TRUST AND RETENTION ACCOUNT AGREEMENT

**AMONGST**

**SCHEDULED COMMERCIAL BANK/NBFC / SIDBI**

**(As Lender)**

**AND**

**[•]**

**(As Energy Service Company)**

**AND**

**[•]**

**(As Host)**

**AND**

**[•]**

**(As the Trustee Bank)**

**TRUST AND RETENTION ACCOUNT AGREEMENT**

**THIS TRUST AND RETENTION ACCOUNT AGREEMENT** ("**TRA Agreement**") is made at [•] on this [•] day of [•], [•], by and between:

1.[*Insert name of the Scheduled Commercial Bank*][[1]](#footnote-1), a scheduled commercial bank, a body corporate, constituted by and under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, with its registered office at [•], and corporate office at [•], acting in the capacity of [•] (hereinafter referred to as "**Lender**", which expression shall, unless it be repugnant to the subject or context thereof, include its successors, transferees, novatees and assigns) of the **FIRST PART**;

[OR, in case of the Lender being an NBFC choose the following]

[*Insert name of the NBFC*][[2]](#footnote-2), a non-banking finance company ("**NBFC**") with CIN No. [•], registered with the Reserve Bank of India with its registered office at [•] and corporate office at [•], acting in the capacity of Lender (hereinafter referred to as "**Lender**", which expression shall, unless it be repugnant to the subject or context thereof, include its successors, transferees, novatees and assigns) of the **FIRST PART**;

[OR, in case of the SIDBI as Lender choose the following]

Small Industries Development Bank of India (SIDBI)[[3]](#footnote-3) , a corporation established under the Small Industries Development Bank of India Act 1989 and having its Head office at [•] (hereinafter referred to as "**Lender**", which expression shall, unless it be repugnant to the subject or context thereof, include its successors, transferees, novatees and assigns) of the **FIRST PART**;

**AND**

2. **[•]**, a [private] [public] company incorporated in India under the [Companies Act, 1956][[4]](#footnote-4)/[Indian Companies Act, 2013][[5]](#footnote-5), having its CIN as [•], and its registered office at [•] (hereinafter referred to as the "**ESCO" [or "Borrower"][[6]](#footnote-6)**, which expression shall, unless repugnant to the context, be deemed to include its successors and permitted assigns) of the **SECOND PART**;

**AND**

3. **[•]**, a private company incorporated in India under the [Companies Act, 1956][[7]](#footnote-7)/[Indian Companies Act, 2013][[8]](#footnote-8), having its CIN as [•], and its registered office at [•], (hereinafter referred to as the "**Host" [or "Borrower"][[9]](#footnote-9)**, which expression shall, unless repugnant to the context, be deemed to include its successors and permitted assigns) of the **THIRD PART**;

**AND**

4. [*name of the Scheduled Commercial Bank*][[10]](#footnote-10), a scheduled commercial bank, a body corporate, constituted by and under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, with its registered office at [•], and corporate office at [•], acting in the capacity of [•] (hereinafter referred to as "**Trustee Bank**" or "**TRA Bank**") which expression shall, unless it be repugnant to the subject or context thereof, include its successors, transferees, novatees and assigns) of the **FOURTH PART**.

Each of the parties mentioned above, unless repugnant to the context, are 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 (“**GEF**”) has executed the Global Environment Facility Grant Agreement dated 31 March 2015 with SIDBI ("**GEF Grant Agreement**") to provide for a grant of USD 16.00 million (USD sixteen million only) for carrying out the 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 Republic of India and World Bank with respect to the execution of the Programme.

(B) The World Bank acting as implementing agency entity of the Clean Technology Fund ("**CTF**") has also executed the Clean Technology Fund Guarantee Agreement dated 31 March 2015 ("**CTF Guarantee Agreement**") with SIDBI, providing a guarantee ("**CTF Guarantee**") for an aggregate amount not exceeding USD 25.00 million (USD twenty five million only) for the Programme.

(C) SIDBI is the project execution agency ("**PEA**") for the Programme. For execution of the Programme, SIDBI as PEA is required to empanel the eligible scheduled commercial banks/NBFC willing to provide EE Loans to ESPC -based energy efficiency projects ("**EE Project**"). Pursuant to the expression of interest, the Lender has been empanelled with the SIDBI to lend to ESCOs or Hosts for implementing one or multiple EE Project.

(D) The Guarantor, at the request of the Lender and in consideration of the Lender having agreed to grant or having granted the EE Loan to the ESCOs/Host for the EE Project, has agreed to enter into a Master Guarantee Agreement dated [•] ("**Master Guarantee Agreement**" or "**MGA**") and a Guarantee Letter dated [•] read together with MGA for EE Project.

(E) All monies disbursed under the EE Loan are required to be used in connection with the financing of EE Project and the Host is required to credit all benefits/energy savings accruing to it from the EE Project into the accounts held with the Trustee Bank, and to utilise its benefits in the manner and priority as herein provided.

(F) The Trustee Bank is engaged in the business of banking in India.

(G) It is a condition precedent to the Lender making the EE Loan available to the Borrower that the parties to the Financing Documents and Trustee Bank shall enter into this TRA Agreement.

**NOW THEREFORE**, in order to provide for the detailed mandate and the terms and conditions for operating the Trust and Retention Account, the Trustee Bank, the Host, the Lender, and the ESCO have agreed to enter into this TRA Agreement.

## 1. DEFINITIONS

All capitalised terms used herein and not otherwise defined shall have the definition assigned to such term in the MGA, ESPC or the Financing Documents, as the case may be. Unless the context otherwise requires, the following capitalised terms shall have the following meanings:

"***Accounts***"**/"Sub-Account"** means all accounts and sub-accountsdesignated as such and established with the Trustee Bank in accordance with this TRA Agreement.

“***Anti-Corruption Guidelines*”** shall mean the World Bank Guidelines on Preventing and Combating Fraud and Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants dated October 15, 2006 and revised in January 2011;

"***Business Day***" shall mean a day (other than a Sunday or a public holiday) on which the banks and financial institutions at Delhi and other places in the territory of India are open for transaction of business.

"*Debt Service Payment*" means, the principal, interest, commitment fee, liquidated damages, fees (other than the fees and expenses payable to the Trustee Bank for and/or in connection with performance of their respective services in accordance with the related agreements and/or the appointment letters) costs, charges and expenses, and other amounts payable to the Lender on Due Date by the Borrower under the Financing Documents.

"***Debt Service Payment Sub-Account***"means a sub-account designated as such and established with the Trustee Bank in accordance with this TRA Agreement.

"***Debt Service Reserve***"or"***DSR***" shall mean the reserve to be created by the Borrower out of the cash accruals/bank guarantee in the Debt Service Reserve Sub-Account, for the period commencing from the Implementation Completion Date up to the Final Settlement Date (as defined under EE Loan Agreement), of an amount equivalent to the aggregate interest and principal amount of the EE Loan payable by the Borrower to the Lender for a period of succeeding [3 (three)] months in terms of the EE Loan Agreement.

"***Debt Service Reserve Amount***" shall have meaning assigned to it under EE Loan Agreement.

"***Debt Service Reserve Sub-Account***"means a sub-account designated as such and established with the Trustee Bank in accordance with the terms of this TRA Agreement.

"***Distribution Date***" shall mean the first day of each calendar month, or if such day is not a Business Day, then the Business Day immediately preceding such day.

"***EE Loan Agreement***"shall mean loan agreement executed between the Lender and the Borrower in relation to the EE Loan for the EE Project.

"***Energy Savings Performance Contract***" or "***ESPC***" means an energy saving performance contract as defined in the GEF Grant Agreement.

"***Fee***"shall have the meaning assigned to it under this TRA Agreement.

"***Financing Documents***" shall mean this TRA Agreement, EE Loan Agreement, the security documents for the EE Loan and any other document executed or to be executed in connection with the EE Loan and any other agreement/documents required for the EE Loan.

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

"***Implementation Completion Date***"means thedate on which the time period for implementation of the EE Project under the ESPC is over.

"***Implementation Fund***"means all monies received by the Borrower at any time up to the Implementation Completion Date after the date of establishment of the Implementation Period Fund Accounts, from actual energy savings from EE Project.

"***Implementation Period Fund Accounts***"means an account designated as such and established with the Trustee Bank in accordance with this TRA Agreement.

"***Insurance Proceeds***" means all proceeds of insurances including those with respect to the EE Project payable to or received by the Borrower under and all claims arising out of any insurance contract in effect and held by or for the benefit of the Borrower.

"***Insurance Proceeds Account***"means an account designated as such and established with the Trustee Bank in accordance with this TRA Agreement.

"***Investment Income***" means any interest, dividends or other income arising from or in respect of the Authorized Investment and any proceeds received by the Trustee Bank upon disposal or realization; or any sum received by the Trustee Bank upon maturity, in respect of the Authorized Investment.

"***New Accounts***"means all accounts and sub-accountsdesignated as such and established with the successor trustee bank appointed in accordance with this TRA Agreement.

"***O&M Expenses***"shall mean:

(i) the amounts paid or payable by the Borrower for the operation and maintenance of the Project, including operating supplies, spare parts, consumables, capital repairs and replacements, duties, cesses, levies, all costs and fees for administrative and consultant services, license fees, water and other utilities, including salaries and wages; and

(ii) any fees, costs, charges and expenses which are due and payable by the Borrower to the Secured Parties and the Lender under the Financing Documents;

but shall exclude, Debt Service, principal, interest, fees or other amounts payable on or with respect to any other credit facility or arrangement of the Borrower permitted by the Lender or any amounts payable by the Borrower pursuant to the Financing Documents or any interest thereon and Taxes.

"***Operation Fund***"means all monies received by the Borrower at any time post the Implementation Completion Date after the date of establishment of the Operation Fund Account, from actual energy savings.

"***Operation Fund Account***"means an account designated as such and established with the Trustee Bank in accordance with this TRA Agreement.

"***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;

"***Operational Period***"means period starting from the expiry of the Implementation Completion Date and up to the expiry of the term of the ESPC.

"***Person***" means any individual, corporation, a partnership, association or trust or any other entity or organisation, including any government or political subdivision or any agency or instrumentality thereof.

"***Permitted Investments***"means the investments as set out in Schedule Iof this TRA Agreement.

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

"***Quarter***" unless specified otherwise or the context otherwise requires, means period of three months commencing on January 1, April 1, July 1 and October 1.

"***Restricted Payments***"shall have the meaning assign to it in the EE Loan Agreement**.**

"***Secured Parties***" shall mean the Lender, PEA, ESCO and the Host.

"***Trust and Retention Accounts***" means the various accounts/sub-accounts to be opened with the Trustee Bank pursuant to the Trust and Retention Agreement into which the monies would be credited from the Trust and Retention Account for meeting various payments in terms hereof.

# 2. THE TRUSTEE BANK’S DUTIES

## 2.1 Declaration of Trust Vesting and Control of Trust and Retention Account

(a) The Borrower and [ESCO]/[Host][[11]](#footnote-11) have settled the trust with the Trustee Bank in accordance with the terms and conditions of TRA Agreement and transferred a sum of [Rs. 1000 (Rupees One Thousand only)][[12]](#footnote-12) to the Trustee Bank by depositing the same in the Trust and Retention Account. The Borrower and [ESCO[/[Host][[13]](#footnote-13) also hereby declares that all rights, title and interests in and to the Trust and Retention Account, the documents relating to the Authorised Investments, funds in the Trust and Retention Account and investments made with funds from the Trust and Retention Account shall be vested in the Trustee Bank and held in trust for the Lender and the Borrower and [ESCO]/[Host][[14]](#footnote-14) in pursuance of the terms of TRA Agreement.

(b) The Trustee Bank has accepted the above amount of [Rs. 1000 (Rupees One Thousand only)] on trust hereby declared and provided for upon the terms and conditions set forth in TRA Agreement. Amounts that will be deposited in the Trust and Retention Account from time to time shall be held in trust, received and applied as provided for in TRA Agreement, and shall be subject to the terms and conditions set out in TRA Agreement. No Person (including without limitation, any Person entitled to receive any payment from the Borrower) other than the Lender, the Borrower and [ESCO]/[Host][[15]](#footnote-15) shall have any rights under TRA Agreement, as the beneficiaries of or as third party beneficiaries under TRA Agreement.

(c) Nothing in TRA Agreement, expressed or implied, shall give or be construed to give to any person (including, without limitation, any person, entity or contractor entitled to receive payments hereunder) other than the Lender, the Borrower and [the ESCO/Host][[16]](#footnote-16), any legal or equitable right, remedy or claim under TRA Agreement, or under any covenant or provision herein contained, all such covenants and provisions being for the sole benefit of the Lender, the Borrower and [the ESCO/Host][[17]](#footnote-17).

(d) Monies and other property received by the Trustee Bank in accordance with TRA Agreement and/or the other Financing Documents and/or comprised in the Security Interest therein shall, until used or applied in accordance with the terms of TRA Agreement, provided or as provided in any other Financing Documents, be held in trust for the benefit of the Lender and for the purposes for which they were received and will be maintained in a separate account so far as proceeds received from the realization out of the property comprised in the Security Interest upon enforcement of Security created in connection with the EE Loan. For the avoidance of doubt, the monies and properties held by the Trustee Bank relating to TRA Agreement, and/or the other Financing Documents and/or the Security Interests therein shall not be considered as part of the assets of the Trustee Bank, and, being trust property shall not, in the case of a bankruptcy or liquidation of the Trustee Bank, be considered as its assets and shall not be available to the liquidator, bankruptcy trustee or other creditor of the Trustee Bank and such monies and properties shall be wholly excluded from the assets of the Trustee Bank in such bankruptcy.

## DUTIES OF THE TRUSTEE BANK

The Trustee Bank shall maintain each Sub-Account under the Trust and Retention Account in accordance with the Trustee Bank's usual practices and the terms of the TRA Agreement. Further, subject to the provisions of TRA Agreement, it is agreed and acknowledged by the Trustee Bank that it shall perform the following duties:

(a) maintain Trust and Retention Account as a separate account;

(b) keep proper books of account relating to each Sub-Account under the Trust and Retention Account maintained by the Trustee Bank;

(c) provide reports to the Lender at such frequencies and as per the format which would be mutually agreed by the Lender and the Trustee Bank;

(d) not allow any payment out of the Trust and Retention Account in respect of the Restricted Payments unless duly approved in writing by the Lender;

(e) upon written request from the Lender or the Borrower, provide such information as may be requested including but not limiting to particulars of Permitted Investments, amounts available in various Sub-Accounts;

(f) forward to the Lender a copy of each document, notice, agreement or opinion, which, in its capacity as Trustee Bank, it receives from or delivers to the Borrower and [ESCO]/[Host][[18]](#footnote-18) or any other lender and which is not otherwise required under the terms of any Financing Document to be delivered by another Person to the Lender; and

(g) notify the Lender and the Borrower of: (i) the amounts deposited in and withdrawn from the Trust and Retention Account, and each of the Sub-Accounts thereof, during the preceding Quarter on or before the [10th (tenth) day] of the next following Quarter; (ii) the Permitted Investments made and proceeds realised therefrom during the preceding Quarter on or before the [10th (tenth) day] of the next following Quarter; (iii) the aggregate balances of the Trust and Retention Account, and the balance of each Sub-Account thereof, during the preceding Quarter on or before the 10th (tenth) day of the next following Quarter; and (iv) such other information as the Borrower and the Lender may reasonably request.

## 3. ESTABLISHMENT OF THE TRUST AND RETENTION ACCOUNTS

3.1 The Trustee Bank shall establish the Trust and Retention Account in the name of the Borrower at its branch at [*insert branch address*]. The Parties hereby agree and acknowledged that, except as may be expressly provided otherwise in this TRA Agreement, all accounts and sub-accounts now or in the future maintained under this TRA Agreement shall be located only in the above mentioned branch for the entire duration of this TRA Agreement. In order to facilitate the day-to-day operations of the Borrower and [ESCO]/[Host][[19]](#footnote-19), the Trustee Bank shall open such sub-accounts as permitted by the Lender.

3.2 The Trust and Retention Account shall have the following deposit and withdrawal accounts/sub-accounts during the period up to the Implementation Completion Date:

A. Implementation Period Fund Accounts

B. ESCO Energy Savings Account

[The ESCO Energy Savings Account shall have the following sub-accounts ("**ESCO Energy Savings Sub-Accounts**"):

a. ESCO Surplus Sub-Account][[20]](#footnote-20)

C. Host Energy Savings Account

The Host Energy Savings Account shall have the following sub-accounts ("**Host Energy Savings Sub-Accounts**"):

a. ESCO Payment Sub-Account; and

[b. Host Surplus Sub-Account][[21]](#footnote-21)

D. Enforcement Proceeds Account; and

E. Insurance Proceeds Account.

3.3 The Trust and Retention Account shall have the following deposit and withdrawal accounts/sub-accounts during the Operation Period:

A. Operation Fund Account;

B. ESCO Energy Savings O&M Account

The ESCO Energy Savings O&M Account shall have the following sub-accounts ("**ESCO Energy Savings O&M Sub-Accounts**"):

[a. ESCO Debt Service Payment O&M Sub–Account][[22]](#footnote-22);

[b. ESCO Debt Service Reserve O&M Sub-Account; and][[23]](#footnote-23)

d. ESCO Surplus Sub-Account.

C. Host Energy Savings O&M Account

The Host Energy Savings Account shall have the following sub-accounts ("**Host Energy Savings O&M Sub-Accounts**"):

[a. Host Debt Service Payment O&M Sub–Account][[24]](#footnote-24);

[b. Host Debt Service Reserve O&M Sub-Account][[25]](#footnote-25)

c. ESCO O&M Payment Sub-Account; and

d. Host Surplus O&M Sub-Account.

D. Enforcement Proceeds Account; and

E. Insurance Proceeds Account.

## 3.4 Implementation Period Fund Accounts

(A) **Deposits into the Implementation Period Fund Accounts**

Subject to the provisions of paragraph (B) below, during the ImplementationPeriod, the Borrower shall pay or cause to be paid the Implementation Fund (if any) into the Implementation Period Fund Accounts, immediately on receipt of such Implementation Fund in accordance with the ESPC or the EE Loan Agreement.

(B) **Payments out of the Implementation Period Fund Accounts**

(i) During the period up to the Implementation Completion Date, the Trustee Bank shall permit withdrawals/make transfer on the Distribution Date from of the funds available in the Implementation Period Fund Accounts into ESCO Energy Savings Account and Host Energy Savings Account in accordance with the terms of the ESPC.

(ii) **ESCO Energy Savings Account:** On the Distribution Date, payments/withdrawal out of the funds available in the ESCO Energy Savings Account shall be in the following sub-account and only for the following purposes (if applicable), and on the Business Day following the Implementation Completion Date, the money lying therein shall be transferred to the ESCO Energy Savings O&M Account:

[(a) **ESCO Surplus Sub-Account**: Transfer/withdrawal the funds available in the ESCO Surplus Sub-Account during the period up to the Implementation Completion Date on the Distribution Date as per the instruction of the ESCO.][[26]](#footnote-26)

(b) No withdrawal shall be permitted from ESCO Energy Savings Account during the period up to the Implementation Completion Date. For avoidance of doubt, if any monies standing to the credit of the ESCO Energy Savings Account or its sub-account(s), the same shall be transferred to the ESCO Energy Savings O&M Account on the Business Day following the Implementation Completion Date and shall be utilized during the Operation Period in accordance with the Clause 3.5 of TRA Agreement.]

[(c) On the Business Day following the Implementation Completion Date, ESCO Energy Savings Account and its sub account(s) shall be closed and the monies lying therein shall be transferred as per the instruction of the ESCO/withdrawn by the ESCO.][[27]](#footnote-27)

[(d) On the Business Day following the Implementation Completion Date, ESCO Energy Saving Account and its sub-accounts shall be closed and money lying therein shall be transferred to the ESCO Energy Savings O&M Account.][[28]](#footnote-28)

(iii) **Host Energy Savings Account:** On the Distribution Date, payments/withdrawal out of the funds available in the Host Energy Savings Account shall be in the following sub-accounts, only for the following purposes and in the following order of priority so as to ensure that each of the following sub-account is credited in full before crediting the next mentioned sub-account:

(a) **ESCO Payment Sub-Account:** All payment in relation to and in terms of the ESPC to the ESCO, due and payable during the period up to the Implementation Completion Date.

[(b) **Host Surplus Sub-Account**: Transfer/withdrawal the funds available in the Host Surplus Sub-Account during the period up to the Implementation Completion Date on the Distribution Date as per the instruction of the Host.][[29]](#footnote-29)

[(c) No withdrawal shall be permitted from Host Energy Savings Account during the period up to the Implementation Completion Date except in accordance with Clause (iii)(a) above. For avoidance of doubt, if any monies lying to the credit of the Host Energy Savings Account or its sub-account(s), after payment/withdrawal in terms of Clause (iii)(a) above, the same shall be transferred to the Host Energy Savings O&M Account on the Business Day following the Implementation Completion Date and shall be utilized during the Operation Period in accordance with the Clause 3.5 of this TRA Agreement.][[30]](#footnote-30)

[(d) On the Business day following the Implementation Completion Date, Host Energy Saving Account and its sub-accounts shall be closed and money lying therein shall be transferred to the Host Energy Savings O&M Account.][[31]](#footnote-31)

[(e) On the Business Day following the Implementation Completion Date, Host Energy Savings Account and its sub account(s) shall be closed and the monies laying therein shall be transferred as per the instruction of the Host/withdrawn by the Host.][[32]](#footnote-32)

## 3.5 OPERATION FUND ACCOUNTS

(A) **Deposits into the Operation Fund Accounts**

During the Operational Period, the Borrower shall pay or cause to be paid all benefit accruing from the EE Project into the Operation Fund Accounts immediately on receipt of such benefits.

(B) **Payments out of the Operation Fund Accounts**

(i) During the Operational Period, the Trustee Bank shall transfer on the Distribution Date funds out of the funds available in the Operation Fund Accounts into the ESCO Energy Savings O&M Account and Host Energy Savings O&M Account in accordance with the terms of the ESPC.

(ii) **ESCO Energy Savings O&M Account**: On the Distribution Date, payments/withdrawal out of the funds available in the ESCO Energy Savings O&M Account shall be in the following sub-accounts, only for the following purposes and in the following order of priority so as to ensure that each of the following sub-account is credited in full before crediting the next mentioned sub-account:

[(a) **ESCO** **Debt Service Payment Sub-Account**: Payments towards the Debt Service Payment, to enable the ESCO to meet the Debt Service Payment requirements of the Lender as per the Notice of Debt Service Payment.][[33]](#footnote-33)

[(b) **Debt Service Reserve Sub-Account:** The balance remaining in the ESCO Energy Savings O&M Account, after the Debt Service Payment Sub-Account is fully credited with, the Debt Service Reserve shall be transferred by the Trustee Bank from the ESCO Energy Savings O&M Account into Debt Service Reserve Sub-Account, to be utilized in the event of shortfall in the ESCO Energy Savings O&M Account to meet ESCO's Debt Service Payment requirements. [The ESCO shall not be required to deposit any amount to the credit of the Debt Service Reserve Sub-Account if the ESCO procures bank guarantee(s) or any letter of credit in a form and manner acceptable to the Lender for an amount equivalent to the Debt Service Reserve. The provision of such bank guarantee(s), or letter of credit shall not in any manner affect the Security Interest created or to be created in favour, or for the benefit, of the Lender. The bank guarantee(s), or other letter of credit referred to above may be invoked by the Lender at any time when there is shortfall in the ESCO Energy Savings O&M Account to meet the Debt Service Payment on any Distribution Date. On receipt of such bank guarantee(s), or other letter of credit, the amount(s) equivalent to the value of such bank guarantee(s) or other letter of credit, as the case may be, out of the amounts standing to the credit of the Debt Service Reserve Sub-Account, as applicable, shall be transferred to the ESCO Energy Savings O&M Account.][[34]](#footnote-34)][[35]](#footnote-35)

(c) **ESCO Surplus Sub-Account:** Transfer/withdrawal the funds available in the ESCO Surplus Sub-Account during the Operation Period on the Distribution Date as per the instruction of the ESCO.

(iii) **Host Energy Savings O&M Account**: On the Distribution Date, payments/withdrawal out of the funds available in the Host Energy Savings O&M Account shall be in the following sub-accounts, only for the following purposes and in the following order of priority so as to ensure that each of the following sub-account is credited in full before crediting the next mentioned sub-account:

[(a) **Debt Service Payment Sub-Account**: Approved payments towards the Debt Service Payment, to enable the Host to meet the Debt Service Payment requirements of the Lender as per the Notice of Debt Service Payment.][[36]](#footnote-36)

[(b) **Debt Service Reserve Sub-Account:** The balance remaining in the Host Energy Savings O&M Account, after the Debt Service Payment Sub-Account is fully credited with, the Debt Service Reserve shall be transferred by the Trustee Bank from the Host Energy Savings O&M Account into Debt Service Reserve Sub-Account, to be utilized in the event of shortfall in the Host Energy Savings O&M Account to meet Host's Debt Service Payment requirements. [The Host shall not be required to deposit any amount to the credit of the Debt Service Reserve Sub-Account if the Host procures bank guarantee(s) or any letter of credit in a form and manner acceptable to the Lender for an amount equivalent to the Debt Service Reserve. The provision of such bank guarantee(s), or letter of credit shall not in any manner affect the Security Interest created or to be created in favour, or for the benefit, of the Lender. The bank guarantee(s), or other letter of credit referred to above may be invoked by the Lender at any time when there is shortfall in the Host Energy Savings O&M Account to meet the Debt Service Payment on any Distribution Date. On receipt of such bank guarantee(s), or other letter of credit, the amount(s) equivalent to the value of such bank guarantee(s) or other letter of credit, as the case may be, out of the amounts standing to the credit of the Debt Service Reserve Sub-Account, as applicable, shall be transferred to the Host Energy Savings O&M Account.][[37]](#footnote-37)][[38]](#footnote-38)

(c) **ESCO O&M Sub-Account**: Payments to ESCO from the balance remaining in the Host Energy Saving O&M Account, during the Operation Period on the Distribution Date, in terms of the ESPC.

(d) **Host Surplus Sub-Account:** Transfer/withdrawal the funds available in the Host Surplus Sub-Account during the Operation Period on the Distribution Date as per the instruction of the Host.

## 3.6 ENFORCEMENT PROCEEDS ACCOUNT

All the proceeds out of any action by and/or on behalf of the Lender for enforcement of their rights and/or Security under or pursuant to the Financing Documents and/or the applicable law or otherwise ("**Enforcement Action**"); and all the proceeds received by the Borrower after any notice of the intended initiation of the Enforcement Action by and/or on behalf of the Lender is given by the Lender to the Trustee Bank shall be deposited into Enforcement Proceeds Account, which shall be utilized towards discharging the Debt Service Payments, which expression for this purpose shall include the entire EE Loan then outstanding.

## 3.7 INSURANCE PROCEEDS ACCOUNT

The Insurance Proceeds shall be deposited into and/or credited to the Insurance Proceeds Account and shall be utilised for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation etc. of the EE Project, and the balance remaining, as per the instructions of the Lender.

## 3.8 OPERATION PROCEDURES

The Lender, [the ESCO/Host][[39]](#footnote-39), Trustee Bank and the Borrower have prior to execution this TRA Agreement agreed on the detailed mandates, terms and conditions and operating procedures stated herein for the Trust and Retention Account under the ESPC, EE Loan Agreement and the Financing Documents.

## 3.9 WITHDRAWALS FROM THE TRUST AND RETENTION ACCOUNT

(i) Subject to the provisions of this TRA Agreement:

(a) The Trustee Bank, upon receiving the relevant written instruction(s) from the financial officer of the ESCO/Host as approved in writing by the Lender, withdraw from the Implementation Period Fund Accounts and Operational Fund Accounts and place the amount so withdrawn, in the specified ESCO Energy Savings Sub-Accounts and Host Energy Savings Sub-Account during the Implementation Period and in ESCO Energy Savings O&M Sub-Account and Host Energy Savings O&M Sub-Accounts during the Operation Period as the case may be ("**Withdrawal Accounts**"). The Lender shall provide the Trustee Bank, written instruction(s) from time to time for making payments out of the Withdrawal Accounts to meet all the expenses/ payments. The amounts lying in the Withdrawal Accounts shall be utilised only in accordance with the written instruction(s) and as contained in this TRA Agreement.

(b) A certification by statutory auditor of the Borrower, in relation to all the withdrawals from the various sub-accounts of the Trust and Retention Account shall relieve the Lender of its obligations to the independently verifying the use of funds by the Borrower.

(ii) The amount as determined to be payable by the Borrower from any of the Retention Accounts as not paid by the Borrower shall be transferred by the Trustee Bank to the Implementation Period Fund Accounts and/or Operation Fund Accounts, as the case may be.

(iii) In the event no specific directions or guidelines are available, as to appropriation or application of the amounts in any of the Trust and Retention Accounts, the Trustee Bank shall act according to the written instruction(s) of the Lender.

## 4. PERMITTED INVESTMENTS

Subject to the provisions of this TRA Agreement:

(i) Except as otherwise provided herein, the Borrower shall, with prior written consent of the Lender, instruct the Trustee Bank in a certificate (containing specific instructions, particularly in relation to the amount and period) signed by its financial officer from time to time to invest amounts deposited and lying in any Sub-Account in Permitted Investments. All such Permitted Investments shall be made in the name of the Borrower. The Trustee Bank shall hold on behalf of the Borrower all document relating to such Permitted Investment.

Where such Permitted Investments are made, the Borrower by delivery of a certificate containing specific instructions in accordance with paragraph (ii) of this Clause, may instruct the Trustee Bank to realise the same (to the extent that the same are not self-realising) and the Trustee Bank shall act in accordance with such instructions.

All Permitted Investments shall be at the sole risk of the Borrower and any loss arising therefrom shall be borne by the Borrower.

All instructions as aforesaid given by the Borrower shall be immediately acted upon by the Trustee Bank.

(ii) Upon the realisation of any Permitted Investment made pursuant to this sub clause, the Trustee Bank shall credit the proceeds of such realisation and will deposit to the respective sub-accounts from which the Permitted Investments have been made, and interest earned on such Permitted Investments shall be credited to the Implementation Period Fund Accounts or Operation Fund Accounts, as the case may be.

(iii) The Borrower shall at all times seek to match the maturities of the Permitted Investments made out of moneys standing to the credit of each sub-account to the maturity of its liabilities in respect of such sub-account.

(iv) The Borrower is obliged to deliver all the documents relating to Permitted Investment along with the requisite letter of authority/ power of attorney in favour of the Trustee Bank to hold the same to enable the Trustee Bank to realise such Permitted Investments on due dates and in case of occurrence of Event Of Default, to liquidate such Permitted Investments before due dates. Written instruction(s) regarding realisation or further investment of the same shall be given by the Borrower sufficiently in advance before the date on which each such Permitted Investment matures.

(v) Except as otherwise set forth herein, the Trustee Bank shall not be responsible for monitoring the performance of any Permitted Investment or for any loss in value thereto unless such loss arises as a consequence of its/the Agent’s wilful misconduct or negligence.

(vi) On and after the occurrence of an Event of Default under the Financing Documents, the Lender may instruct the Trustee Bank to liquidate any of the Permitted Investments.

## 

## 5. TRANSFER OF FUNDS

i) The Trustee Bank shall be notified by the Lender and the Borrower of the completion of the Implementation Period of the Project.

ii) Within [3 (three)] days from the date of receipt of such notice, the Trustee Bank shall:

a) determine the amounts in deposit in the Implementation Period Fund Accounts and their sub-accounts as on date of such notice;

b) establish all the Operational Fund Accounts and Sub-Accounts under Clause 3.3 of this TRA Agreement; and

c) transfer all the amounts in deposit in the Implementation Period Fund Accounts and Sub-Accounts, as on the date of transfer as determined under Clause 3.4 above, and deposit such monies into the Operational Fund Accounts.

## 6. NOTICE OF DEBT SERVICE PAYMENT

Commencing with the date that is [15 (fifteen)] days prior to the first Distribution Date and prior to each Distribution Date, the Lender shall notify the Trustee Bank, the amounts due and payable to it in accordance with the EE Loan Agreement as on the Distribution Date towards:

(i) Interest on costs, charges, expenses and other monies;

(ii) Costs, fees, charges, expenses and other monies;

(iii) Liquidated damages on defaulted amounts;

(iv) Interest payable in terms of the EE Loan Agreement;

(v) Premium on prepayment; and

(vi) Repayment of Loans due and payable under the EE Loan Agreement.

## 7. FEE AND EXPENSES

The Parties hereby acknowledge and agree that the Borrower will pay to the Trustee Bank mutually agreed fee for services performed by the Trustee Bank pursuant to this TRA Agreement (the "Fee") and to pay/reimburse all out-of-pocket, legal, traveling and other costs, charges and expenses (the "Expenses") incurred by the Trustee Bank in the discharge of its duties under this TRA Agreement.

Notwithstanding the above, in the event that the Borrower fails to pay the Fee and/or reimburse the Expenses when due and payable and in the event of sufficient funds being not available in the related trust and retention account, the Lender shall, upon receipt of written notice thereof given by the Trustee Bank stating the Fee and Expenses due, pay to the Trustee Bank such Fee and Expenses.

8. LIMITATION ON LIABILITY

(i) The Trustee Bank shall not be liable for any action taken by it unless such liability is caused directly by omission, fraud, negligence, non-diligence and/or willful misconduct.

(ii) No party (other than Trustee Bank and Lender) may take any proceedings against any officer, employee or agent of the Trustee Bank in respect of any claim it might have against the Trustee Bank or in respect of any act or omission by any of its officer/ employee/ agent.

## 

## 9. Termination

9.1 This TRA Agreement shall remain in full force and effect until final settlement of the EE Loan, unless terminated earlier by the mutual consent of the Parties or otherwise in accordance with the provisions of this clause by written notice from the Secured Parties to the Trustee Bank.

9.2 The Borrower may, by not less than [sixty (60) days] prior notice to the Trustee Bank and with the prior written consent of the Lender, terminate this TRA Agreement and appoint one or more successor trustee bank, provided that such successor trustee bank is acceptable to the Lender and arrangements are made satisfactory to the Lender for transfer of the amounts deposited in the Accounts to New Accounts established with the successor trustee bank.

9.3 The Lender may, after consultation with the Secured Parties and the Borrower (unless an Event of Default has occurred and is continuing, in which event no such consultation shall be required), after giving notice of [sixty (60) days] at any time remove the Trustee Bank with or without cause or the trustee bank may after giving notice of [sixty (60) days] resign and the Lender may appoint a successor trustee bank by written notice of such action to the Borrower, the Trustee Bank and the successor trustee bank within the aforesaid notice period, failing which the Trustee Bank shall be entitled to appoint the successor trustee bank.

9.4 The Trustee Bank shall be entitled to terminate this TRA Agreement if the Borrower fails to comply with any of its obligations to the Trustee Bank under this TRA Agreement and fails to remedy the failure within [forty five (45) days] after receipt of notice thereof from the Trustee Bank to the Borrower and the Lender, provided the Borrower has arranged for the appointment of a new trustee bank acceptable to the Lender and the Secured Parties, and arrangements are made satisfactory to the Lender and Secured Parties for the transfer of amounts deposited in the Accounts to New Accounts established with successor trustee bank.

9.5 (i) Any successor Trustee Bank appointed as provided in this clause shall execute, acknowledge and deliver to the Secured Parties, the Borrower and to its predecessor Trustee Bank an instrument accepting such appointment and agreeing to discharge the functions of the Trustee Bank in accordance with this TRA Agreement, and thereupon the resignation or removal of the predecessor Trustee Bank shall become effective and such successor Trustee Bank; without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder, as if it was originally named as Trustee Bank under this TRA Agreement;

Provided that on the written request of the Secured Parties or of the successor Trustee Bank, the Trustee Bank ceasing to act shall, upon payment of all amounts then due to it pursuant to the provisions of Clause 9.5, execute and deliver an instrument or instruments transferring and assigning to such successor Trustee Bank (without obligation to indemnify such successor Trustee Bank) all the rights and powers of the Trustee Bank so ceasing to act; and

(ii) Upon the request of any such successor Trustee Bank, the Borrower shall execute any and all instruments in writing in order to more fully and certainly vest in and confirm to such successor Trustee Bank all such rights and powers.

9.6Any corporation into which the Trustee Bank may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee Bank shall be a party, or any corporation succeeding to the corporate trust business of either, shall, subject to the consent of the Lender, be the successor of the Trustee Bank.

## 

## 10. Indemnity

The Borrower hereby indemnifies and shall keep indemnified the Trustee Bank for any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, claims or disbursements of any kind or nature whatsoever which may be imposed upon, incurred by or asserted against the Trustee Bank in any way in connection with or arising out of the negotiation, preservation or enforcement of any rights under, or in carrying out its duties under this TRA Agreement or the Financing Documents (other than those arising as a result of the Trustee Bank or such other person’s negligence, omission, willful default, fraud, breach of law or criminal acts as determined by a court of law or tribunal having jurisdictions or express instructions of the Lender. The obligations of the Borrower under this Clause 10 to indemnify and keep indemnified the Trustee Bank shall survive the satisfaction, discharge or other termination of this TRA Agreement and the resignation or removal of the Trustee Bank under this TRA Agreement.

## 11. Not Acting in Individual Capacity

In accepting the trusts hereby created, the Trustee Bank acts solely in its capacity as Trustee Bank and not in its individual capacity and all persons having any claim against the Trustee Bank by reason of the transactions contemplated by the Transaction Documents shall look only to the Borrower for payment or satisfaction thereof, save and except as provided in this TRA Agreement, and other than as a result of its wilful misconduct or gross negligence.

12. **DEFAULTS**

If the Borrower fails to fulfil any of the following obligations under this TRA Agreement:

(a) failure to deposit all proceeds from energy savings from EE Project by the Borrower in the appropriate Account in accordance with this TRA Agreement and such default, if capable of remedy, is not cured within a period of [five (5) Business Days];

(b) A breach consisting of causing the Trustee Bank to transfer funds to any Account in breach of the terms of this TRA Agreement and such default, if capable of remedy, is not cured within a period of [three (3) Business Days];

(c) A breach of the Borrower’s obligations under Schedule I (*Permitted Investments*) and such default, if capable of remedy, is not cured within a period of [three (3) Business Days];and

(d) any other breach by the Borrower under this TRA Agreement; which is not remedied;

such breach/default shall be deemed to be a "**TRA Default**", and the Lender shall have the right to authorise the Trustee Bank to make transfers required pursuant to paragraph (b) to (d) above. An Event of Default shall include a TRA Default.

13. **REPRESENTATION AND WARRANTIES OF THE TRUSTEE BANK AND THE BORROWER**

Each of the Trustee Bank and the Borrower represent and warrant that it is duly organised and validly existing under the laws of India with power to enter into this TRA Agreement and to exercise its rights and perform its obligations hereunder and has taken all corporate and other actions required for the execution of this TRA Agreement and the performance of its obligations hereunder and the Borrower further represents and warrants that all the representations and warranties under the EE Loan Agreement shall be valid for the purposes of this TRA Agreement. The Trustee Bank represents and warrants (i) that it shall hold all funds in the Accounts on trust and in accordance with the provisions of the Agreement; (ii) that it has obtained all approvals, permits and other clearances required for the execution of this TRA Agreement and the performance of its obligations hereunder; and further represents and warrants (iii) that it has not been debarred or sanctioned under the World Bank Guidelines on Preventing and Combating Fraud and Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants dated October 15, 2006 and revised in January 2011 (the “Anti-Corruption Guidelines”).

14.**MISCELLANEOUS**

## 

## 14.1 Closure of Accounts

The Trustee Bank shall, at the request of the Borrower made on or after the payment by the Borrower of all outstanding amounts under the Financing Documents as confirmed by the Lender, close the Accounts (except such Accounts that may have been closed earlier with the consent of the Lender) and pay any amount standing to the credit thereof to the Borrower.

## 14.2 Restriction on Assignment

Save as provided in Clause 9, none of the Borrower or the Trustee Bank shall assign or transfer any part of their respective rights or obligations under this TRA Agreement without the prior consent of the other, provided that this Clause 14.2 shall not prevent Lender from assigning or transferring its rights under the Financing Documents in accordance with the terms thereof.

## 14.3 Successors and Assignors

This TRA Agreement shall be binding on and shall inure to the benefit of the Parties hereto and their respective successors in title and permitted assigns.

## 14.4 Notices

### Addresses

The address for notices and communication in respect of this TRA Agreement shall be as follows:

**For the Host**

[•]

**Registered Office Address:**

[•]

Tel. No. : [•]

Fax No. : [•]

Attention : [•]

**For the Trustee Bank**

[•]

**Corporate Office Address:**

[•]

Tel No. : [•]

Fax : [•]

Attention : [•]

**For the Lenders**

[•]

**Corporate Office Address:**

[•]

Attention : [•]

Tel. No. : [•]

Fax No. : [•]

**For ESCO**

[•]

**Corporate Office Address:**

[•]

Attention : [•]

Tel. No. : [•]

Fax No. : [•]

Any Party may by notice change the addresses and/or addresses to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have written notice of it.

## 14.5 Waiver

Failure by any Party at any time to enforce any provision of this TRA Agreement or to require performance by the other Parties of any provision of this TRA Agreement shall not be construed as a waiver of such provision and shall not affect the validity of this TRA Agreement or any part of it or the right of the relevant Party to enforce any provision in accordance with its terms.

## 14.6 Severability

If any condition, clause or provision of this TRA Agreement not being of a fundamental nature is held to be illegal or unenforceable, the validity or enforceability of the remainder of this TRA Agreement shall not be affected thereby.

## 14.7 Amendments

No amendment to this TRA Agreement shall be binding unless in writing and signed by the duly authorised representatives of the Parties.

## 

## 14.8 Governing Law and Jurisdiction

(i) This TRA Agreement and the rights and obligations of the Parties hereunder shall be construed in accordance with and be governed by the laws of India.

(ii) The Company irrevocably waive any objection now or in future, to the lying of the venue of any Proceedings in the courts and tribunals at [•] and any claim that any such Proceedings have been brought in an inconvenient forum and further irrevocably agree that a judgment in any Proceedings brought in the courts and tribunals at [•] shall be conclusive and binding upon them and may be enforced in the courts of any other jurisdiction, (subject to the laws of such jurisdiction) by a suit upon such judgment, a certified copy of which shall be conclusive evidence of such judgment, or in any other manner provided by law.

## 14.9 Regulatory Approvals

The Borrower shall procure and shall thereafter maintain and comply with all regulatory approvals required for the establishment and operation of the Accounts and the making of any deposits, transfers or withdrawals and for the performance of its obligations under this TRA Agreement.

## 

## 14.10 Notification of Balances

Within seven (7) days following the end of each calendar Month, the Trustee Bank shall notify the Lender, ESCO and the Host of the respective balances in the Accounts and furnish a statement of the deposits into and payment out of the Accounts as at the close of business of such calendar month.

## 

## 14.11 Additional Rights

Any rights conferred on the Trustee Bank or the Lender or any of them, by this TRA Agreement shall be in addition to and not in substitution for or in derogation of any other rights and remedies which the Lender or the Trustee Bank or any of them, may at any time have under the Financing Documents or otherwise, including, without limitation, rights to seek and obtain from the Borrower or any party to the Financing Documents reimbursement of or indemnification against payments made or liabilities incurred under the Financing Documents or otherwise.

## 

## 14.12 Force Majeure

The Trustee Bank shall not be held liable or responsible for any failure or delay in performance of any or all of its duties under this TRA Agreement, directly or indirectly caused by any circumstances beyond its the control including, but not limited to, acts of God, orders or restrictions, war or warlike conditions, hostilities, sanctions, mobilizations, blockades, embargoes, detentions, revolutions, riots, looting, strikes, earthquakes, fires or accidents, failure of communication or banking systems (collectively, "Force Majeure"). Upon the occurrence of any event or condition of Force Majeure which affects the performance of the Trustee Bank, the Trustee Bank shall, as soon as is reasonably possible, notify the other Parties of the nature of the event or condition, the effect of the event or condition on the Trustee Bank performance and, on a best efforts basis, the estimated duration of the event or condition. The Trustee Bank shall also notify the other parties immediately upon cessation of or changes in the event or condition constituting Force Majeure.

## SCHEDULE I

## AUTHORISED INVESTMENTS

**Permitted Investments**:

(a) Treasury bills or debt instruments issued by the Government of India;

(b) Certificates of deposits or instruments having not less than an AAA/P1 rating by CRISIL or equivalent rating by CARE/ICRA/Fitch;

(c) Fixed deposits with bank/Trustee Bank; and

(d) AAA/P1 rated liquid funds;

All the above investments shall be made with prior written approval of the Lender.

**IN WITNESS WHEREOF** the Borrower has caused [its Common Seal to be affixed hereto][[40]](#footnote-40) and to the counter copies hereof on the date, month and year first hereinabove written and the Host/ESCO and the Trustee Bank have caused the same to be executed by the hands of their respective authorized officials or attorney as hereinafter appearing.

**[SIGNED AND DELIVERED for and on behalf of** [•], as ESCO, by the hand of [•], its [•] and authorized official.][[41]](#footnote-41)

**[SIGNED AND DELIVERED** for and on behalf of **[•], as Trustee Bank,** by the hand of [•], its [•] and authorized official.][[42]](#footnote-42)

[SIGNED AND DELIVERED for and on behalf of **[•] as Lender** by the hand of [•], its [•] and authorized official.][[43]](#footnote-43)

[SIGNED AND DELIVERED for and on behalf of [•] **as Host** by the hand of [•], its [•] and authorized official.][[44]](#footnote-44)

1. *In case of Scheduled Commercial Bank*  [↑](#footnote-ref-1)
2. *In case of NBFC* [↑](#footnote-ref-2)
3. *In case of SIDBI as lender* [↑](#footnote-ref-3)
4. *Select as applicable* [↑](#footnote-ref-4)
5. *Select as applicable* [↑](#footnote-ref-5)
6. *To be deleted if the ESCO is not the Borrower* [↑](#footnote-ref-6)
7. *Select as applicable* [↑](#footnote-ref-7)
8. *Select as applicable* [↑](#footnote-ref-8)
9. *To be deleted if the Host is not the Borrower* [↑](#footnote-ref-9)
10. *In case of Financial Institution* [↑](#footnote-ref-10)
11. *Drafting Note: Chose as appropriate.* [↑](#footnote-ref-11)
12. *Drafting Note: Change as applicable* [↑](#footnote-ref-12)
13. *Drafting Note: Chose as appropriate.* [↑](#footnote-ref-13)
14. *Drafting Note: Chose as appropriate.* [↑](#footnote-ref-14)
15. *Drafting Note: Chose as appropriate.* [↑](#footnote-ref-15)
16. *Drafting Note: Chose as appropriate.* [↑](#footnote-ref-16)
17. *Drafting Note: Chose as appropriate.* [↑](#footnote-ref-17)
18. *Drafting Note: Chose as appropriate.* [↑](#footnote-ref-18)
19. *Drafting Note: Chose as appropriate.* [↑](#footnote-ref-19)
20. *To be deleted if the ESCO is the Borrower*  [↑](#footnote-ref-20)
21. *To be deleted if the Host is the Borrower*  [↑](#footnote-ref-21)
22. *To be deleted if the ESCO is the not Borrower*  [↑](#footnote-ref-22)
23. *To be deleted if the ESCO is the not Borrower*  [↑](#footnote-ref-23)
24. *To be deleted if the Host is not the Borrower*  [↑](#footnote-ref-24)
25. *To be deleted if the Host is not the Borrower*  [↑](#footnote-ref-25)
26. *Drafting Note: To be deleted if ESCO is the Borrower.* [↑](#footnote-ref-26)
27. *Drafting Note: To be deleted if ESCO is the Borrower.* [↑](#footnote-ref-27)
28. *Drafting Note: To be deleted if ESCO is not the Borrower.* [↑](#footnote-ref-28)
29. *Drafting Note: To be deleted if Host is the Borrower.* [↑](#footnote-ref-29)
30. *Drafting Note: To be deleted if the Host is not the Borrower.* [↑](#footnote-ref-30)
31. *Drafting Note: To be deleted if the Host is not a Borrower.* [↑](#footnote-ref-31)
32. *Drafting Note: To be deleted if the Host is the Borrower.* [↑](#footnote-ref-32)
33. *Drafting Note: To be deleted if the ESCO is not the Borrower.* [↑](#footnote-ref-33)
34. *If the choice of BG/LC in place of DSRA is available to ESCO* [↑](#footnote-ref-34)
35. *Delete if the ESCO is not the Borrower* [↑](#footnote-ref-35)
36. *Delete if the Host is not the Borrower*  [↑](#footnote-ref-36)
37. *Delete if the choice of BG/LC in place of DSRA is not available to the Host* [↑](#footnote-ref-37)
38. *Delete if the Host is not the Borrower* [↑](#footnote-ref-38)
39. *Select as appropriate* [↑](#footnote-ref-39)
40. *To be suitable modified in terms of the legal status of the entity and its charter documents* [↑](#footnote-ref-40)
41. *To be suitable modified in terms of the legal status of the entity and its charter documents* [↑](#footnote-ref-41)
42. *To be suitable modified in terms of the legal status of the entity and its charter documents* [↑](#footnote-ref-42)
43. *To be suitable modified in terms of the legal status of the entity and its charter documents* [↑](#footnote-ref-43)
44. *To be suitable modified in terms of the legal status of the entity and its charter documents* [↑](#footnote-ref-44)