

# KOTAK MAHINDRA BANK LTD.

## MASTER FACILITIES AGREEMENT

---

**BORROWER:** \_\_\_\_\_

\_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Reg. Office: 27BKC, C 27, G Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400051

July 2020-Version 4

(To be stamped as Agreement+ Indemnity+ Power of Attorney)

## **MASTER FACILITY AGREEMENT**

**This Agreement** is made and executed on the date and at the place mentioned in **Schedule I**, annexed hereto between:

**KOTAK MAHINDRA BANK LTD.**, a company incorporated under the provisions of the Companies Act 1956 and licensed as a Banking Company under the provisions of the Banking Regulation Act, 1949, and having its registered office at 27BKC, C 27, G Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400051 and a branch office inter-alia at the address mentioned in Schedule I hereto ("**Branch**"), hereinafter referred to as the "**Bank**" (which expression shall unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors and assigns) of the **ONE PART**

**AND**

The person(s) specified as the borrower(s) and co-borrower(s) in Schedule I to this Agreement (hereinafter collectively referred to as the "**Borrower**") of the **OTHER PART**.

The expression "**Borrower**" shall, unless repugnant to the context or meaning thereof, be deemed to include, **(i)** where the Borrower concerned is an individual or a proprietorship firm, his/her heirs, executors and administrators; **(ii)** where the Borrower concerned is a partnership firm for the purposes of the Indian Partnership Act, 1932, the partners or partner for the time being of the said firm, the survivors or the survivor of them and their heirs, executors and administrators of the last surviving partner; **(iii)** where the Borrower concerned is a Hindu undivided family, the member or members for the time being of the said Hindu undivided family, and their respective heirs, executors and administrator; **(iv)** where the Borrower concerned is a Company within the meaning of the Companies Act, 2013 or a Limited Liability Partnership, incorporated under the Limited Liability Partnership Act, 2008, its successors in title; **(v)** where the Borrower concerned is an unincorporated body, all the members of such body and their respective successors; **(vi)** where the Borrower is the Governing Body of a Society, its respective successors and the members of the Governing Body and any new members elected, appointed or co-opted; **(vii)** where the Borrower is the Trustees of the Trust, their successors);

The Borrower and the Bank are hereinafter individually referred to as a "**Party**" and collectively as the "**Parties**".

### **WHEREAS:-**

- A.** The Borrower has requested the Bank, for the sanction of certain credit/financial facilities for the express purpose(s) as discussed between them or as set out in the Borrower's application form/request letter made already and as may be made from time to time (hereinafter referred to as the "**Request**").
- B.** Pursuant to such Request, and on the terms and conditions contained in this Agreement and relying upon the representations, warranties and statements on the part of the Borrower contained herein or otherwise made to the Bank, the Bank has vide its Facility Letter (as hereinafter defined) agreed to grant / granted such Facility / Facilities (as hereinafter defined) upto the limits and on the terms and conditions more particularly specified in such Facility Letter referred to in **Schedule -1**, In the event that the Borrower requests the Bank for further/ other Facilities/ Individual Facilities and/or revision of any limits or sub-limits to the existing Facilities and/or the then existing Facility/Facilities, and the

Bank agrees to any of the same, then the Bank may issue such Facility Letter(s) or modifications thereof as may be necessary in this regard and whether separately for each Individual Facility (ies) or covering more than one of them. Such Individual Facilities shall in addition to the main body of this Agreement be governed by the respective Special Provisions relating to the Product read with the Facility Letter(s).

## ARTICLE 1

### 1.1 DEFINITIONS:

In this Agreement, unless the context otherwise requires, the capitalized terms listed below shall have the following meanings:–

- 1.1.1. **“Account”** means current account(s) or overdraft or the cash credit account(s) or such other accounts, as the case may be, opened or held by the Borrower with the Bank.
- 1.1.2. **“Agreement”** includes this Agreement together with all Schedules, Annexure hereto, all amendments, reinstatements, supplements to this Agreement, Facility Letter(s), addendum, reinstatements, amendments to the Facility Letters, such other documents and letters issued by the Bank to the Borrower which are deemed to be Facility Letter for the purposes of this Agreement.
- 1.1.3. **“Assets”** shall mean all the present and future movable properties/immovable properties/ assets of the Borrower/ Security Provider including but not restricted to shares/stock/bonds/securities in any form whatsoever, Plant and Machinery and shall also include the Borrower’s/ Security Provider’s inventory of raw materials, finished and semi-finished goods, stocks in process, stocks in trade, consumable stores, book debts and receivables among others.
- 1.1.4. **“Affiliate”** means:
- a) with reference to an individual, any relative of such individual or any partnership firm where such individual or relative of the individual is a partner or any company where the individual or his relative is a director/ or have control of the company;
  - b) with reference to a company, any person who directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of, such company;
  - c) with reference to a partnership firm, any partner of such partnership firm or any company in which such partner is a director or member having control of the Company or any relative of his partner;
  - d) with reference to a HUF, all the members of such HUF or relative of the HUF;
  - e) with reference to a trust, all the trustees of such trust;
  - f) with reference to an Association of Persons, all the persons belonging to such Association of Persons.
  - g) For the purpose of this definition, the term “relative” and “control” means “Relative” and “Control” as defined under the relevant provisions of the Companies Act, 2013.
- 1.1.5. **“Authorised Signatory”** shall mean the Borrower or any person duly authorized by the Borrower in accordance with applicable law and its constitutional documents to perform any act on behalf of the Borrower under this Agreement including executing/ signing and delivering this Agreement for and on behalf of the Borrower.
- 1.1.6. **“Business Day”** shall mean any day of the week (excluding Sundays and any day which is a public holiday for the purpose of Section 25 of the Negotiable Instruments Act, 1881 (26 of 1881) on which banks are open for general banking business in the place in India where the Branch of the Bank is situate from which disbursement under the Facility/ Facilities has been/will be made and **“Business Days”** shall be construed accordingly;

- 1.1.7. **“Credit Eligibility Letter”** shall mean a letter issued by the Bank to the Borrower specifying the Overall Limits and/or any variations there to from time to time prior to the actual sanction of the Facility/ies to the Borrower; which shall be deemed sanctioned only upon issuance of the Sanction Intimation Letter/Sanction Letter or actual disbursement by the Bank (whichever is earlier).
- 1.1.8. **“Drawing Power”** shall, for any Individual Facility (ies) mean the least of (i) Individual Facility limit for that Individual Facility, (ii) value of Security provided for that Individual Facility less margin or (iii) operative limit for that Individual Facility as decided by the Bank based on its assessment.
- 1.1.9. **“Due Date”** means, in respect of any amount payable under any of the Facilities, the date on which such amount falls due in terms of this Agreement and/or the Facility Letter; and if such date falls on a day which is not a Business Day at the place of the Branch or where the payment is to be made, the immediately preceding Business Day.
- 1.1.10. **“Encumbrance”** shall mean any right, title or interest existing or created or purporting to exist or be created or agreed to be created by way of or in the nature of sale, agreement to sell, pledge, hypothecation, license, hire-purchase, lease, tenancy, mortgage, charge, co-ownership, attachment or other process of any court, tribunal, judicial/ quasi-judicial/ regulatory or statutory or any other authority, statutory liabilities which are recoverable by sale of property or any other third party rights or encumbrance generally including sale and lease back transactions and title retentions or any other form of charge whatsoever and shall include any agreement to create any such Encumbrance.
- 1.1.11. **“Event(s) of Default”** shall mean each of the events of default mentioned in Article 9 hereunder and any events of defaults mentioned in any of the Transaction Documents including the Facility Letter.
- 1.1.12. **“Facilities”** shall mean the credit/financial facilities either Fund Based or Non Fund Based in nature, so sanctioned/**agreed** to be sanctioned by the Bank to the Borrower in terms of the relevant Facility Letter(s) or any variations thereto by issue of letters in writing by the Bank from time to time and on the terms and conditions set out therein or otherwise.
- 1.1.13. **“Facility Letter”** shall mean all the letters issued / to be issued by the Bank from time to time in connection with the facility/ies and includes, as the case may be, the Credit Eligibility Letter, the Sanction Letter specified in the Schedule-I, the Sanction Intimations Letter(s), all addendums, supplements etc. thereto issued from time to time.
- 1.1.14. **“Final Settlement Date”** shall mean the date on which all the Outstanding Balance(s) under this Agreement have been irrevocably paid/repaid by the Borrower to the Bank, to the full satisfaction of the Bank.
- 1.1.15. **“Fund Based Facilities”** shall include Cash Credit Facilities, Overdraft Facilities, Short Term Loan Facilities, Term Loan Facilities, Bills Facilities, Export Pre-shipment/Post shipment Facilities and such other facilities as may be prescribed by the Bank from time to time.
- 1.1.16. **“Non-Fund Based Facilities”** shall include Letters of Credit Facilities, Bank Guarantee /SBLC Facilities, Co-acceptance of Bills Facilities and such other facilities as may be prescribed by the Bank from time to time.
- 1.1.17. **“Indebtedness”** shall mean any indebtedness in respect of monies borrowed or liabilities contracted (including any contingent liabilities, under guarantees, indemnities, hire purchase and leasing) of the Borrower and shall be deemed to include any indebtedness of any associate/Affiliate of the Borrower

or a person or entity related to the Borrower, and any indebtedness of the Borrower and/or of any associate/Affiliate of the Borrower or a person and entity related to the Borrower.

- 1.1.18. **“Individual Facility (ies)”** shall mean each of the facilities listed in the Facility Letter comprising the Facilities. Each Individual Facility (ies) may also be referred to as “Facility” for the sake of convenience and may be so interpreted depending on the context in which it is used.
- 1.1.19. **“Individual Facility Limit”** shall mean the limit of the Individual Facility (ies) as specified in Facility Letter or as maybe increased/decreased by the Bank from time to time and informed to the Borrower in writing. For clarity the aggregate of all Individual Facility Limits of all Individual Facilities shall in no event exceed the Overall Limit.
- 1.1.20. **“Guarantor”** shall mean the person(s) (if any) who have issued/may be required to issue, guarantee(s) in favour of the Bank, *inter alia*, guaranteeing the performance of the obligations of the Borrower to the Bank under and pursuant to the Agreement;
- 1.1.21. **“Interest Rate(s)”** in respect of each of the Facilities shall mean the rate of interest that shall be applicable to such Facilities and the Outstanding Balance in respect thereof, which shall be specified by the Bank in the Facility Letter or the Schedule hereto or may be stipulated by the Bank from time to time.
- 1.1.22. **“Material Adverse Effect”** shall mean a material adverse effect (i) on the assets, business, properties, liabilities, financial condition, results, operations or prospects of the Borrower; or (ii) on the ability of the Borrower to perform its obligations under this Agreement; or (iii) on the validity, legality or enforceability of this Agreement/ Facility Letter/ any other Transaction Documents or (iv) which materially impairs/diminishes/ adversely affects the value of the underlying Assets comprising the Security in the opinion of the Bank; or (v) any event that increases the sectoral/ industry specific risk of exposure for the Bank.
- 1.1.23. **“Outstanding Balance(s)”** shall mean collectively the Facilities, interest, compound interest, Additional Interest, any other charges, dues and monies payable, costs and expenses reimbursable, as outstanding from time to time and whether any of them are due or not for the time being, and whether under this Agreement and/or any of the Transaction Document(s).
- 1.1.24. **“Overall Limit”** shall mean the aggregate of the Individual Facility Limits of various Individual Facilities as specified in the Facility Letter and/or as specified in the Schedule II Cum Key Fact Statement hereto or as maybe increased/decreased by the Bank from time to time and informed to the Borrower by the Bank.
- 1.1.25. **“Person”** includes an individual, statutory corporation, body corporate, partnership, limited liability partnership, joint **venture**, association of persons, Hindu Undivided Family (HUF), societies (including cooperative societies), trust, unincorporated organisation, government (Central, State or otherwise), sovereign State or any agency, department, authority, or political subdivision thereof, international organisation, agency or authority (in each case whether or not having a separate legal personality) and shall include their respective successors and assigns, and in case of an individual shall include his legal representatives, administrators, executors and heirs, and in case of a trust shall include the trustee or trustees for the time being, the survivor or survivors of them and the heirs, executors and administrators of the last surviving trustee.
- 1.1.26. **“Special Provisions Relating to the Product”** shall mean, as the context may permit or require, any or each of the special provisions relating to a product (as may be amended and/or supplemented from

time to time) depending upon the respective Individual Facilities to which each such part of the provisions pertains to, and which contains additional terms and conditions in relation to the specific Fund Based Facilities and/or Non-Fund Based Facilities.

- 1.1.27. **“Purposes”** in relation to each Facility, shall mean the purposes as listed out in the Facility Letter or in **Schedule II Cum Key Fact Statement** annexed hereto and **Special Provisions Relating to the Product**, being the purpose for which the Facilities/ Individual Facility has been granted by the Bank.
- 1.1.28. **“RBI”** shall mean the Reserve Bank of India;
- 1.1.29. **“Sanction Letter”/“Sanction Intimation Letter”** shall mean a letter issued by the Bank to the Borrower sanctioning the limits for Individual Facility/ies not exceeding the Overall Limits and includes Sanction Intimation Letter and the Facility/ies shall be deemed sanctioned only upon issuance of the Sanction Letter / Sanction Intimation Letter or disbursement (whichever is earlier) by the Bank.
- 1.1.30. **“Schedule(s)”** shall mean the Schedule(s) annexed to this Agreement (whether numbered or otherwise) and as may be amended, supplemented and/or reinstated from time to time.
- 1.1.31. **“Secured Assets”** shall mean and include all Assets of the Borrower and Security Provider)over which any Security (as defined hereinafter) is created/ to be created/ stipulated in favour of the Bank for securing the **Outstanding** Balance(s) under this Agreement from time to time.
- 1.1.32. **“Security”** shall have the same meaning as assigned to the term in Article 8 hereof.
- 1.1.33. **“Security Provider”** shall mean any person (other than Borrower) which provides or/shall provide Security for securing the repayment of the Outstanding Balance(s) hereunder, if the Bank so requires at any time until the Final Settlement Date of this Agreement.
- 1.1.34. **“Transaction Documents”** include this Agreement together with all Schedules, Annexures, all other facility documents including the Deed of Hypothecation, Guarantee Deed, Demand Promissory Note, Letter of Continuing Security, General Undertaking, Declarations etc., (wherever applicable), Facility Letters, Sanction Letters, Credit Eligibility Letters, the application form and all other agreements, instruments, undertakings, indentures, deeds, writings and other documents (whether financing, security or otherwise), including but not limited to FIMMDA declaration, GR Forms, AWB/BL/LR, invoices etc. executed or entered into, or to be executed or entered into, by the Borrower or its Authorized Signatory (as the case may be), or any other person, in relation to, or pertaining to, or arising out of the transactions contemplated by, or under this Agreement and includes all amendments, restatements, supplements in respect of any of the afore stated documents.

## **1.2 INTERPRETATION:**

- 1.2.1 The recitals contained in this Agreement and the relevant Schedules shall form an integral part of this Agreement.
- 1.2.2 The singular shall include the plural and vice versa.
- 1.2.3 Consent, permission, approval or no-objection (by whatever name be called) of the Bank shall mean specific and express prior written consent of the Bank unless specifically agreed to otherwise by the Bank and so communicated to the Borrower.
- 1.2.4 All clauses, headings, articles in this Agreement have been inserted for convenience of reference only and shall not affect the interpretation of the provisions of this Agreement in any manner whatsoever.
- 1.2.5 In case of there being more than one Borrowers (i.e. there being co-borrowers), the reference to the term **“Borrower”** shall be deemed to be as if it were plural and this Agreement shall be read

accordingly as if made and liabilities undertaken by each of them jointly and severally and wherever the context so requires the grammar and construction of every concerned reference shall be deemed to be appropriately amended so as to indicate more than one Borrower.

## ARTICLE 2

### 2. GRANT OF THE FACILITIES AND DISBURSEMENT:

- 2.1 At the request of the Borrower, and subject to the terms and conditions as contained in the Facility Letter and this Agreement, the Bank hereby agrees to provide to the Borrower, all the Facilities (upto the respective Individual Facility Limits for the Individual Facilities respectively, however, within the Overall Limit), as stipulated in the Facility Letter, where under the Bank may at its sole and absolute discretion from time to time disburse the Individual Facility amount(s) or parts thereof and/or allow the Borrower to make utilizations under/ of the respective Individual Facilities, in one more tranches (each, a “**Disbursement**”). The Bank shall in its sole discretion be entitled to change the Branch from where the Facilities are being granted/ Disbursement is being made to any other branch from time to time.
- 2.2 The Overall Limit may be revised by increasing or decreasing the Overall Limit. The Individual Facility Limits may be interchanged, within the Overall Limit, by way of Facility Letter. All such Facilities from time to time with all applicable Individual Facility Limits and the Overall Limit, shall be governed by this Agreement, without any further deed, act or writing. In the event that the Borrower requests the Bank for further/ other Facilities/ Individual Facilities and/or revision of any limits or sub-limits to the existing Facilities and/or the then existing Facility/Facilities, and the Bank agrees to any of the same, then the Bank may issue such Facility Letter(s) or modifications thereof as may be necessary in this regard and whether separately for each Individual Facility or covering more than one of them. The Bank shall however be under no obligation to meet any further requirements of the Borrower on account of growth in its business, etc, without proper review of credit limits.
- 2.3 All the Facilities/ Individual Facility shall be utilized by the Borrower only for the respective Purposes, and shall not be used for any other purpose or for investment in capital market/shares/debentures/mutual funds/purchase of gold in any form, including primary gold, gold bullion, gold jewellery, gold coins, units of gold exchange traded funds (ETF) and units of gold mutual funds or any illegal /speculative activity.
- 2.4 Without being obligated to do so, the Bank shall be entitled to monitor the use/end use of the Facilities/ Individual Facility including through any auditor(s) or consultant(s) including by examining books of the Borrower, with necessary certification from them, as appointed by the Bank at its sole discretion and at the cost of the Borrower. Notwithstanding the afore stated, the Borrower shall be required to provide end use statements on a quarterly basis (or at such intervals as may be stipulated by the Bank) to the Bank certified by any auditor or consultant(s) of the Bank’s preference.
- 2.5 The terms and conditions of each Individual Facility shall be as more particularly listed out in the relevant Facility Letter, the facility documents, as also the additional terms specified in the Schedules, Annexure annexed hereto, which shall be an integral part of this Agreement. For certain Individual Facilities, the relevant Special Provisions Relating to the Product shall also be applicable, in addition to the main body of this Agreement and such Facilities shall be governed by the respective Special Provisions Relating to the Product which are/shall form a part of Special Provisions Relating to the Product read with the Facility Letter(s) in addition to the Agreement. It is clarified that in case of term loan, short term loan, working capital demand loan, working capital term loan, buyer’s credit facilities Special Provisions Relating to the Product may not be executed between the Borrower and the Bank. In the event of there being a conflict between the Facility Letter for an Individual Facility and/or the common/ general Facility Letter and/or this Agreement, then the Facility Letter for the Individual Facility shall prevail over the common/ general Facility Letter and this Agreement. In the event of a conflict between the Facility Letter and this Agreement

(and in cases wherein the Special Provisions Relating to the Product has not been executed), the Facility Letter shall prevail over this Agreement. In cases where the Special Provisions Relating to the Product has been executed and there is any conflict between the Special Provisions Relating to the Product and this Agreement, the Special Provisions Relating to the Product and Facility Letter, read in conjunction shall prevail over the rest of this Agreement. The Bank shall be entitled to alter/vary/modify the terms and conditions of this Agreement or any of the Facility Letters at any time by notice to the Borrower, either on its own accord or as maybe required by any Statutory Authority.

- 2.6** The Borrower shall at all times confine the drawings in each Individual Facility to the Drawing Power for that Individual Facility and in no case shall exceed such limit. The Borrower shall ensure at all times until the Final Settlement Date that the Outstanding Balance (at any point of time) is within its Drawing Power (whether by payment/repayment or providing additional security as may be acceptable to the Bank). The Bank may however, at its own discretion, allow drawings beyond the Drawing Power, including ad hoc/ temporary facilities and/or Temporary Overdraft Facilities (“**TOD**”), for such time as may be considered necessary and shall at any time without notice call upon the Borrower to repay such excess drawings. All rights of the Bank and the obligations of the Borrower respectively hereunder and under any Facility Letter or other documents shall extend to such drawings notwithstanding the specific limit stipulated. Such drawings shall become a part of the Outstanding Balance. All the rights and securities created hereunder in favour of the Bank and the obligations of the Borrower thereunder will extend to cover the Borrower's liability to the Bank under any account whatsoever of the Borrower with the Bank, notwithstanding that such account may not relate to any particular Individual Facility agreed to be granted by the Bank to the Borrower.
- 2.7** The Borrower/s further undertakes to execute such documents, deeds and writing including a letter of acknowledgment of debt in favour of the Bank, whenever the Bank may call upon the Borrower to do so, in such manner and form as the Bank may deem fit.
- 2.8** This Agreement along with all other Transaction Documents executed in favour of the Bank by the Borrower shall be valid and binding for all present and future credit facilities, granted or continued/renewed or that may be granted hereunder or continued/renewed and/or all restructuring/change/addition/enhancement/ reduction of limits within the Overall Limit and shall subsist and be valid and binding, notwithstanding the renewal/restructuring/change/addition/enhancement/reduction of limits, the granting of totally new limits, facilities or account/s coming into credit, or inter-changeability of limits, cancellation of certain limits, etc. within the Overall Limit.

### **ARTICLE 3**

#### **CONDITIONS PRECEDENT:**

- 3.1** The obligation of the Bank to allow the Borrower to utilize or continue to utilize/ disburse or continue to disburse the Facility/ Individual Facility or any part thereof from time to time shall be subject to fulfillment of all of the following conditions:
- (a)** The Borrower shall deliver to the Bank a certified true copy of the Borrower's constitutional documents including (as applicable), Memorandum and Articles of Association and Certificate of Incorporation or Deed of Partnership or true copy of such other document under which the Borrower is/are constituted/ incorporated (as the case may be), as amended up-to-date as also certified true copies of authorizations from the Board of Directors/ Resolution of the Partners/ Trustees for the purpose of availing the Facilities as also execution of the necessary documents in this behalf as also other documents as may be prescribed by the Bank from time to time;



- (b) The Borrower shall have met and continues to meet the Bank's requirement of creditworthiness for which the Bank may make such enquires as it deems fit from time to time.
- (c) The Borrower shall have complied and continues to comply with the Know Your Customer (KYC) related guidelines and such other conditions as may be prescribed by the RBI from time to time.
- (d) No Event of Default shall have happened.
- (e) The Borrower shall have satisfied the Bank that the proposed utilization and all prior utilization of the Facility/ Individual Facility or any part thereof is only towards the Purpose;
- (f) The Borrower shall have provided, duly executed and delivered/ obtained such demand promissory notes, guarantee/s, security documents, other documents, writings as required by the Bank and handed over to the Bank such payment instruments including cheques/inchoate cheques as may be required by the Bank. The Borrower or the Security Provider on behalf of the Borrower, has created and/or procured the creation of such Security in favour of the Bank over such Assets as the Bank may require and in such form and manner as may be specified by the Bank from time to time for the repayment / payment of the Outstanding Balance(s);
- (g) The Borrower has paid and shall continue to pay all GST/taxes, charges, fees, costs, expenses and all other monies in relation to, arising out of or, or pursuant to the grant of the Facilities/ Individual Facility including payments of such monies as mentioned in the Facility Letter.
- (h) The Borrower shall have kept the Secured Assets marketable with clear mortgageable title free from any encumbrances to the satisfaction of the Bank.

3.2 The Borrower shall, if so required by the Bank, submit to the Bank a certificate (in a form acceptable to the Bank) by a Statutory Auditor or consultant(s) acceptable to the Bank certifying that all the aforesaid Conditions Precedent have been duly fulfilled, and such other certifications in such form and manner in relation to Conditions Precedent as the Bank may require from time to time.

## **ARTICLE 4**

### **REPRESENTATIONS AND WARRANTIES:**

- 4.1 Each of the Borrowers hereby represents and warrants as on the date hereof, which representations and warranties shall be true, correct, complete and accurate and deemed to have been repeated by the Borrower (1) as on the respective date of each Disbursement, and (2) on every day from the date of this Agreement until the Final Settlement Date, that:
- a) That the Borrower (i) is a major, of sound mind, solvent and competent to contract (where the Borrower is an individual); (ii) is a trust/society/company/partnership firm/Hindu Undivided Family/LLP/other body corporate duly constituted, incorporated or registered and validly existing and licensed to do business under the applicable laws of India; (iii) The Borrower (if an individual) or each of the partners or directors, is a citizen of India.;
  - b) The person(s) executing this Agreement and all other incidental/ ancillary documents on behalf of the Borrower has/have been duly authorised in that regard and are entitled to for and on behalf of the Borrower to, sign, deliver, execute this Agreement and do all such acts/ deeds/ things as may be required by the Bank pursuant hereto;
  - c) neither the execution, delivery of this Agreement and/or any of the Transaction Documents nor any actions/ acts/transactions pursuant thereto, conflict with/breach/ or cause a default under Borrower's constitutional documents, any applicable law or other legal restriction (including, any judgment, order, injunction, decree or ruling of any court, tribunal, judicial, quasi-judicial, regulatory, statutory or any other authority) or any instrument, any other agreement by which the Borrower or any of its property is/ will be bound
  - d) That the information furnished by the Borrower for availing of the Facilities/ Individual Facility is, and shall be, true, complete and correct and there has been no concealment by the Borrower of any such information in any manner whatsoever;

- e) The Borrower (and where the Security is provided by a Security Provider, the Borrower represents that the Security Provider) is the legal and beneficial owner and has good, clear and marketable title to the Secured Assets and the Secured Assets are free from all forms and types of Encumbrances including any form of squatting, trespass, illegal encroachment and/or legal dispute of any nature or otherwise;
- f) All the necessary approvals and resolutions including resolutions necessary under Section 179 and Section 180 of the Companies Act, 2013, certificates, writings, consents, authorizations, approvals, no-objections, permits, no-objections whether under law or under contract, from statutory, regulatory, local and other authorities/body or any other person(whenever applicable), for entry into, execution and performance of this Agreement, have been duly passed, filed, obtained and are and shall continue to be in full force and effect;
- g) The Borrower shall obtain and keep alive all statutory approvals (IT, GST, Factory approvals, PCB clearances etc.) required for the Business and also ensure that there are no pending / overdues/ arrears in this regard.
- h) That neither any action, suit or proceedings (including winding up, bankruptcy proceeding, proceedings under the Income Tax Act, 1961) is pending before any Court of Law, tribunal, any quasi-judicial tribunal, statutory/ regulatory or other body/authority or arbitration, against the Borrower and/or its assets nor any adverse claims/ show cause notice for enquiry, acquisition, requisition, notification or order of any governmental authority or any other authority has been issued or received by the Borrower which could affect the ability of the Borrower to create the Security and/or prejudice the rights of the Bank under this Agreement or which could impair the Borrower's tangible net worth;
- i) That the Borrower has from time to time always duly paid and will pay to the authorities, when due, all maintenance and other charges including all demands such as GST/income tax, property taxes and all other taxes and revenue, and all levies (wherever applicable) required to hold the Secured Assets under the Security; That there are no recovery proceedings initiated or pending against or in relation to the Borrower/Security Provider/any of their assets before any authority under the Income Tax Act 1961 or any other Act.
- j) The Borrower including its directors, officers, agents or employees has complied and shall continue to comply with all Laws, regulations, guidelines, notifications, orders etc. including those pertaining to pollution control and/or environment that may be in force or issued by the authorities concerned from time to time
- k) Neither the Borrower nor any of its directors, officers, agents or employees are
  - (i) in default or have committed a breach of any agreement with any person who has provided loans or deposits or advances or guarantees or other financial facilities to the Borrower or at the Borrower's instance.
  - (ii) included in any list of defaulters by any regulatory/statutory or any other authority and/or banks and/or financial institutions and/or non -banking financial companies etc.
- l) The Borrower declares and assures that all the Secured Assets are the absolute properties of the Borrower/Security Provider, and free from any Encumbrances, save and except, as may be specified herein.

4.2 All representations and warranties of the Borrower in this Agreement shall survive the execution, delivery and termination of this Agreement, the consummation of the transactions contemplated hereby and the repayment of the amounts due under the Facilities and/or the Outstanding Balance hereunder.

## ARTICLE 5

### COVENANTS OF THE BORROWER:

- 5.1 Affirmative Covenants:** Each of the Borrowers hereby agrees and covenants to the Bank as under:
- (a) The Borrower shall at all times during the Final Settlement Date, fully insure (at its/ his own cost) the Assets under the Security, against such risks and for such amount, period and form as the Bank may require, and add the Bank as a loss payee or assign such policy to the Bank. The Borrower shall also deposit all insurance related policies and cover notes, premia receipts etc. with the Bank. If the Borrower fails to insure or keep insured the Security or any part thereof, then the Bank without prejudice to or affecting its rights hereunder, shall be entitled (without being obligated to do so) at its discretion and at the cost of the Borrower, to insure and keep the same insured;
  - (b) The Borrower shall forthwith inform the Bank in the event of (i) any representation or warranty being or becoming untrue or incorrect on any day or at any time, and/or (ii) happening of any Event of Default and/or or any event which with the passage of time (with or without notice) or the giving of notice may result in an Event of Default; (iii) receiving a notice of application/petition being filed / intended to be filed/ (including for the insolvency / winding up/ bankruptcy proceeding under Insolvency and Bankruptcy Code 2016 (IBC) against the Borrower or any of their properties or if a custodian or receiver is appointed for any of the Borrower's properties, business or undertaking and/or Security, or which has the ability to impair the performance of the Borrower hereunder if the relief prayed is so granted; (iv) if any part of the Borrower's properties, business or undertakings and/or Security is / are attached or incurs any damage/ additions/ alterations (v) if any other circumstance which may have an adverse impact on the Security and/or the repayment of the Facilities by the Borrower; (vi) change in his resident status of the Borrower; (vi) where auditors of the Borrower cease acting as the auditors for any reason and such communication to the Bank must specify the reason of such change;
  - (c) The Borrower shall allow the representatives and/or nominees of the Bank to visit, inspect, supervise, and collect information from time to time in relation to the affairs of the Borrower.
  - (d) The Borrower agrees to accept the statement of account sent by the Bank or by any other authorized representative of the Bank as conclusive proof of the correctness of any sum claimed to be due from him and shall accept the statement of accounts and computation of interest by the Bank as final and binding.;
  - (e) The Borrower shall carry on its business efficiently properly and profitably and such business shall be confined to such manufacturing, trading and/or other activity as have been notified to the Bank at the time of making Request for the Facility. The Borrower shall maintain proper books of accounts and such other registers, books, documents, relating to the business as may be statutorily required or as may be required by the Bank or as may be necessary and/or generally kept in the business of the kind carried on by the Borrower and shall get the accounts books duly audited and furnish to the Bank a copy of the audited statements and the auditor's report. The Borrower shall if so required by the Bank allow the Bank its officers, agents and nominees and/or qualified auditors and/or technical experts and/or management consultants as may be appointed by the Bank to inspect or audit such books of accounts, registers, books and documents and also furnish to the Bank at such intervals as the Bank may direct from time to time a schedule or copy of all the entries which shall have been made in such books.
  - (f) The Borrower shall submit to the Bank periodically as required by the Bank all such information, statements, particulars, estimates and reports and/or such other documents in form and detail satisfactory to the Bank, including copies of the Balance Sheet and Profit and Loss Account duly audited by a reputable firm of Accountants acceptable to the Bank, within 90 days and/or such period as may be specified in the Facility Letter, from the close of the financial year and stock statements in the formats as may be prescribed by the Bank from time to time indicating correctly the quantity and value of the stocks and also statements of receivables indicating the names of the debtors amounts of the debts and the periods for which they are outstanding together with

a certificate that the quantities and amounts stated are correct and that all stocks are fully covered by insurance unless such insurance is waived by Bank. The Borrower shall also furnish and verify all statements, reports, returns, certificates and information and shall also execute all documents and do all acts and things which the Bank may require to give effect to any of the terms and conditions set out herein or in the security documents or any of them that may be executed and the Borrower authorises the Bank and each of its agents and nominees as Attorney for and in the name of the Borrower to do whatever the Borrower may be required to do under this Agreement.

- (g) The Borrower expressly undertakes and covenants with the Bank that the Bank may, at the Bank's sole discretion, require from or award a mandate to the Borrower or the Borrower's auditors for a certification from the Borrower's auditors on any of the issues relating to the Facilities including but not limited to the use, diversion or siphoning of funds of/by the Borrower and the Borrower shall cause the Borrower's auditors to provide such certificate forthwith upon being so required by the Bank.
- (h) To comply with the covenants relating to maintenance or improvements of financial ratios relating to the balance sheet structure and profit appropriations as specified by the Bank and the Borrower agrees:
- (i) To maintain the current ratio, debt equity ratio, debt service coverage ratio, net working capital and tangible net worth at such levels/ minimum amounts as the Bank may deem fit or as may be prescribed by the Bank from time to time; The Bank may at its sole discretion decide to vary the aforesaid ratios/ levels/ amounts and provide for maintenance of fresh financial ratios/ levels/ amounts relating to the balance sheet structures and otherwise and in such case the Borrower shall be bound to comply with such new/revised financial ratios/ levels/ amounts. It is hereto agreed and clarified between the Parties hereto, that in event of any dispute in relation to the interpretation or computation of the terms set out herein, the interpretation or computation of the Bank shall prevail and shall be binding on the Borrower. In case of any ratios required to be met by the Borrower/ Guarantor in terms of this Agreement or in respect of the Secured Assets, the determination and calculation thereof including the method or the formulae as per the Bank's discretion shall be final and binding on all the Parties.
- (j) The Borrower shall carry on the entire banking transactions of the business including merchant banking business through the Bank. In particular, the Borrower's entire foreign exchange business, inland bill business and deposits if any shall be placed with the Bank. The Borrower may, however, with the prior permission in writing of the Bank in this regard and to the extent allowed and on such other terms and conditions as may be stipulated deal with any other bank(s).
- (k) The Borrower authorises the Bank to investigate the Borrower's creditworthiness and to obtain information about the Borrower, the Borrower's assets, the Borrower's financial condition whenever the Bank determines it to be necessary.
- (l) The Borrower shall notify the Bank in writing at least 60 days in advance or such other period as may be required by the Bank of any intended changes in the location of its office or principal place of business. The Borrower shall take such action as is required by the Bank prior to making the change.
- (m) The Borrower shall not pay any commission to its promoters, directors, managers or other persons for furnishing guarantees, counter guarantees or indemnities or for undertaking any other liability at all times during the currency of the Facility so sanctioned by the Bank to the Borrower.
- (n) In case the Borrower has an occasion to apply to the Bank for any advances or other credit facilities at any branch, the Borrower shall make a full disclosure of all the then existing advances/ facilities, secured or unsecured, granted to the Borrower by the Bank or by any of its Affiliate/associate companies or by any other bank/ person/ entity.
- (o) That in case the security already provided or to be provided by the Borrower/Security Provider is a under construction project or where any construction is to be made in future, the Borrower shall ensure compliance of the all rules, regulations under National Building Code, Local Civic Authority or any such authority and any violation thereof shall be considered as default under this facility.

- (p) The Borrower shall obtain prior permission from the government /local governments, other statutory authorities for the project under construction/ to be constructed, wherever required. Further the Borrower shall ensure that the project/s is/are in line with provisions of The National Building Code (NBC) and National Disaster Management Authority (NDMA) guidelines, such as general building requirements, fire safety requirements, stipulations regarding materials, structural design and construction (including safety), building and plumbing services, etc. Additionally, the Borrower shall ensure that the safety related codes and regulations as specified in NBC-2005 and as amended from time to time and various Indian standards are complied with and the designs of the proposed buildings and structures are multi-disaster-resilient.
- (q) In case of third party security, it shall be the responsibility of the Borrowers to ensure, that the Mortgagor/security provider, shall obtain prior permission from the government /local governments, other statutory authorities for the project/s, wherever required and that the project/s is/are in line with provisions of The National Building Code and National Disaster Management Authority guidelines, such as general building requirements, fire safety requirements, stipulations regarding materials, structural design and construction (including safety), building and plumbing services, etc. Additionally Borrower/s shall ensure that the Mortgagor/security provider duly complies, with the safety related codes and regulations as specified in NBC-2005 and as amended from time to time and various Indian standards and the designs of the proposed buildings and structures are multi-disaster-resilient.
- (r) The Borrower undertakes to adhere to the National Building Code (NBC) formulated by the Bureau of Indian Standards (BIS) in view of the importance of safety of buildings especially against natural disasters. The Borrower confirms that it maintains and will maintain accurate and proper inventory and on demand forthwith supply all information about such stock, units, premises constructed, under construction and to be constructed and sold, registers etc. to the Lender for the purpose of verification. That repayment by the Borrower is not linked with the project success and completion.
- (s) Any Change or proposed change in nationality/residential status of individual borrower, partner of firm, director of company, guarantors, etc. to be immediately informed to the Bank.
- (t) The Borrower undertakes to keep the Bank informed of the happenings – any event likely to have a substantial effect on their stock, production, sales, profits etc. and such changes in the Senior Management, Labour problems, Go-down Location, Power cut, cases filed against the Borrower, happenings in the associate concerns etc., along with the remedial measures proposed and also provide the details of any addition/ deletion of associate/ sister concerns. The Borrower shall not make or file any application or initiate any proceedings under the Insolvency and Bankruptcy Code, 2016, without first discharging the Indebtedness of the Borrower to the Bank;
- (u) The Borrower shall notify the Bank, within 24 (twenty four) hours from the date of either (i) receipt of any demand/notice from a creditor (financial or operational), which may lead to proceedings under Insolvency and Bankruptcy Code, 2016; or (ii) the occurrence of a default with a creditor (financial or operational).  
Shall forthwith notify the Bank if any person makes or files or initiates any application/proceedings under the Insolvency and Bankruptcy Code, 2016 either against Borrower or security provider/ guarantor;
- (v) The Borrower shall obtain credit rating from any of the credit rating companies recognized by Securities and Exchange Board of India for short term and long term debt and submit such rating to the Bank at least once in a year and also at the time of sanction and at the time of review/ renewal. If there is any downgrading / suspension of credit rating by one or more credit rating agencies (of which the rating agency which has given the last report shall be mandatory), then apart from declaring the downgrading / suspension of the credit rating of the Borrower as an Event of Default, Bank shall have an unconditional right to increase the rate of interest and the Borrower agrees to repay the Facility with such revised rate of interest.

- (w) The Borrower shall promptly authenticate the information including financial information which was disclosed/ submitted by the Bank to any Information Utility (IU) as defined in section 3(21) of the Insolvency and Bankruptcy Code 2016 as and when the request for the same is made by the IU/Bank.

## **5.2 NEGATIVE COVENANTS:**

Unless otherwise approved by the Bank in the form of express prior written consent, the Borrower shall:

- (a) neither enter into any scheme of merger, amalgamation, compromise or reconstruction, dissolution nor permit any change in the capital structure, ownership, management or control of the Borrower including whereby the effective beneficial ownership, management or control of the Borrower shall change;
- (b) neither make any amendments in the Borrower's constitutional documents including Memorandum and Articles of Association nor change the composition/ constitution of the Borrower;
- (c) neither create, assume or incur any further Indebtedness whether for borrowed money or otherwise;
- (d) not induct into its Board of Directors a person whose name appears in the wilful defaulters list of RBI or CIBIL or any other agency/ entity authorized in this regard and take expeditious and effective steps for the removal of such a person, where he/ she is already a member of the Board of Directors;
- (e) not to induct any person named as a willful defaulter or /partner/firm/other entity which is named as willful defaulter in the RBI willful defaulter list
- (f) not transfer, sell, lease, encumber, charge, grant on license or create or permit to create or exist any third party interest or Encumbrance over any of its assets or part thereof including the assets covered under the Security or any part thereof.
- (g) enter into, or be a party to, any transaction with any Affiliate of the Borrower, except in the ordinary course of Borrower's business (and in any event, no transaction of capital nature or involving capital assets or liabilities) and pursuant to the reasonable requirements of the Borrower's business and upon fair and reasonable terms which are fully disclosed to the Bank in advance.
- (h) In case the Borrower is a partnership firm or a sole proprietary concern, change or permit any change of its constitution (which term includes the admission of any partner or the retirement of any partner for any reason other than the demise of that partner)
- (i) In case the Borrower is a company, there shall be no change in the shareholding pattern (including by transfer of shares or issue of new shares;
- (j) Change in any manner the ownership of Borrower (whether directly or indirectly or legally or beneficially or management of the Borrower or management structure or management personnel or take or initiate or omit to do any actions which will result in any such change.
- (k) change its name or trade name, or its accounting standards or its accounting year
- (l) dispose of its assets or compromise with any of its creditors
- (m) transfer funds to any group or associate entity or concerns
- (n) pay any commission to its promoters, directors, managers or other persons for furnishing guarantees, counter guarantees or indemnities or for undertaking any other liability at any time until the Final Settlement Date hereunder;
- (o) shall not declare or pay any dividend or authorize or make any distribution to its shareholders until the Final Settlement Date hereunder.
- (p) shall not pay any dividend in event of occurrence of any Event of Default. Further, dividend shall not be paid (a) if DSCR for any year being lower than 1:00, (b) in excess of projections given to the

Bank (c), if Debt Service Reserve Account (DSRA) is not maintained at adequate level as stipulated (if applicable).

The Bank's decision in respect of the above shall be final and the Borrower shall abide by such decision.

- 5.3**
- a) The Borrower agrees and undertakes not to hereafter effect or to purport to effect any lien, alienation, sale, transfer, mortgage, charge, assignment, deal or other disposition of or encumbrance of, or purport to create any charge or encumbrance over the Security tendered to the Bank and also not to do any other act, which may prejudice the Bank's security or interests.
  - b) Working capital facilities should not be used for investments in shares and securities, on-lending to associate companies, investments in ICD/ inter corporate loans.
  - c) During the currency of these presents the shareholding of such of the shareholders in the Borrower who are its Directors at present and the principal shareholders and promoters of the Borrower shall not be varied without the previous written consent of the Bank first obtained.
  - d) The Borrower (s) agrees that the Bank shall have absolute right to disclose/submit/report any information from time to time pertaining to the Facilities and/or the Security and/or the Borrower(s) as may be required under any law/s for the time being in force or rules made thereunder or as may be required under any guidelines/ directions/rules/ regulations/ law issued/ notified by RBI or such other regulators or body from time to time.

**5.4 CALL ON SHARES:**

The Borrower shall as soon as any call in respect of its share capital has been resolved upon by the Directors or as soon as it shall have been resolved to issue any unissued share capital or to create any new shares immediately give notice of such call to the Bank or give notice to the Bank of the intention of the Borrower to issue or create any such share capital as aforesaid and the proposed amount thereof and shall not until the expiration of seven clear days from the time when such notice shall have been sent to the Bank or such other time as may be required by the Bank issue any notice to the members of the Borrower in respect of payment of any calls or issue or create any such existing or new shares respectively as aforesaid. If the Bank shall so require every notice, prospectus, application form or allotment letter sent out by the Borrower in pursuance of any such resolution shall direct the members or applicants for allotment of the share of the Borrower to pay the call so made or the moneys payable in respect of the said existing or new shares to the Bank or as it shall direct and if no such requisition be made by the Bank the members, applicants or allottees shall be directed to pay any call or other moneys into the Bank's office (as may be informed or notified) to the joint account of the Borrower and the Bank or in such manner as the Bank may direct. The Bank shall be entitled to require all such calls or moneys received by the Borrower to be applied either wholly or partly in or towards the payment or satisfaction of the principal sum, interest and other moneys due to the Bank but in default of the Bank requiring the said calls or moneys to be so applied as aforesaid within one month of their being paid, the Borrower may without the consent of the Bank apply the whole of the balance thereof over and above what shall be required by the Bank to be otherwise applied to the general purposes of the Borrower as it shall think fit provided also that all moneys hereunder to be received by the Borrower from its members in advance of calls upon the shares shall be held by the Borrower in trust for the Bank and so as to form part of the securities and shall be dealt with in the manner hereinbefore mentioned in the case of calls or other moneys received by the Borrower.

- 5.5** That the Borrower shall not invest any of the Borrower's funds in the shares, debentures, deposits or other Investments of any other company without the prior written permission of the Bank

nor will the Borrower funds so availed in terms of the Facilities so sanctioned by the Bank to the Borrower be invested in capital market.

## **ARTICLE 6**

### **REPAYMENT, PREPAYMENT CHARGES AND COMMITMENT:**

#### **6.1 REPAYMENT:**

**6.1.1** The Borrower(s) shall, if not demanded earlier by the Bank, repay the Facilities/ Individual Facility together with the interest that is due from time to time in accordance with the repayment schedule specified in the Facility Letter, without any demur, protest or default and without claiming any set-off or counterclaim or withholding or deduction (save as required by law in which case the amount payable by the Borrower to the Bank shall be increased to the amount which after making such deduction or withholding equals the original due amount as if no withholding or deduction were required), on the respective Due Date(s) and in accordance with this Agreement. For clarity, this applies even to term loans, short term loans, working capital term loans, working capital demand loans, buyer's credit or other Facilities even if there are no Special Provisions Relating to the Product for any of them. Provided that if the amount of the Facility actually disbursed is less than the Facilities amount then the amount of installments payable as aforesaid shall be reduced prorata but the same shall be payable on the stipulated days mentioned in the Facility Letter or the period of repayment shall be correspondingly reduced as the Bank may decide in its discretion and notify the Borrower in writing.

**6.1.2** Notwithstanding anything to the contrary, the Bank shall in its absolute discretion or as per the guidelines/ directions/rules/ regulations/ law issued/ notified by RBI and/or any other statutory or regulatory authority and any other law in force including but not limited to, any tax law modify the repayment schedule including increase/ reduce the amount/ number of installments and/or and in all such cases the repayment schedule shall be deemed to be read and construed accordingly.

**6.1.3** If any payment under this Agreement is required to be made on or before a day which is not a Business Day or within a period which ends on a day which is not a Business Day then the Borrower shall be required to make the payment on the immediately preceding Business Day, provided however, that in such case the Borrower shall pay interest with monthly rests or such other rests upto the date when payment is due or payment was actually due.

**6.1.4** The Borrower shall keep itself informed of the Due Date(s) and payment obligations pursuant thereto including amount and frequency of installments and variations thereto

**6.1.5** If required by the Bank at any time during the currency of the Facilities so sanctioned by the Bank to the Borrower and for the due discharge of the liabilities undertaken by the Borrower, the Borrower shall be required to provide to the Bank such payment instruments modes including undated/ post-dated cheques, standing instructions, electronic clearing service mandates as the case may be.

#### **6.2 PREPAYMENT:**

The Bank may at its absolute discretion permit prepayment of the Facilities/ Individual Facility or any part thereof where: (a) the Borrower serves at least 30 days' written notice of its/ his intention to prepay at the Branch; (unless waived by the Bank in its sole and absolute discretion) (b) subject to such additional conditions pertaining to specific Facility or all the Facilities as the Bank may prescribe subject to applicable law and regulations and including on payment of the prepayment charges as stipulated under the Facility Letter or the Schedule of charges (as the case may be) or specified from time to time by the Bank.

#### **6.3 COMMITMENT CHARGES: (wherever applicable)**

The Borrower shall be liable to pay to the Bank Commitment Charges for non-utilization of the Facilities/ Individual Facility or any part thereof as follows:

- a)** when the amount outstanding under any Individual Facility is lower than the Individual Facility Limit;



- b) on the differential amount between the Individual Facility Limit for that Individual Facility and the amount outstanding under that Individual Facility; and
- c) at such rates as are or as may be prescribed in the Facility Letter/ Facility Letter for the Individual Facility or the Schedule of charges or as may be prescribed by the Bank otherwise.

## **ARTICLE 7**

### **7. INTEREST/COMMISSION/CHARGES ETC.**

#### **7.1 INTEREST RATE:**

The Borrower shall pay interest on the Facilities/ Individual Facility, the unpaid due interest and all other outstanding charges and monies (except on the Additional Interest), at the applicable Interest Rate on the outstanding daily balance from the respective date of Disbursement, compoundable at monthly or other rests or as may be intimated by the Bank to the Borrower in writing from time to time and the Borrower shall not dispute the same.

#### **7.2 RATE OF COMMISSION:**

The Borrower shall be liable to pay commission (collectively "**Commission**") to the Bank on various Non-Fund Based Facilities including letters of credit, bank guarantees, etc. at the rate specified in the Facility Letter or Schedule hereto or as maybe intimated by the Bank in writing from time to time to the Borrower and the Borrower shall not dispute the same. If no rate of commission is specified in the Facility Letter, the Borrower shall be liable to pay commission at the Bank's Card Rates (Standard Rates) as in force from time to time which the Borrower shall be obligated to check with Bank and such rates shall be final and binding on the Borrower.

- 7.3 TAX ON INTEREST/COMMISSION:** 7.3.1 The Borrower shall also be liable to pay GST/all present and future taxes, rates, levies, duties etc. (including any increment thereto) on the interest/commission payable on the amounts due under the Facilities at the prevailing rate(s) under the applicable laws. Where the Bank is required to pay any tax either in pursuance of a statute or order of the Government or other authority or otherwise, the Borrower agrees, declares, confirms and affirms that any increase in the Interest Rate/ Commission effected by the Bank as a sequel to such requirement will be paid by the Borrower to the Bank. Such payment obligations will be binding on the Borrower and shall become payable from the date it becomes effective on the Bank.

#### **7.3.2 TAX RECEIPTS & TDS CERTIFICATE**

The Borrower agrees to provide TDS certificate to the Lender in case it has made any deductions towards any tax in such time that the Lender may prescribe. The Borrower understands and agrees that the Bank can claim credit for the tax deducted by the Borrower and any delay in providing the TDS certificate could lead to loss to the Bank. The Borrower undertakes to repay any amount deducted as tax if it does not provide TDS certificate as prescribed by the Bank. The Bank shall be entitled to hold and sell such Security as may be so required to reimburse the Bank of the loss accrued to the Bank because of non-provision by the Borrower of TDS certificate in time prescribed by the Bank.

#### **7.4 RIGHT TO VARY INTEREST RATE/ COMMISSION ON OUTSTANDINGS:**

The Bank shall in its absolute discretion or as per the guidelines/directions/rules/regulations/ law issued/notified by RBI and/or any other statutory or regulatory authority and any other law in force including but not limited to, any tax law or introduction of new method of computation of interest/new interest benchmark or based on the changes in the prevailing base rate/MCLR rate/external benchmark rate/ REPO rate be entitled to modify the Interest Rate(s) (including Additional Interest Rates)/ Commission/other charges (including Additional Interest) applicable to the Facilities/ Individual Facility from time to time, and the Borrower agrees and confirms to pay interest s per such modified Interest Rate(s)/ Commissions/other charges on the Facilities/ Individual Facility

and related amounts on and from the date of such modification. In any event the Borrower shall keep itself/ himself informed of all such variations/ revisions in the Interest Rate/ Commission/other charges (including Additional Interest) applicable to the Facilities/ Individual Facility from time to time and a publication either in the Bank's website or in the newspaper or on the notice board by the Bank in relation to new/ revised Interest Rate(s)/ Commissions/other charges (including Additional Interest) applicable to the Facilities/ Individual Facility from time to time shall be deemed to be sufficient notice of such intimation of change and the Borrower will be deemed to have consented to such change. The Borrower has perused, understood and agreed to Bank's method of determining the Interest Rate/ Commission from time to time as well as of calculating installment(s) as also the appropriation thereof into principal and interest.

The Bank shall have the right, at any time or from time to time, to review and reschedule the EMIs/Monthly Installments( including the amount of the EMIs/Monthly Installments), tenure or the Loan amount, to enhance or reduce the amount of EMIs/Monthly Installments payable, to give the effect of reduction in the MCLR rate/external benchmark rate/ REPO rate in the EMIs without reducing the tenor of the loan, in such manner and to such extent as the Bank may in its sole discretion decide on account of changes necessitated because of any part payment made by the Borrower if permitted by the Bank at its sole discretion or changes in the interest rate (if the option of Adjustable Rate of Interest is availed of by the Borrower) or conversion by the Borrower from one interest rate to the other. In such event/s the Borrower shall repay the Loan or the outstanding amount thereof as per the revised Schedules as may be determined by the Bank in its sole discretion and intimated to the Borrower in writing.

#### **7.5 CONCESSIONAL RATE - GOVERNMENT SCHEMES:**

Where interest is charged by the Bank at a concessional rate or rates because the Facilities/ Individual Facility being granted by the Bank to the Borrower is/are under the Interest Subsidy Scheme or any other Scheme(s) formulated by the Government and/or RBI and/or any other authority from time to time, the Borrower agrees, declares, confirms and affirms that in the event of the withdrawal, modification and/or variation of such Scheme(s), the concessional rate or rates of interest shall stand withdrawn and the normal rate or rates of interest of the Bank applicable at the material time to such Facilities/ Individual Facility shall become effective and the Bank shall become entitled to charge the Borrower such rate or rates of interest and the Borrower shall pay to the Bank on demand the difference between such concessional rate or rates and the normal rate or rates of interest of the Bank applicable at the material time to such Facilities/ Individual Facility and such difference shall become due and payable by the Borrower to the Bank from the date the withdrawal, modification and/or variation of such Scheme(s) becomes effective. Interest shall be calculated respectively on the daily balance of such Account(s) and be debited thereto on the last working day of the month or quarter according to the practice of the Bank. The Bank shall also be entitled to charge at its own discretion such enhanced rates of interest on the Account(s) either on the entire outstanding or on a portion thereof as it may fix for any irregularity and for such period as the irregularity continues or for such time as the Bank deems it necessary regard being had to the nature of the irregularity and the charging of such enhanced Interest Rate shall be without prejudice to the Bank's other rights and remedies.

#### **7.6 ADDITIONAL INTEREST:**

In case the Borrower fails to pay any of its dues and/or defaults in payment of the Outstanding Balance/ instalment(s) on respective Due Date(s) hereunder or in fulfillment of any of the terms and conditions contained herein or under the Facility Letter or Schedule hereto or as may be stipulated by the Bank from time to time, the Borrower shall be liable to pay additional interest at the rate mentioned in the Facility Letter, which rate shall be over and above the applicable Interest Rate in respect of all the Outstanding Balance (“**Additional Interest**”) from the date of the default till the date of actual payment in full or cure of default to the satisfaction of the Bank, as the case maybe, without prejudice to the Bank's other rights available as per this Agreement. Provided also that the obligation

to pay Additional Interest shall not entitle the Borrower to claim a defense that no event of default as mentioned hereunder has occurred or if occurred has been remedied by virtue of such payment.

#### **7.7 CALCULATION:**

- a. Interest shall be calculated on a 365 day year basis and in case of a leap year, on a 366 day year basis or such other basis as may be required by the Bank. Interest shall be calculated on a 360 day year basis for Facilities being made in foreign currency and shall be paid in the currency of the Facilities or such other basis as may be required by the Bank.
- b. Interest on all outstanding amounts (including towards interest, commission, costs and expenses) will be computed on the daily outstanding balance under the Facilities/ Individual Facility and will be charged to the respective Individual Facilities Account, unless specified otherwise, on a monthly basis or such other basis as may be required by the Bank (and in case of closure of Individual Facilities Account during the quarter, on the day of such closure or such other basis as may be required by the Bank) and payable by the Borrower upon charge;

### **ARTICLE 8**

#### **SECURITY**

##### **8.1 SECURITY AS PER FACILITY LETTER FOR INDIVIDUAL FACILITY**

The Borrower and/or Service Provider on behalf of the Borrower shall secure the due payment, repayment, discharge and redemption of the entire Outstanding Balance pursuant to the Facilities/ Individual Facility so advanced by the Bank to the Borrower and due discharge and performance of all obligations hereunder by creating and/or furnishing such security in favour of the Bank and of such value, in such form and such manner and within such time, as may be acceptable and considered appropriate to the Bank ("**Security**", which expression shall include any additional security, from time to time in accordance with Clause 8.3 hereof and any guarantees from time to time in accordance with this Agreement).

##### **8.2 PERFECTING TITLE TO SECURITY:**

The Borrower/Security Provider on behalf of the Borrower shall from time to time on request of the Bank do all such acts and/or execute all such documents, deeds, writings, things as the Bank may consider necessary for creating/ perfecting the title of the Bank to the Secured Assets and/or securing to the Bank the full benefit of all rights, interests, powers and remedies conferred on the Bank herein and pursuant to Security and for this purposes the Borrower/Security Provider on behalf of the Borrower hereby irrevocably appoints the Bank as its/ their attorney in fact to do all such acts and execute all such documents in the name of the Borrower/Security Provider in relation to the Secured Assets.

##### **8.3 ADDITIONAL SECURITY:**

The Borrower and/or the Security Provider on behalf of the Borrower shall furnish at its/his own cost such other security/ additional security of such value, in such form and manner as may be required by the Bank from time to time, for any reason whatsoever including:

- (a) on account of any shortfall in the required value or margin of the Security in the opinion of the Bank (which in any event until the Final Settlement Date shall be such percentage as may be intimated by the Bank or as may be stipulated in the Facility Letter).
- (b) Where the title of the Secured Assets underlying the Security is disputed in the opinion of the Bank by reason of being unclear, unmarketable, encumbered or otherwise.
- (c) Any destruction, impairment or adverse effect in the opinion of the Bank on the Secured Assets underlying the Security.
- (d) The Borrower shall, if required at any time by the Bank, procure irrevocable and unconditional guarantees including additional guarantees for such amounts from such persons as deemed necessary by the Bank including its Partners/ Directors and/or other firm/companies guaranteeing the payment, repayment and discharge by the Borrower to

the Bank of the entire Outstanding Balance(s) and all other monies due and payable by the Borrower to the Bank and discharge and performance of all Borrower's obligations hereunder or in respect of specific Facilities/ Individual Facility in the form prescribed by the Bank including but not limited to the execution of Deed of Guarantee.

#### **8.4 CONTINUING SECURITY:**

- a) The entire Security shall be a continuing security at all points of time till the Final Settlement Date and accordingly shall:
  - i. be binding upon the Borrower/ Security Provider, its successors;
  - ii. shall extend to cover the entire Outstanding Balance(s) hereunder or otherwise;
  - iii. Be maintained at a value over or equal to the margin;
  - iv. shall not be discharged by any intermediate payment / repayment by the Borrower or any settlement of accounts between the Borrower and the Bank or any intermediate invocation/ enforcement of any Security or part thereof;
  - v. each Security shall be in addition to and not in substitution for or derogation of any other Security/ additional security which the Bank may at any time hold in respect of the Outstanding Balance(s)/obligations hereunder; and
  - vi. shall be a Security for all amounts due and payable by the Borrower for all sums due by the Borrower to the Bank including but not limited to the Outstanding Balance(s), whether under this Agreement or otherwise
- b) The Security created and indemnities and undertakings given herein and/or by the security documents including the Demand Promissory Note executed in favour of the Bank for the Facilities/ Individual Facility shall operate as a continuing security and/or indemnities and/or undertakings for all moneys indebtedness and liabilities of the Borrower under the Facilities/ Individual Facility and will operate as security and/or indemnities and/or undertakings for the ultimate balance or aggregate balance with interest thereon and costs charges and expenses if any to become payable upon the account(s) to be opened and the said account(s) is/are not closed and is/are not to be considered to be closed for the purpose of such security and/or indemnity and/or undertaking and the security and/or indemnity and/or undertaking is not to be considered exhausted merely by reason of the said account(s) being closed and fresh accounts being opened in respect of fresh facilities being granted within the Overall Limit or either or any of them being brought to credit at any time or from time to time or any partial payments made thereto or any fluctuations of such account(s) and if the whole of the Outstanding Balance shall be repaid and the whole of the Security be withdrawn the account(s) or either or any of them may nevertheless at any time before such account(s) has or have been closed, be continued under this Agreement upon the Security as aforesaid being again furnished.

#### **8.5 OTHER COVENANTS IN RELATION TO SECURITY:**

- (a) All the future assets to be given as security to the Bank shall be likewise the unencumbered, absolute and disposable property of the Borrower/ Security Provider. With respect to any Assets it leases, the Borrower holds a valid leasehold interest therein, free and clear of any Encumbrances, is in compliance, in all material respects, with the terms of the applicable lease, and enjoys peaceful and undisturbed possession under such lease. All of the Borrower's Assets that are material to the conduct of its business as presently conducted or as proposed to be conducted are in good operating condition and repair, subject to ordinary wear and tear. The Borrower's inventory is in good and marketable condition, does not and will not include any material quantity of items, which are obsolete or damaged and is saleable in the normal course of the Borrower's business as currently conducted.

- (b) In the event of enforcement of Security, the Borrower hereby agrees and undertakes not to raise any dispute as to the value at which the Security is sold or transferred by the Bank and the decision made by the Bank shall be final and binding on the Borrower. The Bank shall not be liable for any loss arising due to such sale or transfer or disposal of the Security. The Bank shall be entitled to proceed against the Borrower for any deficiency after sale of such Security. All accounts of sale rendered by the Bank shall be conclusive of all matters contained therein and shall be final and binding on the Borrower.
- (c) Any floating charge over the Secured Assets in favour of the Bank shall forthwith crystallize:
  - (i) on the occurrence of an Event of Default; and/or the Bank appointing a receiver or doing some other act which affects the
  - (ii) company's power of disposition over the asset charged; and/or
  - (iii) the Bank filing a suit/ proceeding for enforcement of the floating charge.
- (d) In case of any references to value of the Security or of the Secured Asset(s) or margin or any similar value, the same shall always mean the value determined by the Bank or on the Bank's behalf in the manner and as per the methods and the type deemed fit by the Bank and the same shall be binding on all the Parties.
- (e) The Borrower agrees and confirms hereby irrevocably authorizes and appoints the Bank as its attorney to interact, approach and discuss with one or more buyers of units, premises, sold or agreed to be sold in the project/premises/assets to be given as security or already given as security, for any reason or purpose whatsoever as the Bank may decide and in case of default by the Borrower, the Bank shall be entitled to interact, approach and discuss with such buyers as attorney holder of the Borrower or in the individual capacity of the Bank being prime interested party in the project.

## ARTICLE 9

### EVENTS OF DEFAULT AND CONSEQUENCES THEREOF:

9.1 Happening or occurrence of any of the following events shall constitute an "Event of Default":

- i. Failure and/ or breach on Borrower's/ Guarantor(s) part to perform any of the obligations or terms or conditions applicable under this Agreement/ Facility Letter/ Transaction Documents/ other documents/ any other agreement with any other bank, financial institutions, creditor or any other person including non-payment in full of any part of the Outstanding Balance when due or when demanded by Bank;
- ii. any misrepresentations or misstatement by the Borrower under this Agreement/ Facility Letter/ Transaction Documents, other document;
- iii. Failure and/ or breach on Borrower's/ Guarantor(s) part to disclose any information which in the Bank's opinion, constitutes or could constitute as necessary and material.
- iv. Disclosure of any incorrect or false information by the Borrower's/ Guarantor(s).
- v. if the Borrower or Guarantor fails to pay any of its debts or defaults under any contract or agreement with any party including any bank, financial institutions, creditor or any other person.
- vi. If there is any deterioration or impairment of the Secured Assets underlying the Security or any part thereof which causes the Security in the judgment of the Bank to become unsatisfactory as to character, including depreciation in the margin, value or market price of the assets thereunder whether actual or reasonably anticipated);
- vii. where a receiver is appointed or any attachment, distress, execution or other legal process is threatened, enforced or levied upon against the Borrower/its assets/ or any of the Security;
- viii. where the Borrower fails or intentionally omits to get the charge created by way of the Security registered in accordance with the provisions of applicable law;
- ix. the event of death, winding up, failure in business, insolvency, bankruptcy, or initiation of any proceedings including SARFAESI proceedings/ actions/ notices for any of them, change or

termination of employment/profession/business for any reason whatsoever (where the Borrower is an Individual) or change in the constitution, management or existing ownership or control of the Borrower including by reason of liquidation, amalgamation, merger, reconstruction (where the Borrower is a Company);

- x. If it is certified by an independent Chartered Accountant or valuer (appointed by the Bank in its sole discretion), that the liabilities of the Borrower exceed the Borrower's assets or that the Borrower is carrying on business at a loss;
  - xi. If any circumstance or event occurs which is or is likely to prejudice, impair, imperil, depreciate or jeopardize the Secured Assets and/or the capacity of the Borrower to repay the Facilities/ Individual Facility or any part thereof including where the Borrower ceases to enjoy the confidence of the Bank;
  - xii. If subsequent to the grant of the Facilities/ Individual Facility, the Borrower (in case an individual) is/are a party to any proceeding in any family court/ settlement/ dispute (including divorce);
  - xiii. If the Borrower becomes lunatic or is convicted under any criminal law in force;
  - xiv. the occurrence of any event or condition which, in the Bank's opinion, constitutes or could constitute a material adverse effect on the Borrower, Security or its assets;
  - xv. If Borrower or Security Provider/Guarantor become subject to any debt restructuring process (whether voluntary or otherwise) or could be potentially declared as relief undertaking under any process of law or regulations.
  - xvi. the loss, termination, cancellation, revocation, forfeiture, suspension or impairment of or failure to renew any borrowers licenses, certificates and / permits now held or hereafter acquired by the Borrower which are necessary or advisable for the continued operation of its business.
  - xvii. Any legal or regulatory action, enquiry, proceeding or prosecution has been instituted against the Borrower or its Affiliate or fines/penalties have been imposed by any authority on the Borrower or its Affiliate.
  - xviii. Inability of the Borrower (or the security provider and/or the guarantor) to repay debts to any person or any steps being taken by any person accelerating the payment obligation of the Borrower/ security provider/ guarantor (prior to the relevant due date either for payment of interest or principal or instalment) or declaration by any person of an event of default (howsoever described) under their respective arrangements with the Borrower (or the security provider and/or the guarantor) or any event which under any law, statute, rule, ordinance etc. would have the effect of suspending or waiving all or any right of the creditors generally, against the Borrower (or the security provider and/or the guarantor) or in respect of any contract or agreement concerning the Borrower (or the security provider and/or the guarantor);
  - xix. Any demand made against or filing of any application in respect of/ against the Borrower, any associate or affiliate of the Borrower or any Security Provider and/or the guarantor, under the Insolvency and Bankruptcy Code, 2016 and Regulations thereunder (or which demand, filing or application may lead to a proceeding under Insolvency and Bankruptcy Code, 2016) by any person including any creditor (whether operational or financial) of the Borrower/security provider/ guarantor;
- 9.2 If any Event of Default or any event which, after the notice or lapse of time or both would constitute an Event of Default shall have happened, the Borrower shall forthwith give the Bank notice thereof in writing clarifying such Event of Default, or such event.
- 9.3 On the question whether any of the above events/circumstances has occurred/ happened, the decision of the Bank shall be final, conclusive and binding on the Borrower.
- 9.4 Upon happening/occurrence of any Event of Default, without prejudice to Bank's rights and remedies under contract or law, and without necessity of any demand upon or notice to the Borrower, all of which are hereby expressly waived by the Borrower, and notwithstanding anything to the contrary contained herein or in any of the Transaction Documents, the Bank

may at its absolute discretion, pursue any or all of the following, and whether simultaneously or independently or otherwise,:

- i. recall the Facilities/ Individual Facilities and/ or declare the entire Outstanding Balance together with accrued interest and all other amounts payable and all of the obligations of the Borrower to the Bank hereunder, to have become due and payable by the Borrower to Bank forthwith thereupon, in which event the Borrower shall be liable to forthwith pay to the Bank the entire Outstanding Balance;
  - ii. to cancel/ refuse the grant of the said Facilities/ Individual Facilities or any part thereof which may remain to be disbursed/ utilised;
  - iii. to enforce the Security or any part thereof, including by appointment of a receiver in respect of any of the Secured Assets or part thereof, selling, transferring or disposing off the assets/ some or any part thereof either by means of private treaty or public auction or otherwise at the discretion of the Bank, with or without the intervention of any Court/ tribunal;
  - iv. to exercise, initiate and pursue any action, rights, notices, remedies, any proceedings (including litigation), whether civil, criminal or otherwise in nature, and including for recovery of Outstanding Balance.
- 9.5 For this purpose and in furtherance thereof if the Bank so requests, the Borrower shall immediately hand over the Secured Assets/procure the Security Provider to immediately hand over the Secured Assets and all documents relating thereto and make them available to the Bank at a reasonably convenient place designated by the Bank; and the Bank shall have the right and the Borrower hereby authorises and empowers (and shall procure that the Security Provider shall authorize and empower) the Bank, its agents or representatives, to enter upon the premises wherever such Secured Assets and documents relating thereto may be and for that purpose to break open any outer or other doors of any premises where they may be and to take possession of any of them as may be lying and to remove the same.
- 9.6 The Borrower hereby appoints the Bank as the Borrower's agent and attorney to do all or any of the acts mentioned hereinabove. The Borrower agrees that such appointment shall be irrevocable until the Final Settlement Date.

## **ARTICLE 10**

### **10 WITHDRAWAL OF THE FACILITIES:**

- 10.1 Notwithstanding anything stated in this Agreement or elsewhere, the continuation of the Facilities/ Individual Facilities shall be at sole and absolute discretion of the Bank and the Bank may at any time in its sole discretion and without assigning any reason cancel/ terminate continuation of the Facilities/ any Individual Facility herein granted or any part thereof (including on the happening of an Event of Default listed in Article 9 of this Agreement) and call upon the Borrower to pay the Outstanding Balance and/or enforce the Security (as the case may be). Any such demand by the Bank shall constitute sufficient notice of such cancellation and upon such demand by the Bank, the Borrower shall pay forthwith the whole of the Outstanding Balance to the Bank without any delay or demur or protest or set-off or counterclaim.
- 10.2 The Bank reserves the right at any point of time, to revoke or cancel the Facility(ies) sanctioned and/or vary, alter, modify or rescind, amend or change any one or more of the terms & conditions of the Facility, at the Bank's discretion, with such notice as the Bank may deem reasonable & without assigning any reasons. As regards the un-utilised limits, if any under the Facility(ies), the Bank reserves the right at any point of time, to revoke or cancel and/or vary, alter or modify the said un-utilised limits, at the Bank's discretion, without prior notice & without assigning any reasons thereof.

## **ARTICLE 11**

### **11 OTHER CONDITIONS/ COVENANTS:**

### **11.1 ASSIGNMENT:**

The Bank shall at any time, without any consent of or notice to the Borrower(s) be entitled to securitize, sell, assign, discount or transfer all or any part of the Bank's rights and obligations under the Facilities, Individual Facility, this Agreement, Security, Transaction Documents, or any other document, to any person(s) and in such manner and on such terms as the Bank may decide. Any such sale, assignment, securitization or transfer shall conclusively bind the Borrower and all other persons. The Borrower shall not be entitled to directly or indirectly assign or in any manner transfer, whether in whole or part, any rights, the benefit or obligation under the Loan, this Agreement, Security, Security documents, other document or any part thereof.

Without prejudice to the aforesaid rights of the Bank, the Borrower expressly agrees that during the subsistence of the Facilities/ Individual Facility, the Bank shall have the liberty to shift, at its discretion, without notice to the Borrower, from time to time a part or portion of the outstanding's under the Facilities (hereinafter referred to as the "**Participations**") to one or more Commercial banks. The Borrower further agrees that such Participations shall be governed by the terms of the Uniform Code Governing Inter Bank Participations, 1988 if made by Bank hereunder and shall not affect the rights and obligations, inter se, the Borrower and the Bank in respect of the Facilities or any of them.

### **11.2 SEARCH, INSPECTION AND VALUATION:**

- (a) The Bank or any of its officers/employees, auditors, representatives or any person appointed by the Bank may at any time, at the risk and cost of the Borrower enter upon any premises, whether tenanted or leasehold or owned by the Borrower or forming a part of the Secured Assets or is the business location of the Borrower/Security Provider:
- i. for the purposes of inspecting, verifying or valuing such premises and may thereafter value such premises;
  - ii. where any Secured Assets are stored/kept, for the purposes of inspecting, verifying or valuing such Assets and may thereafter inspect, verify and value such assets;
  - iii. where any Securities of the Bank are stored/kept and/or any records relating to any Securities are maintained or kept for the purposes of inspecting, verifying or valuing such Securities and/or such records relating to the Securities and may thereafter inspect, verify and value such Securities and/or such records relating to the Securities;
  - iv. where any other records, accounts are maintained for the purposes of inspecting and verifying such records and may thereafter inspect, search and/or verify any of the records, entries, accounts, etc.;
  - v. for the purposes of inspecting, verifying or valuing any other item in which the Bank possesses a security interest.
- (b) The Borrower hereby grants and has procured and granted in favour of the Bank from the Security Provider, an irrevocable permission to enter upon any premises, whether tenanted or leasehold or owned by the Borrower or forming a part of the Secured Assets for the aforesaid purposes; and the Borrower agrees and undertakes to give such inspection and possession to the Bank forthwith on demand.
- (c) The Borrower hereby agrees and acknowledges that the Bank shall be entitled at its discretion to engage/ avail of, at the risk and cost of the Borrower, services of any person/third party service provider/agent/agency, for anything required to be done for/ in relation to/ pursuant to the Facilities/ Individual Facility, this Agreement, Transaction Documents including security documents, including collections, recovery of dues, enforcement of security, getting or verifying any information of the Borrower/ assets, inspection of premises / stocks, book debts and statements of the Borrower every quarter by giving a 24 hour notice and any necessary or incidental lawful acts/ deeds/ matters and things connected thereto, as the Bank may deem fit and all such incidental costs and expenses shall borne by the Borrower.



### **11.3 NOTICES:**

**(a)** Notice and / or other communication provided for in this Agreement shall be in writing and shall be transmitted (a) by postage prepaid, registered airmail or by courier service or (b) telex, cable, or facsimile transmission, or (c) e-mail transmission or (d) personal delivery to the Parties as follows, as elected by the party giving such notice.

- i. In the case of notice or payments to the Bank, to the Bank's Branch Address as per the Schedule;
- ii. In the case of notice to the Borrower(s), to the Borrower(s) address as per Schedule or as mentioned in the records of the Bank.

**(b)** All notices and/or other communications shall be deemed to have been validly given on (a) the expiry of 3 (three) days after posting if transmitted by airmail, courier, post or the date of receipt if earlier (b) the date of transmission with confirmed answer back or transmitted by cable, telex or facsimile transmission, (c) in the case of communication by e-mail on successful dispatch of the same, (d) immediately upon delivery in case of personal delivery; whichever shall first occur.

### **11.4 FEES AND COSTS:**

The Borrower(s) shall pay to Bank, the charges, fees (including legal fees), commissions, etc. including fee, upfront processing fee, legal audit cost, Encumbrance certificate charges, ROC charge filing fees, CERSAI charge registration fees, Service charge, non-compliance charges etc. specified in the Schedule of charges / loan application form or as specified by the Bank from time to time, within such time or upon occurrence of such events as specified and if not specified then forthwith upon demanded by the Bank, without any demur, protest or default and without claiming any set-off or counterclaim or withholding or deduction (save as required by law in which case the amount payable by the Borrower to the Bank shall be increased to the amount which after making such deduction or withholding equals the original due amount as if no withholding or deduction were required). All other present and future costs and expenses, GST/taxes (as applicable from time to time), any related levy, stamp duty, registration charges, if any, in all jurisdictions, in relation to the Loan, Security, this Agreement/ Transaction Documents, other documents/any transaction pursuant thereto, irrespective of who the beneficiary is, shall be borne and payable solely by the Borrower, including for investigation of the title of the Secured Asset(s) and for the creation, preparation, preservation, performance, enforcement of the Secured Asset(s), realization and recovery of Facilities, initiating/defending/pursuing any actions/notices/legal proceedings by Bank. In case of any such sums if paid or incurred by the Bank, the Borrower shall be liable to reimburse the same to the Bank in full forthwith.

If any GST/tax or amounts in respect of tax must be deducted/withheld, or any other deductions/withholdings must be made, from any amounts payable or paid by the Borrower, the Borrower shall pay such additional amounts as may be necessary to ensure that the Bank receives a net amount equal to the full amount which it would have received had payment not been made subject to GST/tax or other deduction/withholding. Provided that, all GST/taxes required by law to be deducted/withheld by the Borrower from any amounts paid or payable, including but not limited to interest, commission, discount, service and other charges and any fees, under this Agreement, shall be paid by the Borrower when due and the Borrower shall, within the statutory time frame prescribed under the law or within 15 days of the payment being made or such other time as may be required by the Bank, whichever is earlier, deliver to the Bank satisfactory evidence in accordance with the prevailing tax laws as may be amended from time to time, that the GST/tax has been deducted at source/withheld and duly remitted to the appropriate authority.

## **11.5 DISCLOSURE**

- i. As a pre-condition to the said Facilities given / granted / to be granted hereunder, each of the Borrowers authorises, consents and agrees that the Bank shall have the right to not return the Application, the photographs, information and documents submitted. The Borrower(s), including the directors, partners, proprietors, owners, promoters, employees, officers (wherever applicable) further acknowledges and confirms that the Bank shall, without notice to or without any consent of the Borrower(s) (and even for consideration) be absolutely entitled and have full right, power and authority to make disclosure/submission of any information relating to Borrower(s) including personal information, financial information, details in relation to documents, Facilities, defaults, Security, obligations of Borrower(s), to the Credit Information Bureau of India (CIBIL) and/or to any Information Utility (IU) as defined in section 3(21) of the Insolvency and Bankruptcy Code 2016 and/or any other governmental/regulatory/statutory or private agency/entity, credit bureau, RBI, the Bank's other branches/ subsidiaries/ affiliates/ rating agencies, service providers, other banks / financial institutions, any third parties, any assignees/potential assignees or transferees, who may need the information and may process the information, publish in such manner and through such medium as may be deemed necessary by the publisher/ Bank/ RBI, including publishing the name as part of willful defaulter's list from time to time, and/or publishing or broadcasting in any news channel as also use for KYC information verification, credit risk analysis, or for other related purposes. The Borrower(s) waives the privilege of privacy and privacy of contract in this regard. The Bank shall have the right, without notice to or without any consent of the Borrower(s), to approach, make enquiries, obtain information, from any person including other banks/finance entities/credit bureaus, Borrowers' employer/family members/ officers/ directors/ partners/ promoters/ proprietors/ owners, any other person related to the Borrower(s), for assessing track record of Borrower(s), credit risk, or for establishing contact with the Borrower(s) or for the purpose of recovery of dues from the Borrower(s) or any other legitimate purpose in the opinion of the Bank.

## **11.6 BORROWERS CONSENT/COVENANT:**

- i. In the event any loan or facility is being guaranteed by any Government Entity, Authority, Organisation or Trust under any approved scheme, the Borrower hereby irrevocably agrees and consents to provide affidavits or such other documents as may be required by the Government, the said Entity, Authority, Organisation or Trust to prove the Borrower's eligibility for the scheme. In the event any loan or facility is being guaranteed by any Government Entity, Authority, Organisation or Trust under any approved scheme, the Borrower hereby irrevocably agrees and consents to provide every quarter or at such intervals as may be required, all such information or declarations as deemed necessary by the Government, the said Entity, Authority, Organisation or Trust. The Borrower hereby irrevocably agrees and consents that in the event of any default of any loan or facility being guaranteed by any Government Entity, Authority, Organisation or Trust under any approved scheme the Government, the said Entity, Authority, Organisation or Trust or their appointed agencies shall have the absolute right to list the name and particulars of the Borrower on its website.
- ii. The Borrower hereby irrevocably agrees and consents to electronic and/or digital stamping and/or execution of this Agreement in any manner as deemed fit by the Bank including but not limited to using Aadhar or OTP or Biometric based authentication or USB token based DSC.
- iii. The Borrower hereby irrevocably agrees, consents and accepts to the E-platform/digitised platform of the Bank or of /through any vendor/s appointed by the Bank, for accepting terms and conditions, relating to the facility/security, executing and, transacting facility /security documents, e-stamping data storage etc.
- iv. The Borrower hereby irrevocably agrees, accepts and consents, to receive and/or send any

communication from and to the Bank /third party vendors/agents etc. appointed by the Bank, whether by way of an SMS, email etc. on the personal mobile numbers/email id(s) of Borrower/the authorised signatories and/or on the registered mobile numbers/email id(s) of the Borrower with the bank and the same shall be valid and binding upon the Borrower.

- v. The Borrower hereby irrevocably agrees and accepts that any Communication received and/or sent from and to the Bank /third party vendors/agents etc. appointed by the Bank, whether by way of an SMS, Email etc. on the personal mobile numbers/email id(s) of the Borrower/authorised signatories and/or on the registered mobile numbers/email id(s) of the firm/company/LLP, with the bank shall be treated as valid and binding upon the Borrower.
- vi. The Borrower hereby irrevocably agrees consents and accepts that the Bank shall be at liberty to treat the personal cell number/email id, communicated by the Borrower/authorised signatories/partners etc. last on record of the bank as valid and permitted cell number /email id for communication.
- vii. The Borrower hereby irrevocably agrees and consents that the documents accepted and/or executed on the E-platform/digitized platform, shall be valid and binding upon the Borrower and can be relied upon and used by the bank as a proper form of evidence and the undertakes not to raise any dispute or question as regards the terms and conditions accepted thereon and as regards the documents executed on the electronic/digitized platform.
- viii. The Borrower hereby irrevocably agrees and consents to the Bank availing services of third party vendors for payment of the stamp duty and/or electronic or digital execution of the documents/deeds/agreements through use of electronic or digital technology as available under the law.
- ix. The Borrower irrevocably agrees and consents that the authorized signatory certifying the Managing Council/Committee/Board resolution (as the case may be) is hereby authorized to authenticate/esign/affix digital signature for the purposes of ratifying/certifying the resolution on any E-platform/digitized platform as may be desired by the bank.
- x. That the bank shall be at liberty to rely on the scan copy of the resolution and the same shall be valid and binding upon the Borrower.
- xi. The Borrower agrees and consents that wherever a facility is sanctioned under any particular/specific scheme, the Bank's policy and/or terms and conditions of the scheme and such modifications as may be made thereto from time to time shall be deemed to be incorporated in this agreement and shall apply to the Borrower.
- xii. **TBC Undertaking:**  
The Borrower hereby undertakes to:
- maintain minimum Tangible Base Capital (being share capital plus general reserves and secured/unsecured loans from partners and relatives and group companies thereof less any loan given by the Borrower to all or any partners and relatives and group companies thereof ) in the firm/company.
  - That still such time as all the money due and payable by the Borrower under the Financial facilities are fully repaid by it; we shall maintain the aforesaid Tangible Base capital in the books of account of the Borrower.
  - That we will comply all the undertaking provided hereinabove failure of which will be considered as events of default and shall abide all the repercussion provision as enumerated under the financial instruments executed under the aforesaid financial facilities.

#### **11.7 ADDITIONAL LIABILITY TO THE ACCOUNT OF THE BORROW**

Any additional liability to the Bank on any account whatsoever, including any additional amount which the Bank shall be liable to pay on account of the Facilities shall be charged to the Account of the Borrower.

#### **11.8 JURISDICTION AND ARBITRATION:**

This Agreement shall be construed and governed in accordance with and governed by the laws of India. The Parties hereto expressly agree that all disputes arising out of and /or relating to this Agreement including any related documents shall be subject to the exclusive jurisdiction of the Courts/Tribunals of the city/town of the Branch Office or of the place which have territorial jurisdiction over the place in which the Branch is situated. Provided this clause shall not restrict the Bank and the Bank shall be entitled to initiate/take proceedings relating to a dispute in any Courts/Tribunals of any other place which has jurisdiction. Provided further that if any dispute arising under this Agreement is below the pecuniary jurisdiction limit of the Debts Recovery Tribunals established under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, then such dispute shall be referred to arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 as may be amended, or its re-enactment, to be conducted by a sole arbitrator, appointed by the Bank. The arbitration proceedings shall be conducted in English language. The award passed by the arbitrator shall be final and binding on the Parties. The cost of such arbitration shall be borne by the losing Party or otherwise as determined in the arbitration award. The venue of arbitration shall be the city in which the Branch is situated or such other place as may be determined by the Bank. If a Party is required to enforce an arbitral award by legal action of any kind, the Party against whom such legal action is taken shall pay all reasonable costs and expenses and attorney's fees, including any cost of additional litigation or arbitration taken by the Party seeking to enforce the award.

#### **11.9 WAIVER:**

The rights, powers and remedies given to the Bank by this agreement shall be in addition to all rights powers and remedies given to the Bank by virtue of any other security, statute, or rule of law. Any forbearance or failure/ omission or delay by the Bank in exercising any right, power or remedy hereunder whether pursuant to an Event of Default or otherwise shall not be deemed to be waiver of such right, power or remedy or shall be construed to be a waiver thereof or any acquiescence therein, and any single or partial exercise of any right, power or remedy hereunder shall not preclude the further exercise thereof and every right and remedy of the Bank shall continue in full force and effect until such right, power or remedy is specifically waived by an instrument in writing executed by the Bank.

#### **11.10 APPLICATION AND APPROPRIATION OF PROCEEDS:**

- (a)** In case of any amount received/ realized/ recovered from the Borrower in relation to Borrower, the same shall be adjusted/ appropriated by the Bank in following order without any prior intimation to the Borrower: (a) GST/taxes, costs, expenses, charges, fees, incidental charges including prepayment charges and other monies that may have been expended by the Bank in connection with this Agreement, (b) towards any charges, commissions, fees, taxes, levies (wherever applicable); (c) Additional Interest, (e) installment(s) (f) Interest payable under this Agreement, (h) Principal amount of the Facilities under this Agreement, (g) Other indebtedness of the Borrower to the Bank. The Bank may however change the aforesaid sequence/ order in its sole discretion.
- (b)** Notwithstanding anything to the contrary in this Agreement or any other document, the net proceeds of enforcement, sale, realization, recovery under or pursuant to any provisions hereof or otherwise and /or insurance claim proceeds relating to the Asset, and/or any other recovery, on receipt by the Bank shall be applied at its absolute discretion in the manner it thinks fit. The Borrower shall continue to be liable for any deficiency in the amount due to the Bank by the Borrower(s) after adjustment of the net proceeds of sale, realization, recovery and/or insurance claim as above.

- (c) Nothing herein contained shall negate, qualify or otherwise prejudicially affect the right of the Bank to recover the Outstanding Balance from the Borrower notwithstanding that all or any of the Secured Assets may not/ have been sold, disposed or realized.
- (d) The Borrower shall not question the terms on which and the consideration for which the Secured Assets may have been sold, disposed off or realised by the Bank

#### **11.11 RIGHT OF LIEN, SET- OFF AND CROSS COLLATERALISATION :**

Notwithstanding anything to the contrary in this Agreement or any other document/arrangement: (i) in respect of all and any of Borrower's, its affiliates', group entities', parent entities', associate entities', subsidiaries' (collectively "**Group Entities**"), present and future liabilities to the Bank, its affiliates, group entities, associate entities, parent entities, subsidiaries, any of their branches, divisions (collectively "**Relevant Entities**"), whether under this document or under any other obligation/loan/facilities/borrowings/document, whether such liabilities are/be crystallized, actual or contingent, primary or collateral or several or jointly with others, whether in same currency or different currencies, whether as principal debtor and/or as guarantor and/or otherwise howsoever (collectively "**Liabilities**"), each of the Bank and the Relevant Entities shall in addition to any general lien or similar right (to which any of them as bankers or financial institutions may be entitled by law, practice, custom or otherwise), have a specific and special lien on all the Borrower's and/or Group Entities' present and future stocks, shares, securities, property, book debts, all moneys in all accounts whether current, savings, overdraft, fixed or other deposits, loan accounts, held with or in custody, legal or constructive, with the Bank and/or any Relevant Entities, now or in future, whether in same or different capacity of the Borrower/any of Group Entities, and whether severally or jointly with others, whether for any banking relationship, safe custody, collection, or otherwise, whether in same currency or different currencies; and (ii) separately, each of the Bank and the Relevant Entities shall have the specific and express right, without notice to and without consent of the Borrower or any of the Group Entities, to set-off, transfer, sell, realize, adjust, appropriate all such amounts in all such accounts and deposits (whether prematurely or upon maturity as per the Bank's discretion), securities, amounts and property as aforesaid, for the purpose of realizing or against any of dues in respect of any of the Liabilities whether ear-marked for any particular Liability or not, to combine or consolidate all or any of accounts of any of the Borrower and Group Entities and set-off any monies, whether of same type or nature or not and whether held in same capacity or not including upon happening of any of the events of default mentioned in any of the documents pertaining to the respective Liabilities or upon any default in payment of any part of any of the Liabilities. (iii) The Bank and the Relevant Entities shall be deemed to have and hold and continue to have first charge on any assets including any deposit on which security has been/will be created in respect of the Loan, as security also for any of the other Liabilities; and all the rights and powers vested in the Bank in terms of any security or charge created for the Loan shall be available to the Bank and/or the Relevant Entities also in respect of such other Liabilities, irrespective of the fact whether the Loan is at any time outstanding, repaid or satisfied or not and even after the Loan has been repaid or prepaid.

Without prejudice to the aforesaid, the Borrower undertakes to submit to the Bank irrevocable letters of consent from the Borrower's respective Group Entities granting the said rights including of lien and set off.

#### **11.12 INDEMNITY:**

Each of the Borrowers hereby agrees to indemnify the Bank and that it shall indemnify the Bank and keep indemnified the Bank and save harmless, on demand in respect of any actions, suits, proceedings and all claims, notices, costs, charges, damages, demands, expenses, losses, damages, and liabilities made against, suffered or incurred by the Bank arising directly or indirectly from or in connection with:

1. any failure by the Borrower(s) and/or or the Guarantor(s) to comply with the provisions of this Agreement and / or
2. any liability including third party liability that may arise out of the possession, operation and use of the Asset by the Borrower(s) or by its employees or by its agents or by other persons whosoever whether or not authorized by the Borrower(s) for use of the said Asset and incidental to that purpose and for
3. any claims, losses, demands, actions, costs, expenses and liabilities incurred or suffered by the Bank by reason of the representations and warranties given by the Borrower(s) and/or the Guarantor(s) being false or untrue in material respect and/or
4. any claims, losses, demands, actions, costs, expenses and liabilities incurred or suffered by the Bank by reason of the Asset not being free from encumbrance and / or any previous charge
5. any claims, demands, actions, costs, expenses and liabilities incurred or suffered by the Bank by reason of non- payment or insufficient payment of stamp duty by the Borrower and/or the Guarantor(s) on this Agreement and the documents and any other writings or documents which may be executed pursuant to and/or in relation to this Agreement. The Borrower(s) shall keep the Bank informed of all developments regarding such actions, claims, costs, damages, demands, expenses, losses and liabilities and shall not dispute, compromise or otherwise deal with the same subject to the consent given by the Bank. The Bank shall however be under no obligation and / or liability to the Obligor(s) to provide any assistance in connection with any such claim that the Obligor(s) may require.

#### **11.13 ELECTRONIC MAIL/FAX INDEMNITY AND RELEVANT PROVISIONS**

The Borrower and the Security Provider (collectively, "Indemnifier/s") agree to INDEMNIFY and KEEP INDEMNIFIED, harmless and saved, the Bank (Indemnified), at all times from and against all actions, suits, proceedings, costs, claims, demands, charges, expenses, losses and liabilities howsoever arising in consequence of or in any way related to the Bank having acted or omitted to act in accordance with or pursuant to any instruction, in connection with or arising out of or relating to:

- i) any instruction received by/given to the Bank which it believes in good faith to be such an Instruction by Facsimile/ e-mail Submission (collectively, "Instruction"); and/or
- ii) any unauthorised or fraudulent Instruction to the Bank; and/or
- iii) any unauthorised dissemination, copying, use or disclosure of any Premium Service Banking Reports which are dispatched by the Bank to Indemnifier by Instruction;

The Indemnifier state and declare that, upon receipt by the Bank, each Instruction shall constitute and (irrespective of whether or not it is in fact initiated or transmitted by me/us and/or by the Authorised Person(s) ), shall be deemed to conclusively constitute my/our (the Indemnifier's ) mandate to the Bank to act or omit to act in accordance with the directions and Instructions contained therein notwithstanding that such Instruction may have been authorised or transmitted in error or fraudulently or may otherwise not have been authorised by or on behalf of Indemnifier or the Authorised Person(s) or may have been altered, misunderstood or distorted in any manner in the course of communication.

Indemnifiers are aware that the Bank may receive facsimile Instructions on thermal paper and, in such case, by reason of the chemical composition of thermal paper, the writing/Instruction on the facsimile/facsimile paper may disappear after a short period. Indemnifiers confirm that the same shall be at Indemnifiers' risk and the Bank shall not be obliged to take any precaution by way of

making and preserving a photocopy of such facsimile or otherwise. Without prejudice to the above, if the Bank makes any photocopy of such facsimile, Indemnifiers agree that such photocopy shall be conclusive and binding upon me/us notwithstanding that the same is a photocopy.

Indemnifiers are aware that the Bank may be receiving e-mail Instructions and the writing/Instruction on the e-mail may disappear due to computer failure / malfunction and or any other reasons. Indemnifiers confirm that the same shall be at Indemnifiers' risk and the Bank shall not be obliged to take any precaution by way of making / taking printouts of e-mail and preserving a hard copy of such e-mail or otherwise. Without prejudice to the above, if the Bank makes any hard copy takes printout of such e-mail, Indemnifiers agree that such hardcopy/print-out shall be conclusive and binding upon Indemnifiers notwithstanding that the same is a printout/ hard copy of the e-mail.

On the immediate next day after the day on which any Instructions are transmitted to the Bank by e-mail or facsimile, Indemnifiers shall and be bound to deliver to the Bank, a hard (in original) copy of the Instruction/s in writing signed by Indemnifiers or the Authorised Person(s) (as the case may be). Each hardcopy shall be marked with and bear the wordings "CONFIRMATION OF FAX or E-MAIL" as may be applicable, in bold letters on the top thereof. PROVIDED THAT the Bank may, but shall not be obliged to, await receipt of the hardcopy prior to taking any action in connection with any Instructions; PROVIDED FURTHER AND ALWAYS THAT the absence of or omission to deliver such writing shall not be in any manner construed to mean that such Instructions were not given by Indemnifiers and/or the Authorised Person(s) and shall not in any manner prejudice the Bank's rights under this writing. PROVIDED in the absence or omission to deliver such writing by Indemnifiers, the photocopy taken by the Bank of such facsimile/hard copy of such e-mail sent by me/us shall be deemed to be the original document and shall be binding on Indemnifiers and shall be admitted in evidence as a primary document in any matter that may arise.

The Bank may at any time without assigning any reason and without any notice withdraw the facility of giving Instructions by facsimile or e-mail altogether or in respect of any such said Account(s) and/or related banking operations or matters. However, any such termination shall not affect anything done or any rights or liability accrued or incurred prior to the termination and Indemnifiers' acceptance of these writings and the terms and conditions thereof shall survive any such termination.

If Indemnifiers desire to discontinue giving Instructions by facsimile or e-mail, Indemnifiers shall deliver through post or courier, but not through facsimile or E-mail, to the Bank a prior written notice of 7 (seven) days in this behalf. Such notice of discontinuation shall bind Indemnifiers forthwith upon the notice being given by Indemnifiers. However, such notice of discontinuation shall not be effective as against the Bank until the Bank has acknowledged in writing to Indemnifiers that it has acted on such notice PROVIDED that such discontinuation shall not release me/us from the terms of this writing in respect of any action taken or omitted to be taken by the Bank in accordance with the Instructions or directions contained in any Instruction or the terms of this writing prior to such acknowledgment by the Bank.

The Bank shall not be under any obligations at any time to maintain any special facility for the receipt of any Instructions by way of Facsimile or e-mail or to ensure the continued operations or availability of any equipment required for the same.

Indemnifiers acknowledge and confirm that it Indemnifiers are aware of the nature of internet/intranet telecommunications services, that the Facsimile/e-mail transmissions may not be received properly and may be read or be known to any unauthorised persons and are likely to

be intercepted by unknown persons. Indemnifiers agree to assume and bear all the risks involved in respect of such errors and misunderstanding and the Bank shall not be responsible in any manner for the same or breach of confidentiality thereto and shall also not be liable for any claims, loss, damage, cost or expense and liability arising therefrom.

The protection available to the Bank under this clause shall be in addition to and without prejudice to the Bank's other rights, privileges, powers and remedies in law and contract and the Bank may delay enforcing its rights without at any time losing them and waiver of a right by the Bank hereunder available to it by law or contract shall not be deemed to be a waiver of any other rights or of the same right at another time.

Indemnifiers agree to all other terms and conditions as may be included, imposed or amended hereinafter from time to time in this regard.

**11.14 SEVERABILITY:**

If any provision of the Agreement hereof shall be illegal or unenforceable for any reason the legality and enforceability of the remainder of the provisions of the Agreement shall not be affected or impaired thereby.

**11.15 OTHERS:**

The Borrower's liability hereunder shall not be affected, terminated or prejudiced by any amendments to or changes in the Borrower's ownership or management or in its constitution, Memorandum or Articles of Association etc., by any winding-up, liquidation, re-organisation or any similar process or becoming bankrupt or insolvent or any proceeding in respect thereof or, any analogous step, but such liability shall continue in full force and effect and shall be binding on the Borrower's respective successors.

**11.16 GOVERNING TERMS AND CONDITIONS:**

The Borrower declares and confirms that the Facilities agreed to be granted to the Borrower shall be governed by the terms and conditions as set out **herein**, in the Facility Letter the additional terms contained in the Special Provisions Relating to the Product as also herein contained, as well as those embodied in the relative security documents.

**11.17 BORROWER TO NOTIFY ANY VARIATION IN PROPOSAL:**

The Borrower undertakes to notify in writing to the Bank of any circumstances affecting the correctness of any of the particulars set forth in the Borrower's proposal immediately on the happening or occurrence of any such circumstance.

**11.18 MAINTAIN FINANCIAL INTEREST IN THE BUSINESS:**

The Borrower shall at all times maintain sufficient financial interest in the business and shall if so considered necessary by the Bank bring additional funds or assets by way of capital, deposits or otherwise. The Borrower shall not withdraw except with the Bank's prior permission in writing or divert or misuse the funds and assets invested in or brought into the business by the Borrower as capital, deposits or otherwise.

The Borrower shall not undertake buy-back of share, Preference share capital redemption, capital reduction in the event of any overdue to the Bank or on occurrence of any event of default.

**11.19 EFFECTIVE DATE OF THE AGREEMENT:**

The effective date of this Agreement shall be as specified in **Schedule I, ("Effective Date")** and the Agreement shall continue to subsist until terminated by the Bank in full expressly in writing. The



provision of the Facilities is at the total discretion of the Bank and any request for extension/enhancement/renewal of the Facilities and any Disbursements there under will be at the discretion of the Bank and on fulfillment of terms and conditions as prescribed by the Bank.

#### **11.20 APPOINTMENT OF NOMINEE DIRECTOR:**

The Bank shall at all times until the Final Settlement Date be entitled to appoint nominee directors on the Board of Directors of the Borrower. Such nominee(s) will be entitled to all rights and interest, remunerations and fees payable to other directors of the Borrower. The nominee directors shall not be liable to retire by rotation or hold qualification shares. The Borrower shall accept such nomination and appointment and will ensure that the necessary formalities required to be completed are duly effected as per the applicable procedures of law as stated in the Companies Act, 1956/ the Companies Act, 2013 or any other applicable law as may be amended from time to time.

#### **11.21 DISCLOSURE OF RELATIONSHIPS:**

The Borrower declares, assures and states that, except as mentioned hereunder none of its directors/partners (if the Borrower is a company/partnership firm) is a director or [near specified] relative of a director and/ or Senior Officer of any Bank; The term “**Senior Officer**” means an officer of the bank/s who is in equivalent scale as an officer in senior management level in Grade IV and above in a nationalized bank.

The term “**relative**” shall mean and include any or all of the following persons: (a)Spouse (b) Father (c)Mother (including step-mother) (d)Son (including step-son) (e)Son’s wife (f) Daughter (including step-daughter) (g)Daughter’s husband (h)Brother (including step-brother) (i)Brother’s wife (j)Sister (including step-sister) (k)Sister’s husband (l)Brother (including step-brother) of the Spouse (m)Sister (including step-sister) of the Spouse (l) all members of a HUF The Borrower makes the above declaration solemnly and sincerely believing the same to be true and knowing fully well that on the faith and strength the correctness thereof the Bank has agreed to grant the Facility. The Borrower also agrees that it is a condition of the grant of the Facilities that if any statement made with reference to the above is found to be false at any time the Bank shall be at liberty and entitled to revoke the Facilities. The Borrower declares that the Borrower is related to the director(s) and/ or Senior Officer(s) of the bank/s as specified in **Schedule I** hereto.

#### **11.22 SPECIAL CONDITIONS:**

- a) The Borrower shall not recognize or register any transfer of shares in the Borrower’s capital made or to be made by any person as may be specified by the Bank. The Borrower shall procure and furnish undertakings from such persons, in a form and manner required by the Bank, whereby such person shall agree, inter alia, not to dispose off their shareholdings in the Borrower to any person in any manner whatsoever. The Borrower shall join in such undertaking as a confirming party. The Borrower shall procure that such person providing the undertaking referred to above deposits with the Bank, all original certificates pertaining to their shareholding in the Borrower.
- b) The Borrower shall undertake and/or procure undertaking(s) from such persons as may be specified by the Bank in the form required by Bank, whereby it/he/she/they shall take the responsibility for making arrangements satisfactory to the Bank for meeting the shortfall, if any, in the resources of the Borrower for working capital requirement and/or any of its project. If required, the Borrower shall join in such undertakings procured from such other persons as a confirming party. The funds brought in to meet the shortfall in the resources of the Borrower for working capital and/or for any of its project, shall be in such form and manner and on such terms as may be required by the Bank.
- c) If the Borrower subsequent to this Agreement enters into any agreement/s for financial assistance with other creditors on any terms and conditions more favourable to such creditors than the terms and conditions stipulated herein or elsewhere mentioned or offered to the Bank, or in the sole

opinion of the Bank, such terms and conditions agreed to by the Borrower with such creditors may affect the rights of the Bank either under this Agreement or under any other agreement/s /document/s executed between the Borrower and the Bank or in any way dilutes the financial interest and/or materially prejudices the nature of security interest created in favour of the Bank, then (i) in such an event the Borrower shall promptly inform the Bank of such terms and conditions; (ii) without prejudice to any of the Bank's rights and remedies (including in case of Events of Default) in this regard in law and contract such of those terms and conditions (whether informed or not) as may be considered necessary by Bank shall apply to this Agreement as if Borrower had specifically agreed to such terms and conditions which terms and conditions shall be deemed to have been expressly incorporated herein from inception. The Borrower does hereby irrevocably undertakes and agrees, at its cost, to enter into such addendum/amendments/supplementary agreements or such other agreements for incorporating such additional terms and conditions, as the Bank may deem necessary, in this Agreement and or other agreements/documents in connection with the Facility/s granted, to the satisfaction of the Bank.

#### **11.23 DERIVATIVE TRANSACTIONS:**

The Borrower agrees that the Bank shall have the right of first refusal in the event that the Borrower seeks to do any derivative transactions including but not restricted to Interest Rate or currency swaps or any other derivative transaction with regard to the Facilities or otherwise.

#### **11.24 PROVISIONS RELATING TO FACILITIES DENOMINATED IN CURRENCIES OTHER THAN INDIAN RUPEES:**

Subject to specific provisions incorporated in the relevant Special Provisions Relating to the Product, in case any of the Facilities are denominated in any currency other than Indian rupees, the following conditions shall apply:

- i. The foreign currency amount would be the limiting factor and the Borrower's liability would accordingly be reckoned in the foreign currency in which the relevant Facilities are denominated.
- ii. The Borrower is liable to pay interest and repay principal in the currency in which the relevant Facilities have been denominated. In the event of any default in the payment of principal and/or interest on the Due Date of such Facilities, the Bank may, at its discretion, convert the amount into Indian rupees, on the Due Date(s) for such payment(s) or on any subsequent date, at the Bank's rate prevailing on the date of such conversion or at such other rate as may be deemed fit by the Bank. The amount due thereafter would be reckoned as denominated in Indian rupees.
- iii. The Indian rupee equivalent of the relevant Facilities denominated in currencies other than Indian rupees have been reckoned for the purpose of this Agreement at the exchange rate as mentioned in Schedule II Cum Key Fact Statement hereto under:
- iv. In the event the Indian rupees value depreciates vis-à-vis the currency in which the relevant Facilities, the Borrower hereby agrees and confirms that:
  - a. such increased value in terms of Indian rupees shall also be covered by the Security , if any, stipulated in this Agreement;
  - b. the Borrower shall further execute, sign and furnish all such documents, deeds and writings required by the Bank for the aforesaid purpose.
- v. Such other terms and conditions as may be stipulated by the Bank from time to time shall be applicable and be fully binding on the Borrower.

**IN WITNESS WHEREOF THE BORROWER HAS SIGNED AND DELIVERED THIS AGREEMENT AS UNDER:**

Signed and Delivered by/ for and on behalf of the Borrower & Co-Borrower(s) in token of and in witness of them having read (and/or being explained), verified, understood, irrevocably agreed to, accepted, confirmed and declared all the clauses of this Agreement, the Schedule, all contents thereof including all the terms and conditions contained therein, and having authenticated accuracy and correctness of the same:

SR. NO	NAME OF THE *BORROWER/POA/AUTHORISED SIGNATORY

SIGNED AND DELIVERED BY THE WITHIN )  
NAMED BANK KOTAK MAHINDRA BANK LTD)  
BY THE HANDS OF AUTHORISED SIGNATORY)  
Mr. \_\_\_\_\_ )

SIGNED AND DELIVERED BY THE WITHIN )  
NAMED BORROWER(S) BY THE HANDS OF ITS)  
AUTHORISED SIGNATORY/POA )  
Mr. \_\_\_\_\_ )

### **SCHEDULE OF CHARGES**

Documentation charges/ Legal and Technical fees	Up to Rs. 20000/- (plus taxes as applicable) per instance / per property
Penal/Default/overdue charges/ Audit shortfall	Upto 3 % p.m. (plus taxes as applicable)compounded monthly, on outstanding /unpaid amount
Stock audit charges	Borne by customer on actual basis
Solvency certificate	Upto 0.10% per lac with minimum Rs. 1000/- (plus taxes as applicable) and maximum of Rs. 10,000/- (plus taxes as applicable) per solvency certificate
Minimum churning/Tangible base capital/charges for non-compliance with sanction terms and conditions*	Up to 3 % p.m. (plus taxes as applicable) on outstanding/unpaid amount
TOD charges	Set-up-charges-upto Rs.20,000/- (plus taxes as applicable) per instance, Rate of Interest- up to 2% (plus taxes as applicable) compounded monthly on TOD amount.
Adhoc charges	Set-up-charges-upto Rs.10,000/- (plus taxes as applicable) per instance, Rate of Interest- up to 2% over and above the contracted ROI (plus taxes as applicable) on Adhoc amount.
End-use certificate delays	Up to Rs. 5000/- p.m ROI (plus taxes as applicable)until the certificate is submitted.
Net Worth statement delays	Up to Rs. 10000/- p.m.( plus taxes as applicable) until it is submitted
Foreclosure charges/ prepayment charges( as per borrowers request)	Up to 4 % of sanction amount ROI (plus taxes as applicable)
Termination/ closure charges for revolving facilities ( as per borrowers request)	Up to 4 % of sanction amount ROI (plus taxes as applicable)
Commitment charges for non-utilization of limits	Up to 2 % of limits, if utilization of limits for the quarter is below 60%
Limit extension/ Overdue Renewal Charges	Rate of Interest- up to 2 % over and above the contracted ROI (plus taxes as applicable) for Overdue Renewals beyond 30 days;

	Upto 3% p.m. (plus taxes as applicable) on outstanding/ unpaid amount, in case of exit beyond renewal/review due date without renewal
Creation of Bank Charge on collateral in various mandated databases, such as CERSAI, ROC etc.	Up to higher of Rs. 5000/- per instance or on actuals (plus taxes as applicable)
Charge in collateral/ modification	Up to 0.25% of sanction amount (plus taxes as applicable)
Certificates on Borrower Request (acceptable for issuance to Bank)	Up to Rs.10,000/- (plus taxes as applicable) per instance
Subsidy Application Charges	Up to Rs. 5,000/- (plus taxes as applicable) per instance
Subsidy Processing/ Administration Charges	Up to Rs. 50,000/- (plus taxes as applicable) per instance
Collateral Swap Charges	Up to Rs. 50,000/- (plus taxes as applicable) per instance

\*In case of regular non- compliance with Sanction Terms, Bank reserves the right to drop the limit.

## **SCHEDULE I**

**DATE:** e

**PLACE:**

**DETAILS OF THE BORROWER:**

<b>SR. NO</b>	<b>NAME , ADDRESS &amp; CONSTITUTION</b>
<b>1.</b>	<p><b><i>FOR COMPANY</i></b></p> <p>_____ LIMITED, a company registered under the Companies Act, 1956 or the Companies Act, 2013 (as the case may be) and having its Registered Office at _____ _____ _____</p> <p>through its authorised signatory _____ vide Board Resolution dated _____. <div style="text-align: center;"><b>OR</b></div></p> <p><b>INDIVIDUALS:</b></p> <p><b>1)</b> Mr. / Mrs. / Ms. _____, aged _____ years, residing at _____ _____</p> <p><b>2)</b> Mr. / Mrs. / Ms. _____, aged _____ years, residing at _____ _____</p> <p><b>3)</b> Mr. / Mrs. / Ms. _____, aged _____ years, residing at _____ _____</p> <p><b>4)</b> Mr. / Mrs. / Ms. _____, aged _____ years, residing at _____ _____</p> <p><b>FOR PARTNERSHIP FIRM:</b></p> <p><b>1)</b> Mr. / Mrs. / Ms. _____, aged _____ years, residing at _____ _____</p>

OR

2) Mr. / Mrs. / Ms. \_\_\_\_\_,

aged \_\_\_\_\_ residing at \_\_\_\_\_

3) Mr. / Mrs. / Ms. \_\_\_\_\_,

aged \_\_\_\_\_ residing at \_\_\_\_\_

4) Mr. / Mrs. / Ms. \_\_\_\_\_

aged \_\_\_\_\_ residing at \_\_\_\_\_

authorised partners of **M/s.** \_\_\_\_\_

\_\_\_\_\_ registered under the Indian Partnership Act, 1932, in their capacity as partners of the aforesaid firm and also in their personal capacity.

OR

**FOR LIMITED LIABILITY PARTNERSHIP FIRM:**

1) Mr. / Mrs. / Ms. \_\_\_\_\_,

aged \_\_\_\_\_ years, residing at \_\_\_\_\_

OR

2) Mr. / Mrs. / Ms. \_\_\_\_\_,

aged \_\_\_\_\_ residing at \_\_\_\_\_

3) Mr. / Mrs. / Ms. \_\_\_\_\_,

aged \_\_\_\_\_ residing at \_\_\_\_\_

4) Mr. / Mrs. / Ms. \_\_\_\_\_

aged \_\_\_\_\_ residing at \_\_\_\_\_

authorised partners of **M/s.** \_\_\_\_\_

\_\_\_\_\_ registered under the Limited Liability Partnership Act, 2008, in their capacity as partners of the aforesaid firm and also in their personal capacity.

**OR**

**HINDU UNDIVIDED FAMILY (HUF):**

Mr \_\_\_\_\_ aged \_\_\_\_\_  
years, residing \_\_\_\_\_  
for self and as the Karta of \_\_\_\_\_ HUF  
and carrying on the business at \_\_\_\_\_  
\_\_\_\_\_ as HUF business under the firm name and style of  
M/s. \_\_\_\_\_,

**And 1)** Mr./Mrs./Ms. \_\_\_\_\_ aged \_\_\_\_\_ years, residing at \_\_\_\_\_  
\_\_\_\_\_

2) Mr./Mrs./Ms. \_\_\_\_\_ aged \_\_\_\_\_ years., residing at \_\_\_\_\_  
\_\_\_\_\_

3) Mr./Mrs./Ms. \_\_\_\_\_ aged \_\_\_\_\_ years., residing at \_\_\_\_\_  
\_\_\_\_\_

in their capacity as members/coparceners of the aforesaid HUF and also in their personal capacity.

**OR**

**FOR PROPRIETARY CONCERN:**

Mr./Mrs./Ms. \_\_\_\_\_ aged \_\_\_\_\_ at  
presently carrying on the business at \_\_\_\_\_  
under the firm, name and style of M/s. \_\_\_\_\_  
in his/her capacity as proprietor/proprietress of the aforesaid firm and also in his/her personal capacity.

**OR**

**FOR SOCIETY/TRUST:**

\_\_\_\_\_, a society/trust registered under  
the Co-operative Societies Act, \_\_\_\_\_/ \_\_\_\_\_ Trust Act \_\_\_\_\_ and having its  
Registered Office at \_\_\_\_\_  
through its authorised signatory/ trustees \_\_\_\_\_



2) **NAME OF THE BANK:** THE KOTAK MAHINDRA BANK LTD.

3) **EFFECTIVE DATE:** \_\_\_\_\_

4) **ADDRESS FOR COMMUNICATION AND NOTICES**

**BORROWER(S):**

Attention	
Address	
Telephone	
Email ID	

**BANK (Regional/Zonal Office)**

Attention	
Address	
Telephone	
Email ID	

5) **DETAILS OF BRANCH OFFICE OF BANK**

Attention	
Address	
Telephone	
Email ID	

6) **DISCLOSURE OF RELATIONSHIPS**

Name of Declarant	Name of Director and/ or Senior officer to whom related	Nature of the Relationship	Name of the Branch concerned


\*\*\*\*\*

## SCHEDULE-II – CUM KEY FACT STATEMENT

1.	Type of facilities	1) 2) 3) 4)
2.	Tenure	As may be specified in the sanction/facility letter.
3	Date of Sanction/Facility Letter	
4	Place at which payment is to be made	
5	Total Credit facility amount/Over limit in Rs.	
6	Purpose	
7	Rate of Interest (Tick, whichever is applicable)	<input type="checkbox"/> Fixed Interest Rate as specified in Schedule II A. <input type="checkbox"/> Adjustable/Floating Interest Rate linked to the MCLR Rate of the Bank plus spread as specified in Schedule II B. <input type="checkbox"/> Adjustable/Floating Interest Rate linked to external benchmark rate (REPO rate) plus spread as specified in Schedule II C.
8	Validity of the Facilities	As specified in the sanction/facility letter
9	Tenor of each draw down	As specified in the sanction/facility letter
10	Mode of disbursement	
11	Repayment	As specified in the sanction/facility letter

<b>12</b>	<b>Details of Security/Collateral</b>	
<b>13</b>	<b>Address of the borrower for the purpose of issuing notice</b>	
<b>14</b>	<b>Exchange Rate (for Facilities denominated in currencies other than Indian Rupee)</b>	_____ = _____ Indian rupees].
<b>15</b>	<b>Fees and Charges</b>	As specified in the sanction/facility letter /Schedule of charges .
<b>15</b>	<b>On application</b> (Pl individually specify all type of fee).	
<b>15 B</b>	<b>During the term of the loan</b> (Pl individually specify all type of fee).	As specified in the sanction/facility letter/ Schedule of charges in .
<b>15 C</b>	<b>On foreclosure</b> (Pl individually specify all type of fee).	As specified in the sanction/facility letter/ Schedule of charges .
<b>15 D</b>	<b>Fee refundable if loan not sanctioned/disbursed.</b>	

<b>15 E</b>	<b>Conversion charges for switching from floating to fixed interest and vice-versa</b>	
<b>15 F</b>	<b>Additional Interest for delayed payments.</b>	As specified in the sanction/facility letter/ Schedule of charges.
<b>16</b>	<b>Installment payable</b>	As specified in the sanction/facility letter/ Schedule of charges.
<b>17</b>	<b>Mode of Communication of changes in Interest Rate</b>	By publication either in the Bank's website or in the newspaper or on the notice board of the Bank
<b>18</b>	<b>Date on which outstanding Balance Statement will be issued</b>	Annual

**For Kotak Mahindra Bank Ltd**

1) For \_\_\_\_\_  
<Name of the Borrower>

\_\_\_\_\_  
**Authorised Signatory**

Director/Partner/Authorised Signatory

2) \_\_\_\_\_  
Director/Partner/Authorised Signatory

3) \_\_\_\_\_  
Director/Partner/Authorised Signatory

4) \_\_\_\_\_  
Director/Partner/Authorised Signatory

## SCHEDULE II A FIXED INTEREST RATE

The Fixed Interest Rate shall be .....% p.a

## SCHEDULE II B TERMS AND CONDITIONS APPLICABLE TO THE LOAN WITH FLOATING/ADJUSTABLE INTEREST RATE LINKED TO THE MCLR RATE OF THE BANK

### A. Definition:

- a. **Floating/Adjustable Interest Rate (AIR)** : Reference Rate (Applicable MCLR rate) + Spread.
- i. Applicable MCLR \_\_\_\_\_prevailing on the first disbursement under each Facility (whether partial or full) plus spread shall be the rate of Interest for that Facility until next Reset Date.
  - ii. As on date, the rate of Interest is \_\_\_\_\_% consisting of Applicable MCLR \_\_\_\_\_rate @ \_\_\_\_\_% and the spread @ \_\_\_\_\_%.
- b. **“Reference Rate”** shall mean “applicable MCLR (Marginal cost of funds lending rate) \_\_\_\_\_ Rate”.  
MCLR Rate means the interest rate announced by the Bank from time to time on a pre-announced date, as its MCLR rate for different maturities, in accordance with the guidelines issued by the Reserve Bank of India.

### B. The MCLR Rate shall be reset on the period mentioned below:

#### Reset Date:

- **First Reset Date:** All the loans will be reset on the first day of the sixth calendar month (in case of MCLR 6) excluding the month of disbursement.
- **Subsequent Reset Date/s:** will be the date which is immediately succeeding to the date on which six calendar months (in case of MCLR 6) are completed from the earlier Reset Date.
- Applicable MCLR prevailing on the Reset Date + Spread shall be the Rate of Interest for that Facility until next Reset Date.  
To illustrate: For a disbursement made on April 12, 2016 (in case of MCLR 6) first reset date will be October 1, 2016 and the subsequent Reset date will be on April 1, 2017.
- In the similar way the Reset Dates for MCLR 1,3 and 12 shall be calculated / interpreted)

## SCHEDULE II C TERMS AND CONDITIONS APPLICABLE TO THE LOAN WITH ADJUSTABLE INTEREST RATE LINKED TO RESERVE BANK OF INDIA POLICY REPO RATE

### A. Definition:

- a) **Floating/ Adjustable Interest Rate (AIR):** External Benchmark Rate (REPO rate) + Spread.
- i. REPO rate prevailing on the first disbursement under each Facility (whether partial or full) plus spread shall be the Rate of Interest for that Facility until next Reset Date.
  - ii. As on date, the Rate of Interest is \_\_\_\_\_% consisting of REPO rate @ \_\_\_\_\_% and the spread @ \_\_\_\_\_%.
- b) **“External Benchmark Rate”** shall mean Reserve Bank of India Policy Repo rate
- B. REPO Rate means the interest rate announced by the Reserve Bank of India from time to time on a pre-announced date, as REPO rate

**C. Interest Reset Date:**

- **First Reset Date:** The External Benchmark (REPO) rate of the loans/facility will be first reset on the 16<sup>th</sup> day of the second calendar month, excluding the month of disbursement.

Illustratively the external benchmark rate of a Loan/facility availed between, 1<sup>st</sup> to 31<sup>st</sup> October, shall be reset on the 16<sup>th</sup> of December. So also the external benchmark rate of Loan/facility availed between 1<sup>st</sup> to 30<sup>th</sup> November, shall be reset on the 16<sup>th</sup> of January and so on and so forth.

- **Subsequent Reset Date /s:** The external benchmark rate will subsequently be reset on the 16<sup>th</sup> day of 3<sup>rd</sup> month, which is immediately succeeding, the previous reset dates.

Illustratively, the external Benchmark rate of the loan which was reset on 16<sup>th</sup> December, shall be reset again on 16<sup>th</sup> March and thereafter on June 16<sup>th</sup> and so on (ill the loan is live). So also the external Benchmark rate of the loan which was reset on 16<sup>th</sup> January will be reset on 16<sup>th</sup> April and thereafter on July 16<sup>th</sup> and so on (till the loan is live).

**D. Spread Change**

- a) Spread mentioned above includes a credit risk premium. In the event of any downward change in the credit rating (both internal/external rating) /credit risk profile, the Bank would be entitled to change the credit risk premium, which would result in a increase in the spread and consequently the change of interest.
- b) In addition to spread change condition mentioned above, the bank has a right to revise the “spread” over external benchmark after three years from date of loan/facility disbursal and thereafter after completion of every 3 years.

\*\*\*\*\*

