Guarantee Agreement

(Energy Efficiency Scale-Up Program)

between

INDIA

and

INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT

Dated August 28, 2018
GUARANTEE AGREEMENT

AGREEMENT, entered into between INDIA ("Guarantor") and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT ("Bank") ("Guarantee Agreement") in connection with:

(i) the Loan Agreement of the Signature Date between the Bank and ENERGY EFFICIENCY SERVICES LIMITED ("EESL" or the "Borrower") ("Loan Agreement") pursuant to which the Bank agreed to lend an amount of US$ 220,000,000 to the Borrower (Loan No. 8857-IN ("Loan")) at the request of the Guarantor, in support of the Program; and

(ii) an IBRD Guarantee or Guarantees (collectively, the "IBRD Guarantee") in a maximum aggregate amount equivalent to US$ 80,000,000, to be extended pursuant to one or more guarantee agreements to be entered into between the Bank and the beneficiaries named therein (collectively, the "IBRD-Guaranteed Agreement") and the related Project Agreement between the Bank and EESL (the "Project Agreement"), relating to IBRD Guarantee No. G2580-IN in support of the Project described therein;

(the Program and the Project together, the "Operation").

NOW, THEREFORE, the Guarantor and the Bank hereby agree as follows:

ARTICLE I – GENERAL CONDITIONS; DEFINITIONS

Section 1.01. (a) The General Conditions apply to and form part of this Agreement.

(b) When referring to obligations under this Guarantee Agreement in relation to the Loan, the term "General Conditions" has the meaning ascribed to it in the Appendix to the Loan Agreement.

(c) When referring to obligations under this Guarantee Agreement in relation to the IBRD Guarantee, the term "General Conditions" means the set of provisions listed or referred to in the Appendix to this Agreement.

Section 1.02. Unless the context requires otherwise, the capitalized terms used in this Agreement have the meanings ascribed to them in the General Conditions or, when referring to obligations under this Guarantee Agreement in relation to the Loan, in the Loan Agreement.
ARTICLE II – GUARANTEE; PROVISION OF FUNDS

Section 2.01. The Guarantor declares its commitment to the objectives of the Operation.

(a) To this end, with respect to the Program and without limitation or restriction upon any of its other obligations under this Guarantee Agreement:

(i) the Guarantor hereby unconditionally guarantees, as primary obligor and not as surety merely, the due and punctual payment of all Loan Payments payable by the Borrower pursuant to the Loan Agreement, and the punctual performance of all the other obligations of the Borrower set forth or referred to in the Loan Agreement; and

(ii) without limitation or restriction upon the provisions of Section 2.01(a)(i) of this Agreement, the Guarantor specifically undertakes, whenever there is reasonable cause to believe that the funds available to the Borrower will be inadequate to meet the estimated expenditures required for the carrying out of the Program, promptly to provide the Borrower with the funds needed to meet such expenditures.

(b) To this end, with respect to the Project, and in consideration of the Bank providing the IBRD Guarantee, the Guarantor hereby irrevocably and unconditionally agrees:

(i) to reimburse the Bank immediately on demand or as the Bank may otherwise direct in writing for any amount paid by the Bank under the IBRD Guarantee, together with interest thereon at the rate per annum determined by the Bank and notified to the Guarantor (which rate shall not exceed the Bank’s highest prevailing lending rate for loans with a fixed spread denominated in the currency of payment, as may be shown from time to time on the Bank’s external website) from the date such payment is made by the Bank until such amount is reimbursed in full;

(ii) to indemnify the Bank on demand and hold the Bank harmless against all actions, proceedings, liabilities, claims, losses, damages, costs and expenses brought against, suffered or incurred by the Bank directly or indirectly in relation to or arising out of or in connection with the IBRD Guarantee (except as otherwise provided in Section 8.04(i) of the General Conditions); and
(iii) in the event that Borrower is no longer controlled by the Guarantor, to cause a replacement Borrower acceptable to IBRD to assume any such rights and obligations so as to ensure that the IBRD Guarantee may remain in force and effect (where the term "control" for the purpose of this subsection (iii) means: (i) the ownership, directly or indirectly, of a majority of the voting capital; or (ii) the power to direct the management, policies, or composition of the board of directors (or equivalent body of that entity) through ownership of voting capital, by contract or otherwise), and to cause the existing Borrower to take such action as necessary to facilitate the assumption by a replacement Borrower of any rights and obligations of the existing Borrower under the Guaranteed Agreement and the Project Agreement.

ARTICLE III - REPRESENTATIVE; ADDRESSES

Section 3.01. The Guarantor’s Representative is any of the following officials, acting severally: the Secretary, Additional Secretary, Joint Secretary, Director, Deputy Secretary, or Under Secretary of the Department of Economic Affairs of the Borrower’s Ministry of Finance.

Section 3.02. For purposes of Section 10.01 of the General Conditions:

(a) the Guarantor’s Address is:

Secretary
Department of Economic Affairs
Ministry of Finance
North Block
New Delhi 110 001, India

(b) the Guarantor’s Electronic Address is:

Facsimile:
+91-11-2309 2247
Section 3.03. For purposes of Section 10.01 of the General Conditions:

(a) the Bank's Address is:

International Bank for
Reconstruction and Development
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

(b) the Bank's Electronic Address is:

Telex: 248423(MCI) or 64145(MCI)
Facsimile: 1-202-477-6391

With a copy of any notice and request related to the Project or the IBRD Guarantee to:

Manager, Financial Structuring and PPPs (GTIFP)
Facsimile: +1-202-522-0761
Email: guarantees@worldbank.org
AGREED as of the later of the two dates written below.

INDIA

By
Authorized Representative
Name: SAMEER KUMAR KHARE
Title: JOINT SECRETARY
Date: AUGUST 28, 2018

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

By
Authorized Representative
Name: HISHAM ABDI
Title: ACTING COUNTRY DIRECTOR, INDIA
Date: AUGUST 28, 2018
APPENDIX

Definition of the General Conditions for the Purpose of the IBRD Guarantee

For the purpose of the IBRD Guarantee, the term “General Conditions” means those provisions of the General Conditions for IBRD Financing: Investment Project Financing (2017), dated July 14, 2017, listed or referred to below, with the modifications set forth below.

1. Article I.
2. Sections 3.06, 3.07, 3.09 and 3.10.
3. Sections 5.10 (modified by replacing references to the term “Loan” with the term “IBRD Guarantee”) and 5.11.
4. Section 6.01.
5. Section 6.02(a), modified to read as follows:

“It is the policy of the Bank, in making loans to, or with the guarantee of, its member countries not to seek, in normal circumstances, special security from the member concerned but to ensure that no other Covered Debt shall have priority over its loans in the allocation, realization or distribution of foreign exchange held under the control or for the benefit of such member country. To that end, if any Lien is created on any Public Assets as security for any Covered Debt, which will or might result in a priority for the benefit of the creditor of such Covered Debt in the allocation, realization or distribution of foreign exchange, such Lien shall, unless the Bank shall otherwise agree, ipso facto and at no cost to the Bank, equally and ratably secure the amounts payable by the Member Country under this Agreement, which, for purposes of the Section only, shall be deemed to be equal to the Maximum IBRD-Guaranteed Amount under the IBRD-Guaranteed Agreement, and the Member Country, in creating or permitting the creation of such Lien, shall make express provision to that effect, provided, however, that if for any constitutional or other legal reason such provision cannot be made with respect to any Lien created on assets of any of its political or administrative subdivisions, the Member Country shall promptly and at no cost to the Bank secure all amounts payable by the Member Country under this Agreement by an equivalent Lien on other Public Assets satisfactory to the Bank.”

6. Sections 6.02(c) and (d).
7. Article VII, modified to read as follows:

“In addition to the other remedies available to the Bank under loan agreements or guarantee agreements with the Member Country, the Bank may suspend or
cancel in whole or in part the Member Country’s right to make withdrawals under any loan agreement between the Bank and the Member Country, or declare the outstanding principal and interest of any such loan due and payable immediately, in the event that:

(i) the Member Country has failed to perform any of its obligations under Section 2.01(b) of this Agreement, and such failure has continued and remained uncured in the opinion of the Bank for sixty (60) days or more after notice thereof shall have been given to the Member Country by the Bank; or

(ii) any representation made by the Member Country in or pursuant to Section 2.01(b) of this Agreement, or any representation or statement furnished by the Member Country and intended to be relied on by the Bank in providing the IBRD Guarantee, shall in the opinion of the Bank have been incorrect in any material respect.”

8. Article VIII, modified by deleting from the beginning of Section 8.02 the words “Except as provided in Section 7.06.”

9. Section 10.01, modified by deleting at the beginning of the second sentence of Section 10.01(b) the words “Except as otherwise provided in Section 9.03(a).”

10. Section 10.02, modified by deleting the words “(and the representative designated by the Project Implementing Entity in the Project Agreement or the Subsidiary Agreement)” and “(or the Project Implementing Entity).”

11. Section 10.03, modified by deleting the words “and the Project Implementing Entity.”

12. Section 10.04.

13. Paragraphs 7, 8 and 11 of the Appendix.

14. Paragraph 12 of the Appendix, modified to read as follows:

“"Borrower" means the Member Country that is the party to the Loan Agreement.”

15. Paragraphs 13, 26, 27, 40, 43, 44, 45 and 46 of the Appendix.

16. Paragraphs 49 and 50 of the Appendix.

17. Paragraph 67 of the Appendix, modified to read as follows:
"Legal Agreement" means the guarantee agreement between the Member Country and the Bank pertaining to the IBRD Guarantee, as such agreement may be amended from time to time. "Legal Agreement" includes these General Conditions as applied to the Legal Agreement, and all appendices, schedules and agreements supplemental to the Legal Agreement.

18. Paragraph 69 of the Appendix.

19. Paragraph 72 of the Appendix, modified to read as follows:

"Loan Agreement" means the Legal Agreement.

20. Paragraph 74 of the Appendix, modified to read as follows:

"Loan Party" means the Borrower.


22. Paragraph 86 of the Appendix, modified by deleting the words “for which the Loan is extended.”

23. Paragraph 87 of the Appendix, modified to read as follows:

"Project Agreement" means the project agreement entered into between the Bank and EESL in connection with the IBRD Guarantee, as the same may be amended from time to time in accordance with its terms. "Project Agreement" includes these General Conditions as applied to the Project Agreement, and all appendices, schedules and agreements supplemental to the Project Agreement.

24. Paragraph 88 of the Appendix, modified to read as follows:

"Project Implementing Entity" means EESL which is a party to the Project Agreement.