

OVERDRAFT AGREEMENT

This Agreement is made at the place mentioned in Item No. I of Schedule A and on the date specified in Item No. II of the Schedule A between Kotak Mahindra Bank Limited, a banking company within the meaning of the Banking Regulation Act, 1949, having its Registered Office at 36-38A, Nariman Bhavan, 227, Nariman Point, Mumbai – 400021 and its branch concerned office at the address stated in Item No. III of Schedule A (hereinafter called “the Bank” which expression shall, unless it be repugnant to the meaning or context thereof, mean and include its successors in title and assigns) of the ONE PART; AND

The person/s specified in Item No. IV of Schedule A, (hereinafter referred to / collectively referred to as “the Borrower” which expression shall, unless it be repugnant to the meaning or context thereof, mean and include, his/her, their respective heirs, executors, administrators, legal representative (where the / a Borrower is an individual/Sole Proprietor), successors (where the / a Borrower is a company incorporated under the Companies Act, 1956 or any other body corporate), the partner(s) from time to time of the firm, the survivor(s) of them and the heirs, executors, administrators, legal representatives and successors of the partners (where the / a Borrower is a partnership firm), the members or member for the time being of the said Hindu Undivided Family and their respective heirs, executors, administrators, legal representatives successors and permitted assigns (where the / a Borrower is a Hindu Undivided Family) of the OTHER PART;

WHEREAS:

- (a) The Bank is a bank which is, inter alia, engaged in the business of extending financial assistance and granting loan facilities.
- (b) The Borrower has approached the Bank for an overdraft facility upto a maximum of the amount stated in Item No. V of Schedule A hereto (“**Overdraft Facility**”), against the security of such property/ assets of the Borrower as the Bank may from time to

time deem fit, which Overdraft Facility the Bank has agreed to grant upon the terms and conditions as contained herein.

- (c) The parties hereto are desirous of recording the terms and conditions in relation to the proposed Overdraft Facility to be made by the Bank to the Borrower and certain other matters related thereto in the manner hereinafter contained.

ARTICLE 1

DEFINITIONS AND INTERPRETATIONS

1.1 In this Agreement, unless there is anything repugnant to the subject or context thereof, the expressions listed below shall have the following meanings viz.:

- a) "Account" shall mean the bank account opened and operated or, as the case may be, operated/ maintained by the Borrower with the Bank [wherein the Over Draft Facility shall be granted](#). The operation of the said Account shall be governed by the terms and conditions of the Bank as applicable to the operation of such accounts.
- b) "Adjustable Rate of Interest" when applicable to the Overdraft Facility, shall mean the variable rate of interest applied to the Overdraft Facility on the terms and conditions as more particularly mentioned in Schedule C hereto and on the terms and conditions as more particularly mentioned therein.
- c) "Application" means the application made by the Borrower in the form specified by the Bank for the Overdraft Facility and where the context so requires, all other information submitted by the Borrower to the Bank with a view to avail the Overdraft Facility.
- d) "Credit Information" means all information, documents, representations, particulars and clarifications furnished by the Borrower or the Guarantor to the Bank in any form from time to time and shall include the information contained in the Application.
- e) "Dues" means the amounts payable by the Borrower to the Bank from time to time under this Agreement which includes the all or, as the case may be, part of the total amounts drawn by the Borrower from the said Account, interest, additional interest, fees, non utilization charges, costs, other charges and expenses payable by the Borrower under this Agreement.
- f) "Fixed Rate of Interest" when applicable to the Overdraft Facility , shall mean the fixed rate of interest payable on the Overdraft Facility as more particularly set out in Schedule B hereto and on terms and conditions as contained therein.
- g) "Guarantee" means the guarantee (if any) given by the Guarantor to discharge the liability of the Borrower in case of his/her/its/their default under this Agreement or any amendment, modification, supplemental agreement, arrangement or writing in relation hereto or any other due of the Borrower whether in relation to the Overdraft Facility or otherwise.
- h) "Guarantor" means the person/s who has/have given the Guarantee and where such person/s is/are individual/s, it would include his/her, its, theirs heirs, executors, administrators and legal representatives and where such person/s is/are a partnership firm, it would include the

partners for the time being and their respective heirs, executors, administrators and legal representatives, and where such person is/are corporate, it would include its successors and assigns and where the Guarantor is a Hindu Undivided Family, it would include the members or member for the time being of the said Hindu Undivided Family and their respective heirs, executors, administrators, legal representatives successors and permitted assigns; The Guarantor shall always be a person/s acceptable to the Bank as the Guarantor. The details of Guarantor are mentioned in Item No. XII of Schedule A hereto.

- i) "Indebtedness of the Borrower" means any indebtedness of the Borrower to the Bank at any time for and in respect of monies borrowed, contracted or raised (whether or not for cash consideration) or liabilities contracted by whatever means (including the value of any guarantees and indemnities issued at the request of the Borrower or any person or entity related to or connected to the Borrower, bonds, credits, deposits, hire purchase and leasing by the Borrower or by a person or entity related to or connected with the Borrower); and shall also be deemed to include any indebtedness of any associate or affiliate of the Borrower or any entity related to or connected with the Borrower, towards the Bank or any associates or affiliates of the Bank.
- j) "Interest" means the rate of interest as referred to in Item No.VI of Schedule A hereto read with the relevant terms of Schedule B or Schedule C, as the case may be or as announced and amended by the Bank from time to time as per this Agreement.
- k) "Material Adverse Effect" shall mean an event that may, in the opinion of the Bank, impair the financial condition of the Borrower or the ability of the Borrower to perform or comply with its material obligations under this Agreement.
- l) "Maximum Overdraft Limit" means the maximum limit granted by the Borrower to the Borrower under the Overdraft Facility as more particularly mentioned in Item No.V of Schedule A hereto.
- m) "Minimum Amount Due" in relation to the Overdraft Facility shall mean the minimum amount payable by the Borrower which shall be calculated and payable as per clause 2.6A hereto.
- n) "Operating Limit" shall mean the maximum amounts that the Borrower may drawdown every year pursuant to this Overdraft Facility Agreement. The Operating Limit shall not under any circumstances exceed the Maximum Overdraft Limit.
- o) "Overdraft Facility" means the amount of the Overdraft facility provided by the Bank to the Borrower pursuant to this Overdraft Facility Agreement, [which may include either Drop Down Overdraft Facility wherein the amount of facility shall be reduced every year or Constant Overdraft Facility wherein the amount of facility shall remain constant till the end of the tenure of this agreement unless changed by the Bank as agreed in this agreement.](#)
- p) "Sanction Letter" means the letter issued by the Bank sanctioning the Overdraft Facility (if any) with the relevant particulars as mentioned in the letter including any such letter issued subsequently with any modification.

- q) "Security" shall mean the security over the moveable and/or, as the case may be, immovable property as may be created or agreed to be created by the Borrower in favour of the Bank in the manner acceptable to the Bank and such other security as the Bank may require from time to time to secure the payment of the Dues by the Borrower to the Bank and/or the performance of the engagement under this Agreement by the Borrower.
- r) "**Substitute Interest**" shall mean the interest payable in the event of default as more particularly set out in Clause 2.2(a). 2.2 (g) and 5.3(b) hereto.
- s) "This Agreement" means this Overdraft Facility Agreement executed by the Parties including all the schedules and annexures hereto and any amendment or modification thereof from time to time in accordance with the provisions of this Agreement. It shall also include the Application submitted by the Borrower to the Bank for grant of the Loan and the Sanction Letter issued by the Bank to the Borrower sanctioning the Loan.

1.2 In this Agreement, unless the context otherwise requires:

- a) words denoting the singular number shall include the plural and vice versa;
- b) the pronouns "he", "she", "it" and their cognate variations are used as interchangeable and should be interpreted in accordance with the context ;
- c) heading and bold typeface are only for convenience and shall be ignored for the purposes of interpretation;
- d) references to the word "include" or "including" shall be construed without limitation;
- e) reference to any party to this Agreement or any other Agreement or deed or other instrument shall include in case of individual his/her heirs, executors, administrators and permitted assigns in case of Company its successors or permitted assigns and in case of Partnership Firm the partner(s) from time to time of the firm, the survivor(s) of them and the heirs, executors, administrators, legal representatives and successors of the partners and in the case of a Hindu Undivided Family the members or member for the time being of the said Hindu Undivided Family and their respective heirs, executors, administrators, legal representatives successors and permitted assigns;
- f) reference to an article, clause, paragraph or Schedule is, unless indicated to the contrary, a reference to a article, clause, paragraph or Schedule of this Agreement and all Schedules attached or that may be attached to this Agreement shall form an integral part hereof;
- g) "Amendment" includes a supplement, modification, novation, replacement or re-enactment and "amended" is to be construed accordingly;
- h) "Encumbrance" includes a mortgage, charge, lease, pledge, hypothecation, security interest or lien of any description whatsoever.

1.3 If there is more than one Borrower mentioned in Item No. IV of the Schedule A hereunder written, wherever the context so requires, the word "Borrower" shall be construed as "Borrowers" and the grammar and construction of every concerned sentence shall be deemed to be appropriately amended so as to indicate more than one Borrower. Similarly, if there is more than one Guarantor, wherever the context so requires, the word "Guarantor" shall be construed as "Guarantors" and the grammar and construction of every connected sentence shall be deemed to be appropriately amended so as to indicate, more than one Guarantor/s;

1.4 The terms and expressions not herein defined shall where the interpretation and meaning have been assigned to them in terms of the General Clauses Act, 1897, have that interpretation and meaning.

1.5 References to the masculine gender include references to the feminine gender and the neuter gender and vice-versa.

ARTICLE 2

OVERDRAFT FACILITY AMOUNT, INTEREST ETC.

2.1 Grant of the Overdraft Facility and Amount of the Overdraft Facility

(a) The Borrower agrees to avail from the Bank and the Bank agrees to grant to the Borrower upon the terms and subject to the conditions mentioned in this Agreement, an overdraft facility ("**the Overdraft Facility**") upto the Maximum Overdraft Limit specified in Item No. V of Schedule A. The said Maximum Overdraft Limit is the maximum limits that the Bank may allocate to the Borrower and would be subject to such further lower operating limits ("**Operating Limits**") that the Bank may from time to time stipulate. For the first year of the Overdraft Facility, the Operating Limit shall be equal to the Maximum Overdraft Limit. The Operating Limit shall thereafter either automatically stand reduced to the extent and in the manner provided in clause (b) below or remain constant during the tenure of the Overdraft Facility at the desertion of the Bank. The Bank may, at the request of the Borrower, in its absolute discretion, increase the Maximum Overdraft Limit and/ or, as the case may be, the Operating Limit subject to such additional terms and conditions as the Bank may deem fit including, without limitation, reappraisal of the Borrower's credit.

(b) The overdraft limit shall automatically stand reduced annually on 5th of the next month from the month in which the Overdraft Facility has been originally granted by an amount equal to "L/N" of the original Maximum Overdraft Limit where "L" is the Maximum Overdraft Limit and "N" is the total tenure of the Overdraft Facility as provided in Item No. XVIII of Schedule A hereto, or the Overdraft Facility shall remain constant during the tenure of the Overdraft Facility, as may be agreed in this agreement by selecting option provided under Item No. XVIII of Schedule A hereto.

Illustration: If the original tenure of the Overdraft Facility is 10 years and the Maximum Overdraft Limit granted is Rs. 10,00,000/- (rupees ten lakh), the Operating Limit shall, after one year at the end of the month in which the Overdraft Facility was granted in the previous year , automatically be reduced by Rs. 10,00,000/ 10 = Rs. 1,00,000/- (rupees one lakh only), i.e. the Operating Limit available to the Borrower at the end of one year from the date of this Agreement until the next year shall be Rs. (10,00,000 – 1,00,000) = Rs. 9,00,000/- (rupees nine lakh). Similarly, after two years from the date of this Agreement, the Operating Limit available to the Borrower shall be reduced by another Rs. 1,00,000/- (rupees one lakh), i.e. Rs. 8,00,000/- (rupees eight lakh) and so on and so forth.

Provided that if the Borrower has chosen the option indicated at Item No. XVI of Schedule A hereto, then in such an event the aforesaid process of review would not apply and the Bank shall be entitled to review the Maximum Overdraft Limit and the Operating Limit annually in its sole and exclusive discretion.

(c) Notwithstanding the Maximum Overdraft Limit fixed by the Bank [and the type of Overdraft Facility granted](#), unless the Bank otherwise permits, the Borrower shall not be entitled to utilize the Overdraft Facility beyond the Operating Limit which may be determined by the Bank from time to time as aforesaid on the basis of a review of the said Account conducted by the Bank at the end of each calendar year from the date of this Agreement. The Borrower has understood and is aware of the Bank's methodology of computing the Operating Limit and shall keep an upto date check on the price of the Security and compute the Borrower's Operating Limit before issuing any cheque or drawing any moneys under the Loan.

(d) The Tenure of the Overdraft Facility shall be for the period as mentioned in Item No. XVIII of Schedule A hereto. Notwithstanding the aforesaid or anything to the contrary stated elsewhere in this Agreement, the Bank shall be entitled to review the grant of the Overdraft Facility to the Borrower on an annual basis ("**Review**"). The Review of the said Account by the Bank may involve review of the Bank's margin requirements vis-à-vis the margin provided by the Borrower, the value of the Security computed as per the Bank's policy, latest financials of the Borrower and/ or any other factors and/ or documents considered relevant by the Bank. To enable such Review the Borrower shall furnish to the Bank all such details and particulars as may be required by the Bank at least one month prior to such Review. The Bank shall, after such review, be entitled, in its sole discretion, to either discontinue the Overdraft Facility and demand the immediate repayment of the Dues or permit the continuation of the Overdraft Facility subject to such conditions, including the modification of the Tenure and/ or the Operating Limits as aforesaid, as the Bank may deem fit without any intimation to the Borrower, and the Borrower agrees to at all times (and in particular before any cheque is

presented for payment) keep itself informed of the Operating Limit and the Bank's margin requirements as varied from time to time. The decision of the Bank in this regard shall be final and binding upon the Borrower. In the event the Review as aforesaid results in modification of the Operating Limit or otherwise results in modification of the Tenure of the Overdraft Facility, the Bank shall intimate the Borrower of the modified terms of the Overdraft Facility. The Borrower hereby agrees and undertakes to be bound by such letters/ communication issued by the Bank. If the Borrower desires not to continue to avail of the Overdraft Facility, then the Borrower shall give atleast 30 days prior written notice of the same to the Bank.

2.2 Interest

- (a) The Borrower shall pay interest on the average monthly outstanding balance in the said Account. Interest for each month shall be aggregated and debited to the said Account at the end of each respective month and shall be deemed to be a further drawal under the Overdraft Facility and shall be subject to interest accordingly. Notwithstanding the aforesaid, the amount of interest so debited to the said Account at the end of each month shall be paid by the Borrower before the interest for the next month is debited to the said Account by crediting the said Account with an amount equal to the interest so debited. In the event the Borrower utilizes the Overdraft Facility by drawing down moneys in excess of the Operating Limit, the Borrower shall be liable to immediately repay to the Bank amounts so drawn or utilized in excess of the Operating Limit, failing which the Borrower shall, in addition to the interest as aforesaid, be liable to pay Substitute Interest on the entire amounts outstanding at the rate specified in Item No. [VII] of the Schedule A hereto.
- (b) The Borrower has opted for the Fixed Rate of Interest or the Adjustable Rate of Interest, which option has been specifically indicated by ticking the correct option under Item No.VI of Schedule A hereunder written. The interest rate/s specified by the Bank from time to time shall be previously or subsequently notified by the Bank to the Borrower and Borrower agrees that the same shall be binding upon the Borrower and the Borrower shall not be entitled to dispute or question the same on any ground whatsoever. The Bank may debit the said Account with the interest amount.
- (c) In the event the Borrower has opted for the Fixed Rate of Interest offered by the Bank, the rate of interest applicable to the Overdraft Facility and the terms applicable to such Fixed Rate of Interest, in addition to the general terms stated in this Agreement, are as stated in Schedule-B.

Notwithstanding the above, in the event of any extraordinary or unforeseen changes in the money market conditions, the Bank shall in its discretion be entitled to change the said Fixed Rate of Interest with intimation to the Borrower. The Bank shall be the sole judge to determine whether such conditions exist or not.

- (d) In the event the Borrower has opted for the Adjustable Rate of Interest offered by the Bank, the rate of interest applicable to the Overdraft Facility and the terms applicable to such Adjustable Rate of Interest, in addition to the general terms stated in this Agreement, are as stated in Schedule-C.
- (e) The Borrower hereby acknowledges and confirms that in order to work out a suitable method for payment of Interest, the Bank has adopted a reasonable and proper basis and the Borrower agrees to repay the Overdraft Facility, including the interest, in accordance with the provisions of this Agreement.
- (f) The Borrower agrees that in the case of any variation, adjustment in the rate of interest as per this Agreement the Borrower shall be intimated about the applicable/applied adjustment in the rate of interest as soon as may be practicable; provided that any delay or failure by the Bank to so intimate the Borrower shall not affect the liability of the Borrower to pay interest.
- (g) Any breach by the Borrower of any of the terms and conditions contained herein including the provisions relating to repayment of the Overdraft Facility, would result in Substitute Interest being charged to the Borrower at the rate mentioned in Item No. VII of Schedule A hereunder written on the entire Dues (which are due and not paid), leviable from the relevant due date on which the default has occurred till the date of actual payment / rectification of default. The same shall be without prejudice to the Bank's other rights and remedies. Also it is hereby clarified that the obligation to pay the substitute interest shall not entitle the Borrower to claim a defense that no event of default as mentioned hereunder has occurred.

2.4 Utilisation of the Overdraft Facility/ purpose of the Overdraft Facility

- (a) The Borrower shall, subject to the Operating Limits and other provisions of this Agreement including the fulfillment of Conditions Precedent as set out in Article 4, be entitled to operate/ utilize the Overdraft Facility by making drawals from the said Account in one lumpsum or in suitable installments as the Borrower may deem fit. The decision of the Bank in regard to the fulfillment by the Borrower of the aforesaid conditions shall be final and binding on the Borrower.
- (b) The Overdraft Facility shall **not** be used by the Borrower for any immoral or speculative purposes.

2.5 Fees, Charges, Alteration in Overdraft Facility Tenure, Interest Type etc.

- a) The Bank may, in its sole discretion, levy on the Borrower Annual Review Charges at the rate indicated in Item No. XV of Schedule A hereto or at such rate as the Bank may deem fit and proper for the Review done by the Bank of the Borrower's Account as provided in this Agreement. The Borrower hereby irrevocable authorizes the Bank to debit the said Account with an amount equal to the Annual Review Charges as and when levied by the Bank.
- b) In the event the Borrower does not utilize the Overdraft Facility during any year during the tenure of the Overdraft Facility or makes a limited utilization of the Overdraft Facility, the Borrower shall pay to the Bank non-utilisation charges, which shall be computed as follows: (a) the percentage mentioned at Item No. XIII of Schedule A hereto shall be applied on the average Operating Limit during a 3 month period identified by the Bank and every quarter thereafter, (b) to the extent the daily average utilization during the said 3 month period is less than the amount so arrived at pursuant to (a) above, to the extent of the shortfall, a non-utilisation charge shall be levied at the percentage mentioned in Item No. XIII of Schedule A hereto, subject to a minimum amount mentioned in Item No. XIII of Schedule A hereto. The said amount shall be levied quarterly or at the time of closure/premature closure of the Overdraft Facility, whichever is earlier. The Bank's decision with regard to whether there has been non-utilisation or, as the case may be, limited utilization of the Overdraft Facility shall be final and binding on the Borrower.
- c) In the event of the Borrower being desirous of modifying its rate of interest whether as a consequence of shifting from a particular type of interest opted for by the Borrower earlier to another type of interest rate, or otherwise, the Borrower may do so if so permitted by the Bank at such time and on execution of such supplemental documents as may be required by the Bank and further on payment of conversion charges as applicable from time to time, which may be expressed as a percentage of the outstanding Dues. It is hereby clarified that the change by the Borrower from a particular type of interest to another type of interest rate shall take effect only from the immediately following quarter.
- d) In the event the Borrower is desirous of premature closure of the Overdraft Facility by repaying all the Dues and terminating this Overdraft Facility Agreement, the Borrower shall be liable to pay to the Bank premature closure charges at such percentage of the Operating Limit as indicated in Item No. VIII of Schedule A hereto..
- e) The other charges payable by the Borrower on the said Account shall be as per the account opening terms and conditions applicable to accounts similar to the said Account.
- f) All charges paid/ payable by the Borrower to the Bank are non-refundable and the Borrower hereby undertakes not to claim refund of any charges paid by it from the Bank under any circumstances whatsoever.
- g) If the Borrower has committed any event of default as described in this Agreement prior to the full utilization of the Borrower of the Overdraft Facility, the Borrower shall not be permitted by

the Bank to make any further drawals under the Overdraft Facility. In such case irrespective of the Overdraft Facility amount as mentioned in Item No V of Schedule A the amounts outstanding in the Account shall be deemed to be the Overdraft Facility for the purpose of this Agreement.

- h) Notwithstanding anything herein contained, the Bank shall have the right, at any time or from time to time, to review and reschedule the tenure of the Overdraft Facility in such manner and to such extent as the Bank may in its sole discretion decide on account of such reason as the Bank may reasonably deem fit. In such event/s the Maximum Overdraft Limit and/ or, as the case may be, the Operating Limit available to the Borrower shall be readjusted by the Bank in a manner as may be determined by the Bank in its sole discretion and intimated to the Borrower in writing.

2.6 Mode of Payment, Time, Place etc.

- (a) For repayment of the Dues under this Agreement the Borrower shall simultaneously with the execution of this Agreement hand over to the Bank such number of undated, inchoate and duly signed cheques with the Bank, or such other person as the Bank may nominate, named as the payee therein, as the Bank may in its absolute discretion require to enable the payment of the said Dues.
- (b) At the end of each anniversary of this Agreement, the Borrower shall be liable to repay to the Bank such part of the amount drawn down by the Borrower during the previous year as is in excess of the Operating Limit fixed by the Bank for the following year. In the event the Borrower fails to repay such amounts to the Borrower, for the repayment of such excess amount the Bank shall be entitled to deposit one or more of the inchoate cheques issued by the Borrower in favour of the Bank by filling in the appropriate amounts.
- (c) The Borrower hereby agrees, acknowledges and confirms that the Borrower has agreed to issue the said inchoate cheques voluntarily in discharge of debt owed/ which may be owed by it to the Bank. The Borrower agrees that the said inchoate instruments are to be used for legal liability by the Borrower to the Bank pursuant to this Agreement. The Borrower further agrees, acknowledges and confirms that the said inchoate cheques are intended to be used by the Bank to recover the debts/ legal liability owed by the Borrower to the Bank at any time as the Bank may consider fit and proper and hereby unconditionally and irrevocably authorises the Bank for the said purpose. Upon the happening of the events mentioned in clause (b) above, the Bank shall have, in its discretion, unconditional and irrevocable authority and powers, as hereby given in favour of the Bank, to fill in the dates and amounts in one or more of the cheques forwarded as hereinabove provided and deposit the same towards payment/ repayment of the said Dues. The Borrower however hereby confirms that he/it shall always ensure that sufficient funds are available in the account to which the said cheques relate to enable the Bank to present the same and shall at no time close the bank account/s from

which the said cheques have been issued or issue any communication to the relevant bank, including the Bank, for stopping or postponing the presentment of the said cheques and the Bank is not bound to take notice of any such communication and which, if issued, will be regarded as a breach of this Agreement.. The Borrower hereby confirms that it is aware of the fact that any dishonour of any cheque so issued by the Borrower and presented by the Bank for payment would constitute an offence under section 138 of the Negotiable Instruments Act, 1881 and the Bank may take such action against the Borrower as may be advised. Prior to the said inchoate cheques issued by the Borrower pursuant to this clause being exhausted, the Borrower shall, issue fresh cheques to the Bank, irrespective of whether being called upon by the Bank to do so, and the said instruments would be governed by the provisions of this Agreement.

- (d) In this regard the Borrower hereby unconditionally and irrevocably authorises the Bank acting through any of its officers and/ or agents to do, execute and perform all or any of the following acts, deeds, matters and things on their behalf and their cost and risk that is to say :-
- a. To fill up the dates and the amounts of the cheques forwarded by the Borrower to the Bank and to deposit the same towards repayment of Borrower's dues towards the said facility, without notices to the Borrower in this behalf. The Bank hereby specifically agrees, acknowledges and confirms that the Bank is authorised to fill in the cheques such amounts as may be due by the Borrower to the Bank under this Agreement and the interest including additional/ premium interest on the overdrawn moneys and other interests and/ or charges payable by the Borrower to the Bank on the moneys disbursed till the date on which the cheques are so filled in and the amount shall in any event not exceed the maximum amounts (if any) as specified in a particular cheque.
 - b. To appoint or engage any agent, courier agencies, correspondent banks for ensuring safe holding of cheques and having the same picked up, processed and cleared at the Borrowers' risks and costs.
 - c. And generally to do, perform and execute all acts, deeds, matters and things relating to or concerning or touching the repayment of the said facility.
 - d. For the better doing, performing and executing all the matters and things aforesaid, the Borrower hereby further grants unto the said Bank full power and authority to substitute and appoint in its place on such terms as it may think fit one or more attorney/s to exercise for the Borrower as the Borrower's attorney/s any or all the powers and authorities hereby conferred, to revoke any such appointments and to substitute or appoint any other person/s in place of such attorney/s as Bank may from time to time think fit.
 - e. The Borrower hereby further agrees to ratify and confirm all and whatsoever that the Bank shall do or cause to be done in or about the premises by virtue of the authority herein given.

- f. The Borrower further undertakes to honour all the cheques when presented for payment by the Bank and not to take any steps, which in any way are likely to affect the payment thereunder to the Bank.
- (e) The Borrower hereby agrees, acknowledges and confirms that the authority given by the Borrower to the Bank as aforesaid to fill in the details of the cheque including the amounts payable is as permitted under the provisions of section 20 of the Negotiable Instruments Act, 1881 and the same does not amount to an alteration of the said cheque(s). The Borrower, however, agrees and confirms that in the event the acts of the Bank in filling the cheques as aforesaid are construed by any court, tribunal, authority or other person or forum, judicial, quasi-judicial, non-judicial, governmental, semi-governmental or non-governmental to be an alteration:
- i. the Borrower hereby expressly provides its consent for such an alteration and hereby confirms that by reason of such alteration, the cheques shall/ should not be construed to be void or otherwise unenforceable and the Borrower hereby unconditionally agrees and accepts to honour such cheques when presented for payment; and
 - ii. the Borrower hereby confirms that such alteration is made to record the common intention of the Bank and the Borrower, which common intention is to fill in the cheques/ instruments with the amounts that may be due by the Borrower to the Bank from time to time and to present the same for payment on such dates as the Bank may in its absolute and sole discretion decide.
- (f) . The cheques shall be deemed to have been given for adequate consideration already received by the Borrower and shall not absolve the Borrower from its liability to pay the said sums hereunder until the cheque is duly realized. The Bank shall not be responsible to intimate the Borrower about the utilization/amortization of the cheques and need for submission of further inchoate cheques.
- (g) Each of the aforesaid inchoate cheques shall be deemed to have been given for adequate consideration already received by the Borrower and shall not absolve the Borrower from its liability to pay the said sums hereunder until the cheque is duly realized. The Borrower agrees that if any other amounts are outstanding for payment by the Borrower including on account of the Indebtedness of the Borrower, the Bank shall be entitled to encash the inchoate cheques deposited with it for the satisfaction of such outstanding amounts notwithstanding that the inchoate cheques have been deposited by the Borrower with the Bank for repayment of the Overdraft Facility and the Borrower shall continue to be indebted to the Bank for the Dues, as the case may be.
- (h) In the event of any inchoate cheque being dishonoured by the bank on which the same was drawn by the Borrower, the Borrower shall be required to pay the Bank a cheque representation/ charge of an amount specified in Item No. IX of **Schedule A** for every such dishonour.

- (i) If the Borrower at any time during the tenure of the Overdraft Facility, wishes to replace an inchoate cheque with another then the Borrower will be required to pay Swap Charges of an amount specified in Item No. X of **Schedule A** for every such replacement.
- (j) No cash payment to or payment in the name of any Direct Marketing Associates/Agent (DMA), Direct Selling Agent(DSA) appointed by the Bank shall be made and if any payment is made, the Bank shall not be responsible to take due account of the same.
- (k) In case, the Borrower makes the payment of due amount at any other office or branch of the Bank, which the Bank may accept at its sole discretion, the Borrower shall immediately inform the Concerned Branch of the Bank in writing.
- (l) Only on realization of the amounts due by any mode as above, the Bank shall credit the said Account of the Borrower.
- (m) In case any amount is paid by the Borrower or any amount is received/realized/recovered from the Borrower, then the same shall be adjusted/appropriated in following order (unless otherwise decided by the Bank) without any prior intimation to the Borrower:
 - 1. Costs, charges, expenses, incidental charges and other monies that may have been expended by the Bank in connection with this Agreement.
 - 2. Additional interest, and /or liquidated damages on defaulted amounts under this Agreement.
 - 3. fees under this Agreement.
 - 4. Interest
 - 5. Principal amount of the Overdraft Facility under this Agreement.
 - 6. Towards other Indebtedness of the Borrower to the Bank.

2.6A Minimum Amount Due

Notwithstanding anything contained in this Agreement, the Borrower shall be liable to deposit in the Account, the Minimum Amount Due, which shall be computed and shall be payable as follows:

- (a) first the percentage indicated in Item no. XIV of Schedule A hereto shall be applied on the average outstanding in the Account during a month.
- (b) If there is any amount outstanding in the said month over the Operating Limit, the same shall be added to the resulting amount of the aforesaid calculation.
- (c) The aggregate amount so arrived shall be the Minimum Amount Due, which shall be payable latest by the date of the next month more particularly mentioned in Item No. XIV of Schedule A hereto.

Provided that in the event the Minimum Amount Due is not deposited in the said Account by the said date, then in computing the Minimum Amount Due for the following month, which shall be computed as per the formulae above, the amount arrived at pursuant to (a) above for the previous month shall be also added to determine the Minimum Amount Due.

Nothing in this clause shall in any manner affect the liability of the Borrower to deposit the Interest in the Account pursuant to the other provisions of this Agreement.

2.7 Joint and Several liabilities of the Borrower(s)

Where the Overdraft Facility is provided to more than one Borrower, notwithstanding any thing herein stated, the liability of the Borrower(s) to repay the Overdraft Facility together with the principal, interest, additional interest charges and all other amounts and to observe the terms and conditions set out in this Agreement are joint and several.

2.8 Cross Default

The Borrower agrees, confirms and acknowledges that any default by the Borrower under any other Agreement or arrangement or guarantee or security or other Indebtedness of the Borrower with the Bank or its subsidiaries/affiliates shall constitute an event of default under this Agreement and vice-versa. The said amounts shall be deemed to be Dues under this Agreement secured by the Security and vice-versa.

2.9 Set Off

Without prejudice to what is stated hereinabove, the Borrower hereby expressly agrees and confirms that in the event of the Borrower(s) failing to pay the amount outstanding under the Overdraft Facility or any other loan/ facility, in addition to any general or similar lien to which the Bank or any of its subsidiary/affiliates may be entitled by law, the Bank shall, without prejudice to any of its specific rights under any other Agreements with the Borrower, at its sole discretion and without notice to the Borrower, be at liberty to apply any other money or amounts standing to the credit of the Borrower in any account (including fixed deposit account) of the Borrower (whether singly or jointly with another or others) with the Bank or any of its subsidiary/affiliates in or towards payment of the Dues. The rights of the Bank under this Agreement are in addition to other rights and remedies (including without limitation other rights or set off) which the Bank may have.

2.10 Terminal Benefits

The entire outstanding Dues shall be payable immediately by the Borrower to the Bank, if the Borrower opts for any retirement scheme or accepts any offer from his employer providing any benefit on resigning or retiring from the employment prior to superannuation or upon the employer terminating his employment for any reason or upon the Borrower resigning or retiring from the service of the employer for any reason whatsoever. In such a case, the outstanding Dues may be

paid from the amount or amounts receivable by him from the employer under such scheme or offer or any terminal benefit, as the case may be. Provided however, in the event of the said amount or amounts being insufficient to repay the said sums to the Bank in full, the unpaid amounts remaining due to the Bank shall be paid by the Borrower forthwith. The Borrower does hereby irrevocably authorize the Bank to communicate with and receive the said amounts from the Borrower's employer directly.

2.11 Recall of the Overdraft Facility by the Bank

Notwithstanding anything to the contrary contained in this Agreement, the Borrower agrees that the Bank shall be entitled to, at any time, in its discretion, recall the Overdraft Facility by giving to the Borrower 7 (seven) clear working days notice in writing. Upon the expiry of the period of notice, the Overdraft Facility shall immediately stand repayable by the Borrower to the Bank.

ARTICLE – 3

COVENANTS FOR SECURITY.

3.1

- a) The Borrower covenants that the Dues being repayment of the Overdraft Facility and payment of interest, additional/default interest, fees, costs, other charges and expenses and all other amounts payable to the Bank under this Agreement shall be secured or cause to be secured by such security as the Bank stipulate from time to time.
- (b) The Bank shall have the right to prescribe the type of security and the place, timing and the manner of its creation. Such security shall be created prior to the disbursement of the Overdraft Facility and the Bank shall not be required to disburse the Overdraft Facility until and unless such security has been created.
- (c) The Bank may during the term of this Agreement also require for the Borrower to create additional security and the Borrower undertakes to create or cause to create such additional security as and when called upon by the Bank. Without prejudice to the generality of the above, the Borrower shall create such additional security (a) in the event of the Dues being more than the market value of the Security or otherwise in accordance with the margin requirements of the Bank; and (b) in the event of destruction or damage or depreciation or fall in value of any Security given to the Bank or the title of any such Security being unclear, unmarketable or encumbered in the opinion of the Bank or affecting the value of the Security in any manner whatsoever.
- (d) The Borrower shall also procure Guarantee of the Guarantor/s named in Item No.XII of Schedule A hereto, for the payment of the Dues being Repayment of the Overdraft Facility, payment of interest, additional interest, fees, costs, charges and expenses and all other amounts payable to the Bank under this Agreement.

- (e) The Borrower shall as and when called upon by the Bank, during the term of this Agreement, execute and deliver to the Bank such Irrevocable Powers of Attorney in the format of the Bank empowering the Bank to create Security for the payment of the Dues, as stated aforesaid in sub-clause (a), (b) and (c).
- (f) The Borrower shall execute such bond(s), promissory notes in favour of the Bank for the payment of the Dues as required by the Bank. Further the Borrower shall also execute and deliver such other documents, writings, Power of Attorney and Agreements as may be required by the Bank.
- (g) The Borrower shall execute in favour of the Bank such number of inchoate cheques as provided in clause [] above for repayment of the Dues.
- (h) Any benefit or sums accrued under any additional/collateral security provided/assigned to the Bank to secure the Dues being the Repayment of the Overdraft Facility and payment of interest, additional interest, fees, costs, charges and expenses and all other amounts payable to the Bank under this Agreement or any addendum, supplemental Agreement thereto, shall be credited in such manner towards the Dues unless the Bank decides otherwise. The Borrower shall be responsible to intimate to the Bank 15 (fifteen) days in advance in writing about the maturity date, accrual date or due date of any such additional/collateral security.

3.2 Continuing Security

All Securities (that may be created or cause to be created) and Guarantees furnished by the Borrower to the Bank shall remain a continuing security to the Bank and shall not be discharged by intermediate payment by the Borrower or any settlement of accounts by the Borrower and shall be in addition and not in derogation of any other security which the Bank may at any time hold in respect of the Dues and shall be available to the Bank till all the Dues are paid and the securities are expressly released by the Bank.

ARTICLE 4

CONDITIONS FOR DISBURSEMENT

4.1 The obligation of the Bank to make any disbursement under this Agreement shall be subject to the following conditions:

- (a) Credit Worthiness of the Borrower: The Borrower meets the Bank's requirement of creditworthiness. The Bank shall be entitled to make or cause to be made inquiries as the Bank may deem fit to assess the credit worthiness of the Borrower.
- (b) Non-existence of event of default: No event of default as defined in this Agreement shall have happened.
- (c) Extra ordinary Circumstances: No extra ordinary or other circumstances shall have occurred which in the sole opinion of the Bank may make it improbable for the Borrower to fulfill any of these terms and Conditions.

- (d) Pending Legal Proceedings: The Borrower shall have disclosed to the Bank about any action, suit proceedings, winding up/insolvency proceedings or investigation pending initiated against him/her/it.
- (e) Evidence for Utilisation of Disbursement: The Bank should be satisfied at the time of making any disbursement that the same is required for the purpose as mentioned in Schedule A and as stipulated by the Borrower and the Borrower shall procure evidence satisfactory to the Bank of the proposed utilization of the proceeds of the disbursement of the Overdraft Facility.
- (f) Utilisation of prior Disbursement: The Borrower shall have satisfied the Bank about the utilization by the Borrower of the proceeds of any prior Disbursements, if any.
- (g) Guarantees/Securities etc.: The Borrower shall have provided and executed such Guarantee/s, Security, necessary documents, writings and hand over inchoate Cheques, as may be required by the Bank.
- (h) NRI/PIO, etc, if permissible.: Where the Borrower is a Non Resident Indian or Person of Indian Origin as per the provisions of the Foreign Exchange Management Act, 2000 or other law in force in India relating to foreign exchange, the Borrower shall have obtained all permissions, authorizations, approvals, sanctions and fulfilled all conditions prescribed therein as may be required for borrowing and creation of security.

ARTICLE 5

COVENANTS

5.1 Affirmative Covenants

The Borrower hereby covenants with the Bank that –

- a) The Borrower shall not utilise the Overdraft Facility for any purpose whatsoever other than permitted purposes and not for any immoral or speculative purposes.
- b) The security shall vest absolutely in the Borrower and the Borrower shall cause to do all such act, deed, matter and thing which shall be necessary to vest the security absolutely in the Borrower. .
- c) The Borrower shall notify the Bank of any change in the terms or place of employment, business or profession of the Borrower within seven days of such change.
- d) All insurance policies of whatsoever nature, whether taken by the Borrower or by the Bank on behalf of the Borrower, shall at all times during the currency of the Overdraft Facility be maintained by the Borrower at its own cost and the Borrower does hereby agree that for all such policies the Bank will be a loss payee/beneficiary/assignee and the Bank would be entitled to the benefit of all such policies. Such policies shall be taken with insurance company or companies of repute approved by the Bank in writing. The Borrower shall deposit the

insurance policies and all cover notes premia receipts etc. with the Bank along with such letters, writings as required by the Bank. The Borrower shall make punctual payment of all premia and shall not do or suffer to be done any act which may invalidate such insurances and in case of demise of the Borrower, during the currency of the Overdraft Facility, the Bank shall be entitled to obtain and avail of the moneys under the said policies and appropriate the same towards the repayment of the Dues.

- e) Any person authorized by the Bank will be allowed to have free access to the security for the purpose of inspection/supervising and inspecting the same.
- f) The Borrower shall whenever required by the Bank submit statements of annual income certified and audited by a practicing Chartered Accountant (with his registration number mentioned therein) along with a copy of the tax returns filed with the income tax authorities duly certified by such Chartered Accountant (with his registration number mentioned therein) or latest salary slip duly stamped and signed by the employer.
- g) The Borrower shall notify the Bank of the change in his NRI/PIO status to Resident status, if the Borrower has taken the Overdraft Facility in the status of NRI/PIO and vice versa.
- h) The Borrower shall maintain the Security at his/her/its own cost, in good order and condition and that the Borrower will ensure that the value of such Security does not diminish.
- i) The Borrower shall duly and punctually comply with all the terms and conditions of holding the Security and all the laws in respect thereof including all applicable rules, regulations, bye-laws, etc. applicable to such Security.
- j) If required by the Bank, the Borrower shall at all times during the currency of the Overdraft Facility, at its own cost, keep the Security fully insured against such risks and for such amounts and for such period and forms as the Bank may require, in the name of the Bank or with the Bank being marked as a loss payee or the policy being assigned to the Bank or the interest of the Bank being recognized on such policy in such manner as may be required by the Bank, with such insurance company or companies of repute to be approved by the Bank in writing and shall deposit the insurance policies and all cover notes premia receipts etc. with the Bank. The Borrower shall make punctual payment of all premia and shall not do or suffer to be done any act which may invalidate such insurances and will on receipt of any moneys under the said policies, pay the same to the Bank which shall, at the option of the Bank, be applied either in reinstating or replacing such Security or in repayment of the said Dues. If the Borrower fails to insure or keep insured all/any of such Security as aforesaid, then the Bank shall without prejudice to or affecting its rights hereunder, be at liberty (but not bound) to insure and keep the same insured and the Borrower shall on demand repay to the Bank all amounts spent or incurred by the Bank in doing so, with interest at the rate applicable for the Overdraft Facility as aforesaid.
- k) The Borrower shall notify details of any additions to or alterations in the Security which might be proposed to be made.

- l) Any person authorized by the Bank will be allowed to discuss, collect information with/from the competent authority relating to the Security and the Borrower shall extend such cooperation as may be required.
- m) The Borrower shall promptly give written notice of :
 - 1) Any dispute which might arise between the Borrower and any person or any Governmental body or authority relating to or concerning the Security.
 - 2) Any distress or execution being levied against the Security.
 - 3) Any material circumstances /event likely to have an adverse effect on the Borrower's financial condition or profits or business and of any material change in the Borrower's business.
 - 4) Any loss or damage to the Security due to any act of God or damage.
 - 5) Any material change in the financial strength of the Guarantor(s).
- n) The Borrower shall do, perform and execute such acts, deeds, matters and things as the Bank may consider necessary either to perfect the title of the Bank to the Security.
- o) The Borrower shall, at such intervals as the Bank may require, deliver its financial statements to the Borrower.

5.2 Negative Covenants

Without prejudice to the other covenants provided by the Borrower under this Agreement, the Borrower further covenants with the Bank that unless the Bank shall otherwise previously approve in writing, the Borrower shall not -

- a) stand surety for anybody or guarantee the repayment of any Overdraft Facility or overdraft or the purchase price of any asset without written permission of the Bank.
- b) leave India for employment or business or for long term stay abroad without fully repaying the Dues. Whether the stay is long term or not shall be decided solely by the Bank.
- c) In case the Borrower being a Company, permit any change in the ownership or control of the Borrower whereby the effective beneficial ownership or control of the Borrower shall change in any manner whatsoever, without the prior written consent of the Bank ;
- d) In case the Borrower being a Company, enter into or decides to enter into any scheme of merger, amalgamation, compromise or reconstruction without the prior written consent of the Bank ;
- e) In case the Borrower being a Company, make any amendments in the Borrower's Memorandum and Articles without the prior written consent of the Bank ;
- f) In case the Borrower being a Company, declare any dividend if any installment towards principal or interest remains unpaid on its due date.

- g) Utilise the Overdraft Facility or the Security for any speculative or anti-social or illegal purpose.
- h) Let out, lease or give on leave and license or otherwise howsoever part with the possession/ use of the Security or any part thereof.
- i) Sell, charge, lease, surrender or otherwise howsoever alienate or transfer or create interest in favour of other person in the Security or any part thereof or permit any charge, encumbrance or lien of any kind whatsoever over the such Security.
- j) Enter into any agreement or arrangement with any person institution or local or government body for the use, occupation or disposal of the Security or any part thereof.
- k) Subject the Security or any part thereof to any family arrangement or partition or convert the Security as part of HUF property or execute any power of attorney or other similar deed in favour of any other person to deal with such Security in any manner.

5.3 Charges, Cost , Taxes etc.

- a) The Borrower irrevocably undertakes to pay forthwith on demand to the Bank all taxes, expenses, duties, charges, fees etc. (including , interest tax, stamp duties and any penalty relating thereto, legal cost) and any other charges whatsoever payable in following circumstances :

- i) Any demand or order passed by Central or State Government or any competent authority;
- ii) For investigation of title to the Security, preparation, execution, registration of the Overdraft Facility/Security documents;
- iii) For preservation of Security, performance, enforcement, realization, collection (Collection Charges shall be as specified in Item No. XI of Schedule A) or enforcement of payment of the Dues;

now or hereafter, whether with retrospective or prospective effect in relation to this Agreement or in relation to any other document/s to be executed in respect of the Overdraft Facility Amount or for creation of security in favour of the Bank. If the Bank at its sole discretion, makes any such payments, the Borrower irrevocably undertakes to reimburse the Bank within 7 days of being intimated by the Bank of the same.

- b) The Borrower shall pay Documentation charges as mentioned item XVIII of Schedule A
- c) In case of delay in the payment of any amount payable as above or in the payment of Prepayment Charges, Cheque Swap Charges, Non utilization charges, other monies & charges, Cheque Dishonour Charges, SI/ECS Dishonour Charges on due date the same shall carry interest at the Substituted Interest mentioned in Item No.VII of Schedule A hereto and shall be computed from the respective due dates for payment to the actual date of

payment and shall become due and payable upon the footing of compound interest with monthly rests.

- d) All the above monies payable under this Agreement, if not paid in time as above, shall be deemed to be part of the Dues.
- e) In the event the Borrower fails to pay when due any sum which it may owe to the Bank and the Bank shall commence legal proceedings to recover such sum, the Borrower will further pay the Bank all advances, charges, cost and expenses, including reasonable legal fees, incurred or paid by the Bank in exercising any right, power or remedy conferred by this arrangement, (or in the enforcement thereof) and all such sums shall become a part of the Dues secured hereunder and shall be paid to the Bank by the Borrower immediately and without delay or demur.

ARTICLE 6 REPRESENTATIONS AND WARRANTIES

The Borrower hereby represents and warrants that:

- a) the Credit Information is true and accurate in all material respects, is not misleading and does not omit any material details, the omission of which would make any fact or statement therein misleading and the Credit Information shall be deemed to form part of the warranties herein contained.
- b) the Borrower does not violate any covenant, conditions or stipulations under any existing Agreements entered into by the Borrower with any party, by availing the Overdraft Facility from the Bank.
- c) that subsequent to the Application there has been no material change which would affect the grant of the Overdraft Facility as requested for in the Application.
- d) all acts, conditions and things required to be done, fulfilled or performed, and all authorisations required or essential, for the entry and delivery of this Agreement have been fulfilled, done, obtained, effected and performed and are in full force and effect and no such authorisation has been or is threatened to be revoked or cancelled.
- e) this Agreement has been validly executed and any addendum/supplemental Agreement to the main Agreement or each contract document constitutes or will constitute, when executed, legal, valid and binding obligations of the Borrower enforceable in accordance with their respective terms.
- f) nothing in this Agreement conflicts with any law, regulation or bye law of the Central or a State Government or any local or revenue/tax or statutory authority or any such other authority, which is binding on the Borrower and the Borrower hereby undertakes and confirms that in the event the Bank suffers or incurs or is put to any costs, charges, expenses, penalties, claims, demands and damages that the Bank may incur or be put to by reason of entering into this Agreement with the Borrower or by acting in pursuance of this Agreement because of the

Borrower or the Bank thereby violating or infringing any such law, regulation or bye law the Borrower shall, forthwith on demand by the Bank and without any demur, protest or default pay/ reimburse to the Bank all such costs, charges, expenses etc. so incurred or suffered by the Bank.

- g) the Borrower's obligations under this Agreement and the contract documents will constitute private and commercial acts done and performed for private and commercial purposes and the Borrower will not be entitled to claim immunity for themselves or any of their assets from suit, execution, attachment or legal process in any proceedings in relation to this Agreement or the contract documents.
- h) the Borrower has not taken any other Overdraft Facility, Advance, Facility or debt of any nature whatsoever from the Bank and if taken, the same has been disclosed correctly and the Borrower is not a Guarantor or given any security to any Overdraft Facility, Advance, Facility or debt of any nature whatsoever granted by the Bank to any other person(s) and if given, the same has been disclosed correctly.
- i) there is no charge, lispensens, lien or other encumbrance or legal dispute of any nature on the Borrower or the whole or any part of the Security. The Borrower has a clear and marketable title to the Security.
- j) the Borrower shall keep himself acquainted with the rules (if any) prescribed by the Bank in force from time to time.
- (k) that the Borrower (i) is a major and is of sound mind (where a / the Borrower is an individual); (ii) is a body corporate duly constituted and incorporated under the laws of India (where a / the Borrower is a company incorporated under the Companies Act, 1956 or any other body corporate); (iii) is a partnership firm within the meaning of the [Indian] Partnership Act, 1932 comprising of the persons mentioned in Item No.IV of Schedule A as partners (where a / the Borrower is a partnership firm); and is competent to contract and enter into and perform his/her/its obligations under this Agreement.
- (l) that the Borrower has paid and will pay when due all public demands such as income tax, property taxes and all other taxes and revenues payable to the government or any local body/authority. There are no proceedings pending against the Borrower or any of the Borrower's properties under the provisions of the Income Tax Act, 1961.
- (m) Where the Borrower is a Company, the Board and Company is authorized and has taken all necessary approvals required under the Companies Act, 1956 and the borrowing is not an ultra virus borrowing.

All representations and warranties of the Borrower in this Agreement shall be deemed to be repeated by the Borrower on every day from the date of this Agreement until the said Dues are paid to the Bank in full; and the Borrower will forthwith inform the Bank in the event of any representation or warranties being or becoming untrue or incorrect on any day or at any time.

ARTICLE 7

EVENT OF DEFAULT & REMEDIES OF THE BANK

If one or more of the events specified in this Article (hereinafter called "Event of Default") shall have happened, then the Bank by a written notice to the Borrower may declare that the principal, all accrued interest and all other amounts payable by the Borrower shall become payable forthwith by the Borrower to the Bank under or in terms of this Agreement, and upon such declaration the same shall become due and payable forthwith and the Security, created in favour of the Bank for the Overdraft Facility shall become enforceable.

7.1 EVENTS OF DEFAULT

- a) **Payment of Dues:** If a default shall have occurred in payment of the Dues or any part thereof or any other amounts payable or the payment made falls short of any amount due and payable to the Bank in terms of this Agreement.
- b) **Representations and Warranties:**
If any representations or statements or particulars made in the Borrower's proposal / Application herein are found to be incorrect or the Borrower commits any breach or default in performance or observance of this Agreement or any documents creating Security or fail to keep or perform any of the terms or provisions of any other agreement between the Bank and Borrower in respect of this Overdraft Facility;
- c) **Performance of Covenants:** If default shall have occurred in the performance of any covenants and conditions, on the part of the Borrower under this Agreement between the Borrower and the Bank.
- d) **Non delivery of Cheques:** If the Borrower fails to deliver inchoate Cheques in accordance with the terms of this Agreement.
- e) **Non-payment through direct instruction:** Where the Borrower has accepted payment of due amounts through direct deduction from salary or direct debit from his bank account or through Electronic Fund Transfer and any such payment is not received or honoured or cleared.
- f) **Alienation of Security:** If the Security or any part thereof is let out, given on leave and license, disposed off, leased, charged, encumbered, used for commercial purpose or otherwise alienated in any manner whatsoever without the prior written permission of the Bank.
- g) **Depreciation of Security:** If there is any deterioration or impairment of any kind of the Security, or any part thereof or any decline or depreciation in the value or market price thereof (whether actual or reasonably anticipated), which causes the Security in the judgment of the Bank to become unsatisfactory as to character or value ;
- h) **Insolvency:** The insolvency, winding up, failure in business, commission of an act of insolvency, general assignment for the benefit of creditors, if the Borrower suspends payment to any creditors or threatens to do so, filing of any petition in bankruptcy of by, or against the Borrower or filing up of any petition for winding up / insolvency of the Borrower;

- i) Divorce or Death: Where any of the Borrower or Guarantor is divorced or dies or becomes a lunatic.
- j) Inability to repay the Overdraft Facility: if there is reasonable apprehension that the Borrower or the Guarantor are unable to pay their debts or either of the Borrower or the Guarantor has admitted its inability to pay its debts, as they become payable;
- k) Change in Financial Position : if the Borrower or the Guarantor suffers any Material Adverse Effect on the Borrower's financial condition or profits or business and of any material change in the Borrower's business ;
- l) Legal conviction: if the Borrower or the Guarantor is convicted under any criminal law in force;
- m) If the Borrower or Guarantor does any act which may affect the Security or the value of such Security.
- n) If the Security is destroyed beyond repair for any reason whatsoever;
- o) If at any time the Security is used for any illegal or unlawful purposes;
- p) There exists any other circumstance, which in the sole opinion of the Bank is prejudicial to the interest of the Bank;
- q) Attachment, Distraint etc.: If the Security is attached or seized or becomes a part of any other legal proceeding;
- r) Cross Default: If the Borrower or Guarantor has made a default under any Overdraft Facility either under this Agreements or other contract with the Bank.
- s) If any litigations or proceedings (including arbitration or conciliation proceedings) are initiated against or orders or decrees are passed against or notice are received by the Borrower or the Guarantor.
- t) Failure to deliver balance confirmation: If the Borrower fails to sign and deliver to the Bank the balance confirmation of the Bank's Overdraft Facility as and when so required by the Bank.
- u) Change in employment/business: There is any change in the terms or place of employment or business and the same is not informed to the Bank.
- v) Conditions precedent Disbursement: Where the Overdraft Facility disbursement is to be in installments, the Borrower fails to fulfill the conditions precedent stipulated in this Agreement or any schedule hereto or in any other communication, prior to the date of disbursement of each of the installments (or such extended period as may be permitted by the Bank).
- w) If the Borrower (being a Company) does not get the charge of the Bank registered with the concerned Registrar of Companies within the statutory period or it goes into liquidation for the purpose of amalgamation or reconstruction or it decides for the same, except with prior written approval of the Bank;
- x) If a Receiver is appointed in respect of the whole or any part of the assets of the Borrower;
- y) If the Borrower ceases or threatens to cease or carry on its business;
- z) If it is certified by an Accountant of a Firm of Accountants appointed by the Bank (which the Bank is entitled and hereby authorised to do so at any time) that the liabilities of the Borrower exceed the Borrower's assets or that the Borrower is carrying on business at a loss;

- aa) If any order is passed by any Governmental, judicial, quasi-judicial or any other authority affecting the operation of the said Account.

7.2 NOTICE ON THE HAPPENING OF AN EVENT OF DEFAULT

- a) If any Event of Default or any event which after a lapse of time is capable of becoming an Event of Default takes place, the Bank shall be entitled to forthwith call upon the Borrower to repay the Overdraft Facility and all Dues to the Bank and in such case it shall be the obligation of the Borrower to immediately repay the Overdraft Facility and Dues to the Bank. In case of default by the Borrower to immediately repay the Overdraft Facility and Dues the Bank shall be entitled to without prejudice to the other rights and remedies available, to the Bank, under this Agreement and in law, to enforce Security created by the Borrower in favour of the Bank in terms of this Agreement.
- b) Upon the Security becoming enforceable, the Bank shall, without prejudice to its other rights and remedies, be entitled to and shall have absolute power and authority to use its discretion to sell and dispose off the Security or any part of the same by private treaty, without (as far as may be) the intervention of the Court, as and when the Bank may, in its absolute discretion, deem fit and to apply the net proceeds of such sale in satisfaction so far as the same will extend towards liquidation of the Overdraft Facility. The Borrower hereby agrees and undertakes not to raise any dispute as to the value at which the Security is 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 the sale or transfer of the Security under this Article.
- c) The Bank may also terminate this Agreement at any time after the expiry of the period of notice.
- d) Notwithstanding any cancellation or termination pursuant to the provisions of this Article, all the provisions of this Agreement shall continue in full force and effect as herein specifically provided mutatis mutandis till such time as the Overdraft Facility Amount is repaid by the Borrower, to the satisfaction of the Bank.

7.3 MAKING GOOD ANY SHORTFALL

If the net sum realized through the sale/ transfer of Security is insufficient to cover the full amount of the amounts owed by the Borrower, then without prejudice to the other rights and remedies of the Bank under this Agreement or in law, the Borrower agrees to pay to the Bank forthwith at the Bank's demand such amount as will make up the shortfall.

ARTICLE 8

WAIVER

No delay in exercising or omission to exercise, any right, power or remedy accruing to the Bank

under this Agreement upon any default under this Agreement or any other document shall impair any such right, power or remedy nor shall be construed to be a waiver thereof or any acquiescence in such default; nor shall the action or inaction of the Bank in respect of any default or any acquiescence by it in any default affect or impair any right, power or remedy of the Bank in respect of any other default.

ARTICLE 9

EFFECTIVE DATE OF TERMS AND CONDITIONS

This Agreement shall come in force from the date of signing of this Agreement and shall remain in force and effect until all the monies due and payable to the Bank under this Agreement between the Borrower and the Bank are fully paid to the satisfaction of the Bank.

ARTICLE 10

SECURITISATION/ASSIGNMENT

The Borrower expressly recognizes and accepts that the Bank shall, without reference to or any intimation to the Borrower, be absolutely entitled and have full power and authority, to sell, assign, securities or transfer to any third party or person as the Bank may decide the Overdraft Facility and all outstanding due and the rights and obligations under this Agreement and any security/additional security (including Guarantee/s) which may be created in favour of the Bank, in any manner, in whole or in part and on such terms as the Bank may decide including reserving to the Bank the power to proceed against the Borrower, additional security or Guarantor on behalf of the assignee/transferee in events of default for any amounts due by the Borrower under this Agreement. Any such sale, assignment, transfer or securitization shall bind the Borrower and the Borrower shall accept the third party as its sole creditor or creditors and in such event the Borrower shall pay to the Bank or such creditor or as the Bank may direct, the outstanding amounts due by the Borrower under this Agreement. The Borrower shall not be entitled directly or indirectly to sell/transfer/assign the benefit or obligation of this Agreement without the prior written permission of the Bank.

ARTICLE 11

COLLECTION / ADMINISTRATION

- a) The Borrower expresses, recognizes and accepts that the Bank shall, without prejudice to its right to perform such activities itself or through its officers or employees, be entitled and shall have full power and authority to appoint one or more third parties as the Bank may select and to delegate to such third party all or any of its functions, rights and powers under this Agreement relating to administration of the Overdraft Facility including the right and authority to collect and receive on behalf of the Bank from the Borrower the interest and other amounts due from the Borrower under this Agreement and to perform and execute all lawful acts, deeds, matters and things connected therewith and incidental thereto including sending notices, contacting the Borrower, receiving cash/cheques/drafts/Mandates from the Borrower

and giving valid and effectual receipts and discharge to the Borrower. For the aforesaid purpose, the Bank shall be entitled to disclose to such third parties all necessary or relevant information pertaining to the Borrower and the Overdraft Facility and the Borrower hereby consents to such disclosure by the Bank.

- b) The Borrower expressly agrees and accepts that the Bank shall have absolute right to shift or transfer the place of Concerned Branch at any time at any location in India without prior-post intimation to the Borrower. In the event of such transfer the Borrower agrees to attend such transferred office for all purpose of this Agreement and such office shall be the Concerned Branch.

ARTICLE 12 MISCELLANEOUS

12.1 Inspection etc.

The Borrower shall permit inspection of all books of accounts and other records maintained by the Borrower or his agent at any place in respect of the Overdraft Facility to the persons authorized by the Bank. The Borrower shall also permit similar inspection by such other companies, other Banks, institutions, credit bureaus or bodies as the Bank may appoint or authorize for the purpose of the Overdraft Facility granted by the Bank.

12.2 Statement of Account etc.

- a) The statement of accounts of the Bank duly certified by its authorised officer, shall be conclusive evidence of amounts due to the Bank and of payments received by the Bank.

12.3 Sharing of Information

The Borrower/s, irrevocably agrees and consents to the Bank at any time and in any manner disclosing and/or making available to any agencies, bureaus (including credit bureaus specified by the Reserve Bank of India, which presently includes The Credit Information Bureau (India) Limited) , affiliates or subsidiaries of the Bank, associations and other persons whosoever any information (including personal and financial information) and documents of or relating to the Borrower/s and/or the Guarantor/s, including any Credit Information, in such cases where the Bank considers appropriate including where such disclosure is permitted or required by or under law, circular or guideline or where the Bank is of the view that the interests of the Bank require such disclosure or for furnishing such information and documents for preparation, publication and distribution of credit reports and credit opinions relating to the Borrower to other persons including banks and financial institutions. The provisions of this clause shall survive even after the term / termination of this Agreement and the repayment of all dues of the Borrower/s.

The Borrower agrees that if the Borrower/s commit/s any breach of any provision of this Agreement or any default or delay in the repayment of the Overdraft Facility or any amount payable under this Agreement whatsoever which the Borrower/s is/are liable to pay, the Bank shall have the unqualified right to disclose or publish the Borrower's/s' name/s and particulars (including photographs and particulars of their accounts and default), as a defaulter in such manner as the Bank may deem fit.

12.4 Service of Notice

Any notice or request to be given or made by a party to the other shall be in writing. Such notice or request shall be deemed to have been duly received by the party to whom it is addressed if it is given or made at the address specified below or at such address as the parties to this Agreement shall have intimated other address in the manner provided under this Agreement.

For the Bank: At the address as mentioned in Item No.III of Schedule A.

For the Borrower: The address as stated in Item No.IV of Schedule A hereto.

The Bank shall not be bound to accept instructions from any agent appointed by the Borrower and shall be entitled to insist that all instruction under this Agreement be provided to the Bank directly / personally by the Borrower.

The Bank may send any notice to the Borrower or to any person concerned in any manner as it may decide at its sole discretion provided that all such notices shall be in writing. However the Borrower shall send any notice to the Bank either through hand delivery or through Registered Ad. Post only.

Notice shall be deemed to have been received, if given by post on the expiration of 3 days after the same shall have been delivered to the post office, if given by telegram, on the expiration of 24 hours after the telegram shall have been delivered to the telegraph office and if delivered personally, when left at the address of the Borrower as aforesaid and if sent by facsimile, the notice shall be deemed to have been delivered on the day of transmission; provided that immediately on the day of the facsimile transmission a copy of the notice is despatched by a reputable overnight courier. A certificate by an officer of the Bank who sent such notice that the same was so sent shall be final and conclusive. Any notice or request by the Borrower shall be deemed to have been received by the Bank on actual receipt thereof by the Bank. [Any notice sent by the Bank through any manner/mediator shall not be treated as an agent of the Bank.](#)

12.5 Severability.

If any provision of this Agreement is held to be illegal, invalid, or unenforceable under any present or future law, and if the rights or obligations under this Agreement of the Parties will not be materially and adversely affected thereby (a) such provision will be fully severable; (b) this Agreement will be construed and enforced as if such illegal, invalid, or unenforceable provision

had never comprised a part hereof: and (c) the remaining provisions of the Agreement will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance here from.

12.6 Acknowledgement of the terms

The Borrower acknowledges and accepts the rates of interest and its calculation method, other fees, charges and all other amounts payable as per the terms of this Agreement as reasonable and the Borrower has understood the meaning of each terms and financial implications, amounts payable and liabilities and obligations created under this Agreement .

12.7 Supremacy & Amendment

This Agreement supersedes all discussions and Agreements (whether oral or written, including all correspondence) prior to the date of this Agreement between the Parties with respect to the subject matter of this Agreement. This Agreement may be modified or amended only by a writing duly executed by or on behalf of each of the Parties.

12.8 Governing law.

The Parties agree that this Agreement shall be governed by the laws of India.

12.9 Arbitration

Unless the same falls within the jurisdiction of the Debts Recovery Tribunal established under the Recovery of Debts Due To Banks and Financial Institutions Act, 1993, or any other competent authority for Debt related disputes constituted in any other law in future or which are in force, any and all claims and disputes arising out of or in connection with this Agreement or its performance shall be settled by arbitration by a single Arbitrator to be appointed by the Bank. The venue of arbitration shall be, in either Mumbai or New Delhi or Chennai or Kolkata or at the Concerned Branch at the sole discretion of the Bank . The arbitration shall be conducted under the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof for the time being in force and the award of such Arbitrator shall be final and binding upon the Parties hereto.

12.10 Jurisdiction

In the event that the claim or dispute does not fall within the jurisdiction of the Debts Recovery Tribunal established under the Recovery of Debts Due To Banks and Financial Institutions Act, 1993, for the purposes of arbitration mentioned in Clause 12.9 and subject to the provisions of clause 12. 9 above, the Courts aforesaid where the venue of arbitration is decided, or if law does not permit the same, the Courts of the city in which the concerned servicing branch of the Bank is situated, shall have exclusive jurisdiction in respect of any suit, petition, reference or other filing permitted or required to be made pursuant to the Arbitration and Conciliation Act, 1996 in respect

of the matters arising out of this Agreement including, without limitation, a petition for appointment of an arbitrator or arbitrators under section 11 of the Arbitration and Conciliation Act, 1996 in relation to this Agreement.

12.11 Nothing contained in this Agreement shall prejudice the rights of the Bank to proceed under the Securitisation, Asset Reconstruction and Enforcement of Security Interests Act, 2002 ("Securitisation Act").

12.12 The Borrower acknowledges that the Borrower has been furnished with a copy of this Agreement and all other documents in relation to this Agreement.

SCHEDULE A

Item.	Particulars	
I	Place of Execution of Agreement	
II	Date of Execution of Agreement	
III.	Address of the concerned Branch Office of the Bank	<p>Kotak Mahindra Bank Limited</p> <p>The Bank may in its discretion change the Concerned Branch from time to time.</p>
IV.	Name and Address of Borrower/s	<p>1) Name:</p> <p>_____</p> <p>_____</p> <p>Constitution: <input type="checkbox"/> Individual <input type="checkbox"/> Company <input type="checkbox"/> Partnership <input type="checkbox"/> Others</p> <p>Address</p> <p>: _____</p> <p>_____</p> <p>Pin: _____</p> <p>2) Name:</p> <p>_____</p> <p>_____</p> <p>Constitution: <input type="checkbox"/> Individual <input type="checkbox"/> Company <input type="checkbox"/> Partnership <input type="checkbox"/> Others</p> <p>Address</p> <p>: _____</p> <p>_____</p> <p>Pin: _____</p> <p>3) Name:</p> <p>_____</p> <p>_____</p> <p>Constitution: <input type="checkbox"/> Individual <input type="checkbox"/> Company <input type="checkbox"/> Partnership <input type="checkbox"/></p>

		<p>Others Address : _____ _____</p> <p>Pin: _____</p> <p>4) Name: _____ _____</p> <p>Constitution: <input type="checkbox"/> Individual <input type="checkbox"/> Company <input type="checkbox"/> Partnership <input type="checkbox"/> Others Address : _____ _____</p> <p>Pin: _____</p>
V.	Overdraft Facility Amount (Amount in numbers and words):	<p>Number: Rs _____ _____/-</p> <p>Words: (Rupees _____ _____ _____ Only)</p>
VI.	<p>Rate of Interest :(Tick, whichever is applicable)</p> <p>Fixed Interest Rate as per Schedule B (</p> <p>Adjustable Interest Rate as per Schedule C (</p> <p>Rate of Interest _____ % p.a. and</p>	
VII	Substitute interest	<input type="checkbox"/> _____ % p.a. compounded monthly
VIII	Premature closure charges	<p>If the closure is within a period of [] months from the date of this Agreement, the premature closure charges shall be computed as []% of the Operating Limit.</p> <p>If the closure is at any time thereafter, the premature closure charges shall be computed at []% of the Operating Limit.</p>
IX.	Cheque/SI/Debit Mandate Re-presentation Charges	

X.	Swap charges (for placement of inchoate cheque)	Upto Rs. 500 Per swap instance
XI.	Collection Charges	3% per month
XII.	Guarantor/s	<p>1) Name: _____ _____ Constitution: <input type="checkbox"/> Individual <input type="checkbox"/> Company <input type="checkbox"/> Partnership <input type="checkbox"/> Others Address : _____ _____ _____ Pin: _____</p> <p><input type="checkbox"/> 2) Name: _____ _____ Constitution: <input type="checkbox"/> Individual <input type="checkbox"/> Company <input type="checkbox"/> Partnership <input type="checkbox"/> Others Address : _____ _____ _____ Pin: _____</p> <p>3) Name: _____ _____ Constitution: <input type="checkbox"/> Individual <input type="checkbox"/> Company <input type="checkbox"/> Partnership <input type="checkbox"/> Others Address : _____ _____ _____ Pin: _____</p> <p>4) Name: _____ _____</p>

		Constitution: <input type="checkbox"/> Individual <input type="checkbox"/> Company <input type="checkbox"/> Partnership <input type="checkbox"/> Others Address : _____ _____ _____ Pin: _____
XIII	Non Utilisation Charge	0.25% of difference between actual average utilization and 25% of the average operating limit during the quarter, subject to a minimum of Rs. 1250 + ST, chargeable on a quarterly basis. To be levied quarterly at 0.25% per quarter subject to a minimum of Rs. 1250/- + ST.
XIV	Percentage of average outstanding for Minimum Amount Due Date of next month by which the Minimum Amount Due to be deposited in the Account.	
XV	Annual Review Charges	Rs.5000/-
XVI	Please tick the check box if the annual review is not on the basis of the formulae in clause 2.1(b) hereto.	<input type="checkbox"/> Yes, I would not like the annual review to be on the basis of the formulae set out in Clause [] above and agree that it should be at the sole and exclusive discretion of the Bank.
XVII	Tenure of the Overdraft Facility [Please tick any one]	Tenure : _____ Months. <input type="checkbox"/> Drop Down Overdraft Facility <input type="checkbox"/> Constant Overdraft Facility
XVIII	Documentation Charges	Upto Rs.10000/-

SCHEDULE B
TERMS AND CONDITIONS APPLICABLE TO THE OVERDRAFT FACILITY WITH
FIXED INTEREST RATE

(A) Computation of Interest :

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

Pre-EMI Interest shall be _____% p.a.

The same shall be computed on a Monthly Rest basis on the average of the amount outstanding in the Account during the period of the said month.

The same shall be payable on a monthly basis latest by the _____ date of the next month.

SCHEDULE C
TERMS AND CONDITIONS APPLICABLE TO THE OVERDRAFT FACILITY WITH
ADJUSTABLE INTEREST RATE

(A) Definition:

a) Adjustable Interest Rate (AIR) : Reference Rate

(+) / (-) _____% p.a., currently [_____].

b) "Reference Rate" shall mean:

Base Rate: means the interest rate announced by the Bank from time to time as its Base Rate in accordance with the guidelines issued by Reserve Bank of India.

(B) Computation of Interest:

a) The Borrower shall be charged AIR and Pre-MI Interest (if applicable) on Monthly Rest Basis at the rate mentioned hereinabove.

b) The Reference Rate shall be rest on the period mentioned below and until such reset date, would be fixed irrespective of changes in Reference Rate (as applicable) in such period.

Sr. No.	Dates	Reset Date
1.	First Date	Availing of facility
2.	Second Date	
3.	Subsequent Reset	[●] months after Second Date and every other subsequent dates
4.		

(C) The Bank may vary the Base Rate from time to time in such manner as the Bank may deem fit, in accordance with the guidelines issued by Reserve Bank of India from time to time.

IN WITNESS WHEREOF the parties hereto have signed the day, month and year first above written.

Name of the Borrower (s)

Signature of the Borrower(s)

Signed and Delivered by the within named:
Kotak Mahindra Bank Limited by
the hand of Mr. _____
its authorized signatory.
