

REVOLVING INVESTMENT FUND AGREEMENT

for

This Contract Agreement ("RIF Agreement") is made and entered into on this _____ day of _____ 2019, in Chandigarh, by and between

Punjab Energy Development Agency hereinafter referred to as "PEDA" or "Authority" or "Lender" having its office at Solar Passive Complex, Plot No. 1 & 2, Sector-33 D, Chandigarh – 160 034 which expression shall unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors and permitted assigns of the FIRST PART;

[NAME OF THE PUBLIC AGENCY], herein after referred to as "Client" or "Borrower" having its principal office at [ADDRESS], which expression shall unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors and permitted assigns of the SECOND PART;

The Authority and the Borrower shall hereinafter be referred to individually as "Party" or collectively as "Parties".

RECITALS:

- A. **WHEREAS** the FIRST PARTY had invited proposals for implementation of Energy Efficiency Projects under Punjab State Energy Conservation Fund (PSECF) through Revolving Investment Fund (RIF) Mode vide its invitation Ref. No. _____ dated _____;
- B. **WHEREAS** the SECOND PARTY has expressed its interest and approached the FIRST PARTY for implementation of Energy Efficiency Projects in response to the invitation by the FIRST PARTY, vide its application reference no. _____ dated _____;
- C. The FIRST PARTY has inter alia, approved the application of the SECOND PARTY giving provisional sanction and the SECOND PARTY has carried out detailed surveys and satisfied themselves about the technical and commercial viability of the project(s) and submitted the detailed proposal including Investment Grade Energy Audit (IGEA) Report by Accredited Energy Auditors to the FIRST PARTY;

- D.** The SECOND PARTY had invited proposals from Implementing Agencies (IAs) on terms, conditions and technical specifications duly approved by the FIRST PARTY for the scope of work mentioned at Schedule A, for implementation of the recommendations of IGEA, on receipt of written consent from the FIRST PARTY vide its Request for Proposal No. _____ dated _____ and [NAME OF THE IMPLEMENTING AGENCY] has been duly approved by PEDA and the SECOND PARTY as the IA for the purpose of providing services and installing equipment, retrofitting and other measures designed to reduce energy use and cost as per the Scope of the Project mentioned in Schedule A, for the SECOND PARTY at its [LOCATION AND ADDRESS] (the "Facilities");
- E. WHEREAS,** SECOND PARTY owns and operates the Facilities, and would benefit from services and equipment and other measures designed to lower energy costs, as well as to reduce energy-related maintenance and capital expenditures, at the Facilities; and
- F. WHEREAS,** SECOND PARTY has completed an "Energy Study / IGEA," dated [DATE], of the Facilities, and has determined the potential for reducing both future energy costs and future maintenance and capital expenditures, and has also determined the approximate cost of the measures necessary to achieve such savings which has been duly approved by the FIRST PARTY; and
- G. WHEREAS,** SECOND PARTY desires to make improvements to the Facilities, which would result in the conservation of energy, as well as a reduction in anticipated future maintenance and capital expenditures associated with energy use, and intends avail the FINANCIAL ASSISTANCE (FA) from the FIRST PARTY from PSECF through RIF mode for undertaking design, engineering, project management, maintenance training, and energy use monitoring services to accomplish this end through the Implementing Agency; and
- H. WHEREAS,** IA has skills and experience in providing services of the type described in this Agreement and Schedule(s); and
- I. WHEREAS,** IA and SECOND PARTY have entered into an agreement that the energy conservation measures shall be designed and installed by contractor(s) with skills and experience in the design and installation of such measures (hereafter the "Contractor") and duly submitted the copy of such agreement to the FIRST PARTY;

and

J. WHEREAS, FIRST PARTY and SECOND PARTY wish to establish an arrangement wherein FIRST PARTY will provide the FINANCIAL ASSISTANCE to the SECOND PARTY in accordance with the terms of the Scheme and as mentioned hereunder;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound hereby, FIRST PARTY and SECOND PARTY hereto covenant and agree as follows:

1. INTERPRETATIONS AND DEFINITIONS

1.1 INTERPRETATIONS

- 1.1.1 The nomenclature of the headings, paragraphs are for the convenience of reference only and shall be ignored in construing or interpreting this Agreement.
- 1.1.2 References to persons and words denoting natural persons shall include bodies corporate and partnerships, joint ventures and 'statutory and other authorities and entities.
- 1.1.3 References to any enactment, ordinance or regulation or any provision thereof shall include any amendment thereof or any replacement in whole or in part.
- 1.1.4 Reference to recital(s), article(s), clause(s), sub-clause(s) annexure(s) or schedules shall unless the context otherwise requires, be the recital(s), article(s), clause(s), sub-clause(s) annexure(s) or schedules of this Agreement.
- 1.1.5 The words importing singulars shall include plurals and vice-versa as may be necessary.
- 1.1.6 The annexure and schedules of this Agreement and the Scheme Document shall form an integral part of this Agreement and will be in full force and effect as though they were set out in the body of this Agreement.
- 1.1.7 Any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference provided that this clause shall not operate so as to increase the-liability or obligations of any Party hereunder or pursuant hereto in any manner whatsoever.

- 1.1.8 Any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effectual only if it is in writing and under the hands of a duly authorised representative of such Party in this behalf and not otherwise.
- 1.1.9 Any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days and dates.

1.2 DEFINITIONS:

In this Agreement unless the context otherwise requires or implies the following expressions shall have the meaning herein respectively assigned to them:

Agreement	Means this agreement together with all annexure and schedules and any amendments thereto made in accordance with the provisions herein contained.
Approvals	Means the consents, licenses, permits, approvals and registrations by or with any Government agency or any other authority as may be necessary for setting up and operating the project.
Effective Date	Means the date of signing of this Agreement.
GOP	Means the government of Punjab and included all its agencies, authorities under its control/regulation including PEDDA.
GOI	Means the Government of India and includes all agencies, authorities under its control/regulation including but not limited to Ministry of New and Renewable Energy.
IA	Means Implementing Agency which shall undertake implementation of the recommendations of IGEA Report
IGEA	Means the Investment Grade Energy Audit Report as per BEE Guidelines, prepared by Accredited Energy Auditors and as approved by PEDDA or any revision thereof approved by PEDDA.
PEDDA	Means the Punjab Energy Development Agency or any of its successors.
Project	Means entire scope of the project as mentioned in SCHEDULE A of this Agreement.
Project Cost	Means the cost of undertaking the project as per IGEA Report
PSECF	Punjab State Energy Conservation Fund
RIF	Revolving Investment Fund

2. **The Project**

FIRST PARTY and SECOND PARTY mutually agree to the "Project," which is hereafter defined as the provision of services and installation of equipment described in detail in Schedule A (Scope of the Project).

3. **Final Budget:**

3.1 Sanctioned Amount: SECOND PARTY has submitted the approved rate of IA to the FIRST PARTY for its approval and FIRST PARTY has accorded sanction to the SECOND PARTY equivalent to the approved rate (as submitted by the SECOND PARTY or finalized after deliberations between the FIRST PARTY, IA and the SECOND PARTY) plus preparatory expenses (administrative expenses including cost of monitoring and verification) as defined in the IGEA approved earlier. The final sanctioned amount shall be lower of:

a. Rs. 25 Lakhs

b. Cost of implementation of the recommendations as per IGEA including administrative expenses as defined in the Scheme Document subject to a maximum of 10% of the total cost of implementation.

c. Final negotiated amount to be paid to Implementing Agency plus administrative expenses such that administrative expenses are not more than 10% of the total amount.

3.2 Total amount approved by PEDDA to be disbursed to the SECOND PARTY, shall define the final Project budget (the "**Final Budget**" or "**Sanctioned Amount**") which has been sanctioned by the FIRST PARTY. The Final Budget shall project all costs associated with the Project with overall cap of 10% of the Sanctioned Amount as Administrative Expenses.

4. **Project Implementation Period:**

The Second Party shall implement the recommendations of IGEA report within a period of _____ months from the date of Sanction of Funds.

5. Penalty for delay in Implementation:

In case of delay in implementation by the Public Agency beyond the scheduled implementation period or any other extension granted by PEDDA, the Public Agency delay penalty shall be charged at the rate of 1% per week for every subsequent week of delay upto a maximum of 10%. In case of delay beyond 10 weeks of scheduled implementation period or extended period (as the case may be) the entire disbursed amount shall become payable by Public Agency to PEDDA immediately along with 18% p.a. penal interest compounded monthly from the date of disbursement until the entire amount is remitted / returned to PEDDA.

6. Project Financing:

6.1 FIRST PARTY shall finance the Project Cost i.e. “The Final Budget” under PSECF through RIF Mode in accordance with Clause 3.1.

6.2 Disbursement: FIRST PARTY shall disburse the sanctioned amount to the SECOND PARTY in accordance with the following schedule of disbursement:

- i. On appointment of implementing agency - 10% of the Sanctioned Amount
- ii. On completion of procurement - 50% of the Sanctioned Amount
- iii. On completion of installation - 40% of the Sanctioned Amount

6.3 The SECOND PARTY has opened a separate account for availing FINANCIAL ASSISTANCE under the Scheme as per the details below:

Name of the Public Agency:

Name of the Bank:

Account Number:

IFSC Code:

6.4 Interest and Charges: The financial assistance provided under the scheme shall bear no interest and the sanctioned / disbursed amount shall include all administrative and preparatory expenses to be incurred for implementation of IGEA subject to overall cap of 10% of sanctioned amount.

6.5 Tenure: _____months

6.6 Moratorium: _____months

6.7 Collateral: An unconditional and irrevocable Bank Guarantee for an amount of Rs. _____ in favour of Punjab Energy Development Agency, payable at Chandigarh

7 Repayment:

7.1 Post Dated Cheques backed by Bank Guarantee: The SECOND PARTY has submitted to the FIRST PARTY ____ numbers of Post Dated Cheques each of Rs. _____ in favour of PEDA, payable at Chandigarh. The Post Dated Cheques are backed by Bank Guarantee of equivalent amount (sanctioned amount) for the tenure of repayment. The SECOND PARTY undertakes that it shall not order any stop payment of the Cheques issued to the FIRST PARTY and it shall not close the related account on which Cheques are drawn and in case such actions are effected shall construe Event of Default by the SECOND PARTY;

OR

Escrow Account: The FIRST PARTY shall open an ESCROW ACCOUNT with a bank. The Bank will act as an ESCROW AGENT.

Escrow Agreement: Tripartite Agreement shall be executed between ESCROW AGENT, FIRST PARTY and SECOND PARTY. The committed revenue stream shall be escrowed every month by the SECOND PARTY by the 5th of every month. Operations of Escrow Agreement shall be as defined therein. The Escrow Agreement shall have a clause to the effect that PEDA shall have irrevocable right to its funds and that the Escrow Agent / Escrow Bank shall have to honor the accounts / claims of PEDA.

OR

Bank Guarantee: The SECOND PARTY has submitted to the FIRST PARTY an unconditional and irrevocable Bank Guarantee for an amount of Rs. _____ (sanctioned amount) valid for a period of _____ years (tenure of credit). The amount due to the FIRST PARTY shall be apportioned periodically depending on payment terms from the value of Bank Guarantee.

7.2 Repayment: The SECOND PARTY availing Financial Assistance from RIF has submitted Post Dated Cheques as per 7.1 above or consented to Escrow _____ revenue stream or submitted Bank Guarantee for repayment to FIRST PARTY into the RIF:

7.3 Prepayment: Allowed without any penalty or prepayment charges

7.4 Undertaking: SECOND PARTY undertakes that it shall diligently make its commitments into the ESCROW ACCOUNT and repay the complete amount of Financial Assistance to the FIRST PARTY in accordance with the terms and conditions stipulated in this Agreement.

7.5 Delay Penalty: In case of delay in payment of installments by the Public Agency, penalty will be charged on unpaid amount (including any other dues, charges, etc.) at 18% per annum compounded monthly.

8 Event of Default: The happening of the following events shall constitute an event of default (“Event of Default”)

- a. Any non-compliance by the SECOND PARTY of the terms & conditions of this Agreement or any other agreement entered into in respect of this FA or any other financial assistance availed of by the SECOND PARTY from the FIRST PARTY;
- b. Any breach of this Agreement by the SECOND PARTY;
- c. Non adherence to the Repayment Schedule;
- d. Insolvency, winding up, dissolution of the SECOND PARTY and inability of the SECOND PARTY to repay their debts;
- e. Any concealment of any material document or event by the SECOND PARTY;
- f. Submission of any forged document by the SECOND PARTY;
- g. Deployment of funds for any purpose other than designated purpose for which the funds are sanctioned;
- h. Any other event which in the sole opinion of the FIRST PARTY would endanger the repayment of the Loan Amount.

9 Consequences of an Event of Default:

- a. The entire Amount along with Interest (if any) for the entire period shall immediately become due and payable, and the FIRST PARTY shall have the right to recall the entire financial assistance together with interest (if any) for the entire period, the overdue interest arising on account of default and all charges are payable by the SECOND PARTY together with applicable taxes.
- b. FIRST PARTY shall have first charge over the amount in the Escrow Account;

- c. FIRST PARTY shall be entitled to enforce the Security, if any available;
- d. FIRST PARTY shall be entitled to proceed against and take any action against the SECOND PARTY in order to realize the Loan Amount along with Interest, Charges and expenses;
- e. In addition to the rights specified in this Agreement, the FIRST PARTY shall be entitled to take all or any action with or without intervention of the Courts to recover the monies due and payable by the SECOND PARTY under this Agreement.
- f. Notwithstanding any other rights available to the FIRST PARTY under this Agreement, the FIRST PARTY shall be entitled to initiate criminal proceeding or any other appropriate actions against the SECOND PARTY if at any time the FIRST PARTY at its sole discretion has sufficient grounds to believe that the SECOND PARTY has made any misrepresentations and / or submitted any forged documents or fabricated data to the FIRST PARTY.
- g. All rights and powers conferred on the FIRST PARTY under this Agreement shall be in addition and supplemental to any rights the FIRST PARTY has as a creditor against the SECOND PARTY under any law for the time being in force and security documents and shall not be in derogation thereof.

10 Capital Investment by the SECOND PARTY:

In recognition of the fact that this project provides significant non-energy conservation improvements to the facilities, the SECOND PARTY agrees to invest _____ in the implementation of the project.

11 Inspection and Monitoring:

The FIRST PARTY or its authorized representatives shall have the right to undertake inspection and monitor the implementation of the recommendations of the IGEA Report with or without prior notice to the SECOND PARTY and the SECOND PARTY shall ensure that no barriers are erected or placed to obstruct the FIRST PARTY from undertaking such inspection. The purpose of such inspection shall be to ensure physical and financial progress of the project in accordance with the specifications approved by the FIRST PARTY and to ensure that the funds are deployed for the purpose for which they are sanctioned and no other purpose whatsoever.

12 MONITORING & VERIFICATION

Accredited Energy Auditor employed by the Public Agency would undertake monitoring and verification any time after 2 months of the completion of implementation of the recommendation of the IGEA. The monitoring and verification would comprise post implementation energy audit to be undertaken by Accredited Energy Auditors. The cost of such post implementation energy audit would be borne by Public Agency out of administrative expenses disbursed by PEDAs as initial installment with overall cap of 10% of the total sanctioned amount.

13 Access to Records

SECOND PARTY shall provide to the FIRST PARTY and any of its duly authorized representatives, reasonable access to books, documents, papers, and records for the purpose of making audit, examination, excerpts and transcriptions, and shall retain required records for five years after final payments have been made by SECOND PARTY to IA.

14 Representations and Warranties

The SECOND PARTY represents and warrants that:

- a. His / its execution, delivery and performance of this Agreement are within his / its powers and have been duly authorized, do not contravene any contract binding on or affecting his / it or any of his / its properties, do not violate any applicable law or regulation;
- b. this Agreement is valid and binding upon the SECOND PARTY;
- c. there is no pending or threatened action which may materially adversely affect the validity or enforceability of this Agreement;
- d. all information provided by the SECOND PARTY to the FIRST PARTY under this Agreement is correct and true.
- e. The SECOND PARTY hereby confirms that the funds will be utilized for the purpose as stated in Schedule 1 and that the Loan will not be utilized for speculative purpose.

15 Indemnification

The SECOND PARTY shall indemnify and hold the FIRST PARTY and its directors, officers, employees, agents and advisers harmless against losses, claims, liabilities, or damages which are sustained as a result of any acts, errors, or omissions of the SECOND PARTY, its

respective employees, agents, or assignees, or for improper performance or non-performance relating to this Agreement or any other document executed thereof in pursuance to this Agreement.

16 Term and Termination

- a. This Agreement shall become effective on execution.
- b. The Agreement shall stand terminated on the date the SECOND PARTY has repaid the Amount in full along with Interest (if any), overdue interest (if any) and other charges as mentioned in this Agreement, and fulfilled all other obligations under the Agreement to the satisfaction of the FIRST PARTY.
- c. The SECOND PARTY does not have the right to terminate this Agreement in any situation except with the written consent of the FIRST PARTY, by repaying the entire amounts due to the FIRST PARTY under this Agreement.

17 Waiver

The FIRST PARTY's failure to exercise or delay in exercising any right, power, privilege or remedy under the Agreement will not operate as a waiver or acquiescence, nor will any single or partial exercise of any right, power, privilege or remedy prevent any further or exercise of any other right, power, privilege or remedy.

18 Severability

If any provision in this Agreement shall be found or be held to be invalid or unenforceable, then the meaning of said provision shall be construed, to the extent feasible, so as to render the provision enforceable, and, if no feasible interpretation would save such provision, it shall be severed from the remainder of this Agreement and in such an event, the Parties shall use best efforts to negotiate, in good faith, a substitute, valid and enforceable provision or agreement, which most nearly reflects the Parties' intent in entering into this Agreement.

19 Arbitration and Dispute Settlement

19.1 Dispute Resolution

- a. Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "Dispute") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 16.1 b.

- b. The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

19.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Chief Executive, PEDDA to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Chief Executive, PEDDA within 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute and if the Dispute is not resolved as evidenced by the signing of written terms of settlement within 15 (fifteen) days of the notice in writing referred to in Clause 16.1 a or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 15.3.

19.3 Arbitration

- a. Any Dispute which is not resolved amicably by conciliation, as provided in Clause 16.2, the parties agree to submit that dispute to arbitration in accordance with Arbitration and Conciliation Act, 1996.
- b. The arbitrators shall make a reasoned award (the “Award”). Any Award made in any Arbitration held pursuant to this Clause 16 shall be final and binding on the Parties as from the date it is made, and the Parties agree and undertake to carry out such award without delay.
- c. This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.
- d. The expenses of Arbitrator, proceedings and allied expenses shall be equally borne by both the parties.

19.4 Adjudication by the Arbitration Tribunal

In the event of constitution of a statutory tribunal or other forum with powers to adjudicate upon disputes between the Parties, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 16.3, be adjudicated upon by such tribunal or other forum in accordance with Applicable Laws and all references to Dispute Resolution Procedure shall be construed accordingly.

20 Notices

Every notice, request, demand or other communication under this Agreement shall:

- a. be in writing, delivered by hand, or by registered post / Speed post, acknowledgement due, or by Courier or any other mode as decided by the FIRST PARTY;
- b. be deemed to have been received by the SECOND PARTY when delivered by hand, at the time so delivered if during business hours on a business day for the recipient, and if given by registered post acknowledgement due, 72 hours after it has been put into post; and
- c. be sent to the SECOND PARTY to the address mentioned hereinabove and to the FIRST PARTY at its office address first hereinabove mentioned, or to such other address as either party may in writing hereafter notify to the other party.
- d. The FIRST PARTY may (but not obliged to) send short message services (sms) to the SECOND PARTY intimating him on the dues payable by him and may call the SECOND PARTY to pay any dues that is outstanding under the agreement. The SECOND PARTY hereby specifically authorizes the FIRST PARTY to make such calls or send SMS or emails to their contact details provided to the FIRST PARTY, and further acknowledges that the same shall not be considered as unsolicited calls/SMS/mails from the FIRST PARTY.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED

For and on behalf of PUNJAB ENERGY

For and on behalf of _____

DEVELOPMENT AGENCY:

(Signature)

(Signature)

(Name):

(Name):

(Designation):

(Designation):

In the Presence of :

1.

2.

SCHEDULE A: SCOPE OF THE PROJECT