**Annexure- I**

**Key Clauses for inclusion in the Loan Agreement with Borrower**

The following provisions should be captured by the PFI i.e. Lender in the facility agreement/loan document executed by it with an ESCO/Host (as the case may be) (i.e. Borrower):

1. **Change in Management of the Borrower**

The Borrower shall not be permitted to make any change in the management or allow any change in control of the Borrower during the tenure of the facility without prior written the consent of the Lender. Any change in the management or change in control of the Borrower may be permitted by the Lender at its sole discretion only if the new promoters of the Borrower meet/satisfy the norms of the eligible ESCO or Host (as the case maybe) as per the conditions set out in the Operational Guidelines and Partial Risk Sharing Facility Programme and the Borrower undertakes to continue to perform its existing activities or undertake new activities which are otherwise eligible as EE Project under the Operational Guidelines.

2. **JV or Consortium (in case ESCO or Host is a consortium)**

If this is applicable, the Borrower agrees and undertakes that its share in equity or contract value, as applicable, shall not fall below 51% (fifty one percent) in the JV or Consortium, so that JV or Consortium shall continue to be treated as MSME.

## 3. Representations and Warranties

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## The Borrower represents and warrants to the Lender that neither it, 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 energy efficiency project), any of its shareholders, contractors, affiliates, nor any person acting on its or their behalf, has engaged in any Sanctionable Practice in connection with the energy efficiency project or any transaction contemplated by this Loan Agreement. Sanctionable Practice shall have the meaning set out in Schedule 1.

4. **Restructuring of the facility by the Lender**

The Lender, during the tenure of the facility shall have option, exercisable at its absolute discretion, to restructure the facility if: (i) energy saving from the energy efficiency project is lower than the anticipated energy saving as stipulated under the energy savings performance contract executed by the Borrower for such energy efficiency project, and (ii) the Lender is of the opinion that by restructuring the facility, the repayment of the facility by the Borrower may become regular and timely.

5. **Access to EE Project, Records and Provision of Information**

5.1. The Borrower shall, at the request of the Lender, upon reasonable notice and at no charge for access, provide the Lenders or the nominees of the Lenders access, during normal business hours, to:

(a) examine and visit all or any part of any facilities or premises under the ownership or control of the Borrower used for the purpose of an energy efficiency project; and

(b) the managers and senior staff of the Borrower, and such other staff as are designated by Borrower as having knowledge of matters with respect to which the Lenders or its nominees seek information, and to the extent the Borrower is reasonably able to procure such access, the managers and senior staff of the contractors, of the Borrower. Provided that the representatives of the Lenders or its nominees comply with all applicable safety regulations and do not interfere with normal operations of the energy efficiency project.

5.2 The Borrower shall permit, at the request of the Lenders or its nominees, the representatives of the Lenders or its nominees to examine and make copies of the operating records, books of account, and other records or documents relating to the energy efficiency project maintained by or in the possession of the Borrower, at reasonable times and frequency and upon reasonable notice, and shall provide, or procure to be provided, promptly upon written request by the Lenders or its nominees, all financial, technical, environmental, social, and other information related to energy efficiency projects, as the Lenders or its nominees may from time to time reasonably request.

6. **Confidentiality**

The Borrower waives any right it may have to prevent or restrict the Lender from disclosing (and hereby expressly agrees and confirms that the Lender has right to disclose) to any person including but not limited to Small Industries Development Bank of India (SIDBI) and International Bank for Reconstruction and Development ("World Bank" or "IBRD"), in its capacities as an implementing entity of each of the Clean Technology Fund ("CTF") and the Global Environment Facility ("GEF"):

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

(ii) such information on the nature of the energy efficiency project (other than confidential financial or other proprietary information), reports furnished to the Lender and all other relevant documents in connection with monitoring of compliances with all the applicable laws (including [insert definition of Environment and Social laws from MGA]) that in accordance with the policies and practices on information disclosure is required to be disclosed by the Lender (whether or not in response to a request therefor), to the SIDBI and World Bank, in its capacities as an implementing entity of each of the CTF and GEF to be covered under the PRSF Programme.

7**. Compliance Requirement**

The Borrower undertakes to comply and ensure compliance of all the Environmental and Social Laws as set out in the Schedule 2.

**SCHEDULE 1**

**SANCTIONABLE PRACTICE**

Sanctionable Practice means any of the "Corrupt Practices", "Fraudulent Practices", "Coercive Practices," "Collusive Practices" and "Obstructive Practices".

1. **Corrupt Practice**

A "**Corrupt Practice**" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party.

**Interpretation**

A. Corrupt practices are understood as kickbacks and bribery. The conduct in question must involve the use of improper means (such as bribery) to violate or derogate a duty owed by the recipient in order for the payor to obtain an undue advantage or to avoid an obligation. Antitrust, securities and other violations of law that are not of this nature are excluded from the definition of corrupt practices.

B. It is acknowledged that foreign investment agreements, concessions and other types of contracts commonly require investors to make contributions for bona fide social development purposes or to provide funding for infrastructure unrelated to the project. Similarly, investors are often required or expected to make contributions to bona fide local charities.

These practices are not viewed as Corrupt Practices for purposes of these definitions, so long as they are permitted under local law and fully disclosed in the payer’s books and records. Similarly, an investor will not be held liable for corrupt or fraudulent practices committed by entities that administer bona fide social development funds or charitable contributions.

C. In the context of conduct between private parties, the offering, giving, receiving or soliciting of corporate hospitality and gifts that are customary by internationally-accepted industry standards shall not constitute corrupt practices unless the action violates applicable law.

D. Payment by private sector persons of the reasonable travel and entertainment expenses of public officials that are consistent with existing practice under relevant law and international conventions will not be viewed as Corrupt Practices.

E. The World Bank Group does not condone facilitation payments. For the purposes of implementation, the interpretation of "Corrupt Practices" relating to facilitation payments will take into account relevant law and international conventions pertaining to corruption.

2. **Fraudulent Practices**

A "Fraudulent Practice" is any action or omission, including misrepresentation that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial benefit or to avoid an obligation.

**Interpretation**

A. An action, omission, or misrepresentation will be regarded as made recklessly if it is made with reckless indifference as to whether it is true or false. Mere inaccuracy in such information, committed through simple negligence, is not enough to constitute a "Fraudulent Practice" for purposes of World Bank Group sanctions.

B. Fraudulent Practices are intended to cover actions or omissions that are directed to or against a World Bank Group entity. It also covers Fraudulent Practices directed to or against a World Bank Group member country in connection with the award or implementation of a government contract or concession in a project financed by the World Bank Group. Frauds on other third parties are not condoned but are not specifically sanctioned in World Bank Guarantee or carbon finance operations. Similarly, other illegal behavior is not condoned, but will not be sanctioned as a Fraudulent Practice under the World Bank sanctions program as applicable to World Bank Guarantee or carbon finance operations.

3. **Coercive Practices**

A "Coercive Practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party.

**Interpretation**

A. Coercive Practices are actions undertaken for the purpose of bid rigging or in connection with public procurement or government contracting or in furtherance of a Corrupt Practice or a Fraudulent Practice.

B. Coercive Practices are threatened or actual illegal actions such as personal injury or abduction, damage to property, or injury to legally recognizable interests, in order to obtain an undue advantage or to avoid an obligation. It is not intended to cover hard bargaining, the exercise of legal or contractual remedies or litigation.

**4. Collusive Practices**

A "Collusive Practice" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party.

**Interpretation**

Collusive Practices are actions undertaken for the purpose of bid rigging or in connection with public procurement or government contracting or in furtherance of a Corrupt Practice or a Fraudulent Practice.

5. **Obstructive Practices**

An "Obstructive Practice" is (i) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making of false statements to investigators, in order to materially impede a World Bank Group investigation into allegations of a corrupt, fraudulent, coercive or collusive practice, and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or (ii) acts intended to materially impede the exercise of the World Bank’s access to contractually required information in connection with a World Bank Group investigation into allegations of a corrupt, fraudulent, coercive or collusive practice.

**Interpretation**

Any action legally or otherwise properly taken by a party to maintain or preserve its regulatory, legal or constitutional rights such as the attorney-client privilege, regardless of whether such action had the effect of impeding an investigation, does not constitute an Obstructive Practice.

**General Interpretation**

A person should not be liable for actions taken by unrelated third parties unless the first party participated in the prohibited act in question.

**SCHEDULE 2**

**ENVIRONMENTAL AND SOCIAL LAWS COMPLIANCE**

1. **Environmental and Social Laws**

Environmental and Social Laws means any laws and regulations in effect in India or in the state where an energy efficiency 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 Lender or any energy efficiency project financed by the Lender.

2. **ERMF Guidelines**

Energy efficiency 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 ("**ERMF**") i.e. the roles and responsibilities of all stakeholders under the energy efficiency project relating to environmental regulatory compliance, environmental legacy issues, negative environmental impacts from technology upgrades, environmental safeguard and due diligence requirements for sub-projects, third-party appraisal checks;