under PRGFEE. Any decision taken by the SC will be final and binding.

- 10.2. Although, any person aggrieved, by an order made by SC under the Act, may prefer an appeal to the Appellate Tribunal for Energy Conservation established under Section 30 of the Act. The person making appeal to Appellate Tribunal shall file the same in accordance with Appellate Tribunal for Energy Conservation (Procedure, Form, Fee and Record of Proceedings) Rules, 2012 notified vide G.S.R. 510 (E) dated 28th June 2012. The orders of the Appellate Tribunal would be final and binding to all the Parties.
- 10.3. Nothing contained herein shall prohibit or shall be deemed to prohibit either Party from exercising their rights as may be available to them under applicable law.

11. Force Majeure

- 11.1. If and to the extent that a Party's performance of any of its obligations pursuant to this MoU is prevented, hindered or delayed by reason of fire, flood, earthquake, explosion or other casualty or accident or act of God, war or terrorist attacks or other violence, or any applicable law, order proclamation, regulation, ordinance, demand or requirement of any governmental or regulatory authority and such non-performance, hindrance or delay could not have been prevented by reasonable foresight or precautions (including proper planning and execution of the disaster recovery or business continuity plan) or circumvented through the use of alternate sources, work - around plans or other means, (in each case, a "**Force Majeure Event**"), then the non-performing, hindered or delayed Party will be excused for such non-performance, hindrance or delay, as applicable, of those obligations to the extent that they are affected by the Force Majeure Event for as long as such Force Majeure Event continues, provided that the affected Party intimates the other party within 3 working days of such a Force Majeure Event and such Party continues to use its commercially reasonable efforts to re-commence performance whenever and to whatever extent possible without delay, including through the use of alternate sources, workaround plans or other means. If the period of non-performance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, BEE shall have right to terminate this MoU in accordance with clause 5 above after giving written notice.

12. General Clauses

12.1. No Agency

This MoU does not create any principal-agent relationship between the Parties, nor does it make or authorize any Party to act for or on behalf of, or make any representations on behalf of the other Party. This MoU does not seek to create any joint venture. This MoU is on non-exclusive basis. This MoU only seeks to record an understanding of the Parties to seek to work together in certain areas.

12.2. Severability

It is expressly agreed and declared that if for any reason whatsoever after execution hereof, a court of competent jurisdiction holds any provision hereof to be illegal, void or unenforceable, such provision shall be of no force and effect, but the illegality or unenforceability of such provision shall have no effect upon and shall not impair the enforceability of any other provision(s) of this MoU. Such incident would have no effect on the PRGFEE guarantees already issued by BEE pursuant to this arrangement which will remain in force and valid till the life of the respective projects.

12.3. Statutory Compliances

BEE and PFI agree that all services rendered and operations conducted pursuant to this MoU shall be in compliance with all legislations, statutes, ordinances, regulations, administrative rulings or requirements of law.

12.4. Notices

Any notice or other writing required or permitted to be given hereunder or for the purposes hereof to any Party shall be sufficiently given if delivered personally or if transmitted by fax or other form of recorded communication test prior to transmission to such Party.

Notices shall be sent to the addresses as under:-

In the case of notice to BEE at:

Bureau of Energy Efficiency
Government of India, Ministry of Power
4th Floor, SewaBhawan
R. K. Puram, New Delhi - 110 066 (INDIA)
Telephone:+911126179699
Fax:+911126178352

In the case of a notice to PFI at:

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Or such other address as the Party to whom such writing is to be given shall have last notified to the Party in writing. Any notice against acknowledgment personally delivered to the Party to whom it is addressed as provided in this Clause shall be deemed to have been given and received on the day it is so delivered at such address, provided that if such day is not a business day then the notice shall be deemed to have been given and received on the business day next following such day. Any notice mailed to the address and in the manner provided for in this Clause shall be deemed to have been given and received on the fifth Business Day next following the date of its mailing. Any notice transmitted by fax or other form of recorded communication shall be deemed given and received on the first business day after its transmission.

12.5. Miscellaneous

- (i) The headings hereof are descriptive only and not to be construed in interpreting the provisions of this MoU.
- (ii) This MoU is neither transferable nor assignable without the prior written consent of BEE. This MoU and each Party's obligations hereunder shall be binding on the assigns and successors of the recipient and shall inure to the benefit of the assigns and successors of the Provider.
- (iii) In case any bank is designated for issuing bank guarantees supporting the guarantee agreement to be signed between IA and PFI (hereafter referred to as the "**Designee Bank**") wants to become PFI under PRFGEE, the IA will ensure that the total guarantees provided to the consortium of RECPDCL-

REC-EESL including the guarantees provided by the Designee Bank shall be limited to 10% of the total fund value.

12.6. Supplementary Provisions

Words and expressions used but not defined in this MoU and provided for in the Rules shall have the same meaning respectively assigned to them in this MoU.

IN WITNESS WHEREOF the Parties to the MoU have caused their respective duly authorised persons to execute these presents on the date first hereinabove written.

**FOR Bureau of Energy FOR PARTICIPATING FINANCIAL
Efficiency(BEE) INSTITUTION (PFI)**

Signed

Signed

Name:
Designation:
Address:

Name:
Designation:
Address:

Witness

1.

2

Name:
Place;
Date:

Name:
Place;
Date:

Note: Signing this MoU the warrants that the respective signatory as the duly authority to execute the MoU on behalf of the respective organisation.