

PLOD BOOKLET NO. \_\_\_\_\_

VERSION 1.5

AGREEMENT NO.: \_\_\_\_\_

AGREEMENT

# PERSONAL LOAN SMART OVERDRAFT

BRANCH: \_\_\_\_\_

DMA NAME: \_\_\_\_\_

DMA STAMP: \_\_\_\_\_ PHONE NO. \_\_\_\_\_

## AGREEMENT FOR PERSONAL LOAN OVERDRAFT

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 individually and/or collectively referred to as "the **Borrower**") of the SECOND PART; AND

The person/s specified in Item No. V of Schedule A, (hereinafter individually and/or collectively referred to as "the Co-Borrower/s") of the THIRD PART

The person/s specified in Item No. VI of Schedule A, (hereinafter individually and/or collectively referred to as "the Guarantor/s") of the FOURTH PART

The Bank, the Borrower, the Co-Borrower/s and the Guarantor are hereinafter collectively referred to as "Parties" and individually as a "Party".)

The expressions "Borrower" or "Co-Borrower/s" or "Guarantor/s" shall, unless it be repugnant to the meaning or context thereof, mean and include, where the party concerned is an individual or a proprietorship firm, his/her heirs, executors and administrators; where the party concerned is a partnership firm, the partners or partner for the time being of the said firm, the survivors or survivor of them and the heirs, executors and administrators of the last surviving partner; where the party concerned is the Karta of a Hindu Undivided Family and the borrowing/guarantee is for the purposes of the Hindu Undivided Family, the member or members for the time being of the said Hindu Undivided Family, and their respective heirs, executors and administrators and assigns; and where the party concerned is a company, its successors in title, where the party concerned is an unincorporated body, all the members of such body and their respective successors, where the concerned party is the Governing Body of a Society, respective successors of the members of the Governing Body and any new members elected, appointed or co-opted and where the concerned party is the Trustees of the Trust, their successors

### WHEREAS

- (a) The 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. VII of Schedule A hereto ("Overdraft Facility"), 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 words and 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. 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) "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.
  - c) "Affiliates" 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/ in control of the company];
    - (b) with reference to a company a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, 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;
    - (d) with reference to a HUF, all the members of such 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 the Association of Persons.
  - d) "Credit Information" means all information, documents, representations, particulars of operations and business, financial information, representations on future business prospects and clarifications which has been or may hereafter be furnished by the Borrower, to the Bank from time to time or which, whether furnished as aforesaid or by any other person, in the opinion of the Bank relates to or may have a bearing on the credit worthiness or financial condition of the Borrower, or the ability of any of them to repay the proposed Overdraft Facility or any part thereof.

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- 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) "Rate of Interest" when applicable to the Overdraft Facility, shall mean the rate of interest payable on the Overdraft Facility as more particularly set out in Item No.X of Schedule A hereto or as announced and amended by the Bank from time to time as per this Agreement.
- g) "Guarantee" means the guarantee (if any) given by the Guarantor/s 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) "Indebtedness" means any past, present or future indebtedness of, or money or assets owed, payable or deliverable (and whether or not then due) by, the Borrower, or by any Affiliate/s of such Borrower, , or any of them to the Bank or to any Affiliate of the Bank on any account whatsoever.
- i) "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.
- j) "Maximum Overdraft Limit" means the maximum limit granted by the Bank to the Borrower and/or the Co-Borrower/s under the Overdraft Facility as more particularly mentioned in Item No.VIII of Schedule A hereto.
- k) "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.
- l) "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.
- m) "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.
- n) "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.
- o) "Overdue Interest" shall mean the interest payable in the event of default in repaying the dues due and payable to the Banks more particularly set out in Clause 2.2(f), and 5.3(b) hereto.
- p) "Overline Interest" shall mean interest payable on the entire amounts outstanding more particularly set out in Clause 2.2 (a) and 2.2 (g) hereto.
- q) "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 Overdraft Facility and the Sanction Letter issued by the Bank to the Borrower sanctioning the Overdraft Facility.
- 1.2 In this Agreement, unless the context otherwise requires:
- words denoting the singular number shall include the plural and vice versa;
  - the pronouns "he", "she", "it" and their cognate variations are used as interchangeable and should be interpreted in accordance with the context ;
  - heading and bold typeface are only for convenience and shall be ignored for the purposes of interpretation;
  - references to the word "include" or "including" shall be construed without limitation;
  - 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;
  - 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;
  - "Amendment" includes a supplement, modification, novation, replacement or re-enactment and "amended" is to be construed accordingly;
- 1.3 Except where the context otherwise requires the term Borrower includes the Co-Borrower/s and vice versa
- 1.4 If there is more than one Co-Borrower/s mentioned in Item No. V of the Schedule A hereunder written, wherever the context so requires, the word "Co-Borrower shall be construed as "Co-Borrowers and the grammar and construction of every concerned sentence shall be deemed to be appropriately amended so as to indicate more than one Co-Borrowers. 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;
- 1.5 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.
- 1.6 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
- 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. VIII 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.
  - The Operating Limit as aforesaid shall, subject to the other terms and conditions of this Agreement, either automatically stand reduced every year at the end of 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. IX 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. IX 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. IX 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.
  - The Bank shall be entitled to review the Maximum Overdraft Limit and the Operating Limit annually in its sole and exclusive discretion.
  - 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 and compute the Borrower's Operating Limit before issuing any cheque or drawing any moneys under the Loan.
  - The tenure of the Overdraft Facility shall be for the period as mentioned in Item No. IX 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, 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.
  - Notwithstanding the annual review mentioned hereinabove the Bank shall also be entitled to conduct regular monitoring of the Overdraft facility granted to the Borrower. The monitoring of the said Account/facility by the Bank may involve periodic analysis of the performance of the said Account/facility vis-à-vis various parameters including but not limited to parameters such as utilization, interest servicing, over utilization, cheque returns, regularities in payments, etc., as per the Bank's policy, latest financials of the Borrower and/ or any other factors and/ or documents considered relevant by the Bank. The Bank shall, after such monitoring, 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 Operating Limits as aforesaid, as the Bank may deem fit without any intimation to 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 monitoring as aforesaid results in modification of

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- the Operating Limit, 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 at-least 30 days prior written notice of the same to the Bank.
- 2.2 Interest
- (a) The Borrower shall liable to pay interest on the daily outstanding balance in the said Account. Interest for each month shall be 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 Overline Interest on the entire amounts outstanding at the rate specified in Item No. [XII] of the Schedule A hereto.
- (b) 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) The rate of interest applicable to the Overdraft Facility and the terms applicable to such Rate of Interest, in addition to the general terms stated in this Agreement, are as stated in Schedule. 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 Rate of Interest with intimation to the Borrower. The Bank shall be the sole judge to determine whether such conditions exist or not.
- (d) 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.
- (e) 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.
- (f) In case of any default committed by the Borrower, in making payment of the principal and/or interest, the unpaid amounts shall carry interest at the rate specified at the rate mentioned in Item No. XI of Schedule A ("Overdue Interest") and shall be computed from the respective due date/s for payment and shall become payable upon the footing of compound interest with daily rates. The Borrower/s, shall pay collection charges to the Bank. Collection Charges shall be as specified in Item No. XIX of Schedule A. Also it is hereby clarified that the obligation to pay the Overdue Interest shall not entitle the Borrower to claim a defense that no event of default as mentioned hereunder has occurred.
- (g) In case where the Borrower has drawn or the Bank has allowed the drawing in excess of the operating limit and/or the Maximum Overdraft Limit, the Borrower shall be liable to pay Overline Interest on the entire amounts outstanding, this interest will also be levied on the entire outstanding where the actual drawing together with interest and other charges exceed the operating and or the Maximum Overdraft Limit.
- (h) Notwithstanding anything contrary contained hereinabove in case of breach and/or violation of any of the provisions of this agreement by the Borrower, the Bank shall at its sole discretion put a debit-freeze on the Bank account/s of the Borrower. The instructions to debit-freeze the bank account/s will prohibit the Borrower as the case may be from debiting any amount from the bank account/s. The Bank shall regularize the account/s on repayment of the entire dues of the Borrower to the bank.
- 2.3 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 draws 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 be used by the Borrower only for permitted purposes and shall not be used for any immoral or speculative purposes or for any capital market and real estate activities
- 2.4 Fees, Charges, Alteration in, 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. XVII 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 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 the period of the Overdraft Facility or makes a limited utilization of the Overdraft Facility, at the discretion of the Bank, the Borrower may have to pay the Bank non-utilization charges which shall be computed as follows: (a) the percentage mentioned at Item No. XV of Schedule A hereto shall be applied on the average Operating Limit during a 12 month period identified by the Bank and every year annually thereafter, (b) to the extent the daily average utilization during the said 12 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. XV of Schedule A hereto, subject to a minimum amount mentioned in Item No. XV of Schedule A hereto. The said amount shall be levied annually 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 Maximum Overdraft Limit or Operating Limit as the case may be as indicated in Item No. XIII of Schedule A hereto.
- (e) In the event of the Borrower failing to maintain the Minimum Credit Turnover as prescribed by the Bank, the Borrower shall be liable to pay to the Bank non maintenance charges at such percentage of the Maximum Overdraft Limit or Operating Limit as the case may be as indicated in Item No. XVIII of Schedule A hereto
- (f) 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.
- (g) 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.
- (h) If the Borrower has committed any event of default as described in this Agreement prior to the full utilization of the Overdraft Facility, the Borrower shall not be permitted by the Bank to make any further draws under the Overdraft Facility. In such case irrespective of the Overdraft Facility amount as mentioned in Item No VII of Schedule A the amounts outstanding in the Account shall be deemed to be the Overdraft Facility for the purpose of this Agreement.
- (i) The Bank shall have the right to collect all such other charges and/or fees as deemed fit by the Bank from time to time and the Borrower shall be liable to pay such other charges upon receipt of such intimation from the Bank
- (j) Notwithstanding anything herein contained, the Bank shall have the right, at any time or from time to time, to change or vary the rates, fees, charges, interest mentioned in Schedule A 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. Upon intimation of such change or variation, Borrower shall be deemed to have consented to such change or variation.
- (k) Notwithstanding anything herein contained, the Bank shall have the right, at any time or from time to time, to review 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.
- 2.5 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) 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 Bank, 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 however hereby confirms that 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. 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) If the Borrower at any time during the period 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. XIV of **Schedule A** for every such replacement.
- (e) 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.

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## 2.5 A 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:

- first the percentage indicated in Item no. XVI of Schedule A hereto shall be applied on the outstanding in the Account at the end of the month inclusive of interest.
- 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.
- 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. XVI 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.

## 2.6 Joint and Several liabilities of the Borrower and/or the Guarantor/s

Notwithstanding anything herein stated, the liability of the Borrower and/or the Guarantor/s (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.

## 2.7 Cross Default

The Borrower, and/or the Guarantor/s agree and confirm that the Bank may at its absolute discretion appropriate any payments made by the Borrower, and/or the Guarantor/s under or pursuant to this Agreement towards any other agreement or transaction entered into by the Borrower, and towards any other Indebtedness and such appropriation shall be final and binding upon the Borrower, and/or Guarantor/s who shall continue to remain liable to the Bank for payment of dues under this Agreement in respect of which such sums of money were so paid but were appropriated towards another agreement or transaction entered into by the Borrower, and/or Guarantor/s or towards any other Indebtedness. The provisions of this Agreement and any document executed pursuant to this Agreement shall apply mutatis mutandis to the manner of disposal and appropriation under this Article.

## 2.8 Set Off

Without prejudice to what is stated hereinabove, the Borrower and/or the Guarantor/s hereby expressly agrees and confirms that in the event of the Borrower 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 and/or the Guarantor/s, at its sole discretion and without notice to the Borrower and/or the Guarantor/s, be at liberty to apply any other money or amounts standing to the credit of the Borrower and/or the Guarantor/s in any account (including fixed deposit account) of the Borrower and/or the Guarantor/s (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.

## 2.9 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

#### CONDITIONS FOR DISBURSEMENT

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

- 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.
- Non-existence of event of default:** No event of default as defined in this Agreement shall have happened.
- 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.
- 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.
- 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 shall procure evidence satisfactory to the Bank of the proposed utilization of the proceeds of the disbursement of the Overdraft Facility.
- 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.
- Guarantees/Securities etc.:** The Borrower shall have provided and executed such Guarantee/s, necessary documents, writings and hand over inchoate Cheques, as may be required by the Bank.
- 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.

### ARTICLE 4 COVENANTS

#### 4.1 Affirmative Covenants

The Borrower hereby covenants with the Bank that-

- The Borrower shall not utilise the Overdraft Facility for any purpose whatsoever other than permitted purposes and not for any immoral or speculative purposes or capital market or real estate.
- 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.
- 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.
- Any person authorized by the Bank will be allowed to have free access for the purpose of inspection/supervising the same.
- 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.
- 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.
- Any person authorized by the Bank will be allowed to discuss, collect information with/from the competent authority relating to the Borrower shall extend such cooperation as may be required.
- The Borrower shall promptly give written notice of:
  - Any material circumstances /event likely to have an adverse effect on the Borrower financial condition or profits or business and of any material change in the Borrower's business.
  - Any material change in the financial strength of the Guarantor/s(s).
- The Borrower shall, at such intervals as the Bank may require, deliver its financial statements .
- The Borrower, shall pay to the Bank the dues, Installments, interest, Overdue Interest, Collection Charges, damages, costs, charges, expenses and all other amounts due or payable to the Bank under or pursuant to this Agreement (hereinafter collectively referred to as "Overdraft Facility") on the Due Dates for the payment thereof.
- The Borrower, shall forthwith inform the Bank, in writing, if any Event of Default or any event which after a lapse of time is capable of becoming an Event of Default takes place
- Where the Borrower, is Hindu Undivided Family, that the borrowing / guarantee is for the purposes and benefit of the Hindu Undivided Family and its members.
- The Application for the Overdraft Facility has been signed by the Borrower for and on behalf of all the Borrowers, if any.
- The Borrower, is aware of and have understood the method by which interest has been computed and included in the Installments.

#### 4.2 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-

- 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.
- 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.
- 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 ;
- 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 ;
- In case the Borrower being a Company, make any amendments in the Borrower Memorandum and Articles without the prior written consent of the Bank ;
- In case the Borrower being a Company, declare any dividend if any installment towards principal or interest remains unpaid on its due date.

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- g) Utilise the Overdraft Facility for any speculative or anti-social or illegal purpose.  
Without prejudice to the liability of the Borrower to repay the Overdraft Facility, the Co-Borrower/s hereby agrees that they shall also be liable, jointly and severally, with the Borrower, for the payment of the Dues and all other amounts payable by the Borrower under this Agreement and for performance of the Borrower's obligations under this Agreement. All clauses contained herein specifically pertaining to payment of Installments and other amounts payable by the Borrower and obligations and liabilities of the Borrower under this Agreement shall apply mutatis mutandis to the Co-Borrower/s as if the term "Borrower" included also the Co-Borrower/s.
- 4.3 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:
- Any demand/or order passed by Central or State Government or any competent authority;
  - For preservation of performance, enforcement, realization, collection (Collection Charges shall be as specified in Item No. XIX 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 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) 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 Overdue Interest rate mentioned in Item No.XI 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.
- c) All the above monies payable under this Agreement, if not paid in time as above, shall be deemed to be part of the Dues.
- d) 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 hereunder and shall be paid to the Bank by the Borrower immediately and without delay or demur.

#### ARTICLE 5 REPRESENTATIONS AND WARRANTIES

The Borrower and/or the Guarantor/s hereby represents and warrants that:

- 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.
- the Borrower and/or the Guarantor/s does not violate any covenant, conditions or stipulations under any existing Agreements entered into by the Borrower and/or the Guarantor/s with any party, by availing the Overdraft Facility from the Bank.
- 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.
- 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.
- 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 and/or the Guarantor/s enforceable in accordance with their respective terms.
- 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 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 and/or the Guarantor/s or the Bank thereby violating or infringing any such law, regulation or bye law the Borrower and/or the Guarantor/s 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.
- the Borrower and/or the Guarantor/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 and/or the Guarantor/s 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.
- 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/s 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.
- the Borrower and/or the Guarantor/s shall keep himself acquainted with the rules (if any) prescribed by the Bank in force from time to time.
- that the Borrower and/or the Guarantor/s (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 and/or the Guarantor/s 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. V, V and VI of Schedule A as partners (where a / the Borrower and/or the Guarantor/s is a partnership firm); and is competent to contract and enter into and perform his/her/its obligations under this Agreement.
- that the Borrower and/or the Guarantor/s 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 and/or the Guarantor/s or any of the Borrower and/or the Guarantor/s's properties under the provisions of the Income Tax Act, 1961.
- Where the Borrower and/or the Guarantor/s 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 and/or the Guarantor/s in this Agreement shall be deemed to be repeated by the Borrower and/or the Guarantor/s on every day from the date of this Agreement until the said Dues are paid to the Bank in full; and the Borrower and/or the Guarantor/s 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 6 DECLARATIONS

- The Borrower declare/s, assure/s and state/s that, the Borrower is/are not a director or a [specified near] relative of a director and/or Senior Officer of the Bank (if the Borrower is/are an individual); and (ii) none of the partners (if the Borrower is/are a partner of a partnership firm) of the Borrower is/are a [near specified] relative of a director and/or Senior Officer of the Bank; and (iii) the Karta and none of the members of the Borrower is/are a [specified near] relative of a director and/or Senior Officer of the Bank (if the Borrower is an HUF); and (iv) none of its directors (if the Borrower is/are a company) is a director or [near specified] relative of a director and/or Senior Officer of the Bank;
- The term "Senior Officer" means an officer of the Bank who is in equivalent scale as an officer in senior management level in Grade IV and above in a nationalised 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.
- The Borrower make/s 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 agree/s that it is a condition of the grant of the Facility 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 Facility.
- The Borrower, hereby expressly agree that during the subsistence of the Overdraft Facility, the Bank shall have the liberty to shift, at its discretion, without notice to it, from time to time a part or portion of the out standings in the Overdraft Facility (hereinafter referred to as "the Participation" to "one or more Scheduled Commercial Banks (hereinafter referred to as "the Participating Bank/s"). The Borrower further agrees that such Participations shall be governed by the terms of the Uniform Code Governing Inter Bank Participations, 1988 and shall not affect the rights and obligations, inter se, the Borrower and the Bank in respect of the Overdraft Facility

#### 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 in favour of the Bank

##### 7.1 EVENTS OF DEFAULT

- 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.
- Representations and Warranties:  
If any representations or statements or particulars made in the Borrower proposal / Application herein are found to be incorrect or the Borrower commits any breach or default in performance or observance of this Agreement 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;
- 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/or the Co-Borrower/s and the Bank.
- Non delivery of Cheques: If the Borrower fails to deliver inchoate Cheques in accordance with the terms of this Agreement.
- 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

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Electronic Fund Transfer and any such payment is not received or honoured or cleared.

- f) 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;
  - g) Lunatic & Death: Where any of the Borrower dies or becomes a lunatic.
  - h) Inability to repay the Overdraft Facility: if there is reasonable apprehension that the Borrower are unable to pay their debts or either of the Borrower has admitted its inability to pay its debts, as they become payable;
  - i) Change in Financial Position : if the Borrower suffers any Material Adverse Effect on the Borrower s financial condition or profits or business and of any material change in the Borrower business ;
  - j) Legal conviction: if the Borrower is convicted under any criminal law in force;
  - k) There exists any other circumstance, which in the sole opinion of the Bank is prejudicial to the interest of the Bank;
  - l) Cross Default: If the Borrower has made a default under any Overdraft Facility either under this Agreements or other contract with the Bank.
  - m) 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.
  - n) 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.
  - o) 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.
  - p) 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).
  - q) 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;
  - r) If a Receiver is appointed in respect of the whole or any part of the assets of the Borrower;
  - s) If the Borrower ceases or threatens to cease or carry on its business;
  - t) 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 is carrying on business at a loss;
  - u) 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 without prejudice to the other rights and remedies available, to the Bank, under this Agreement
  - b) The Bank may also terminate this Agreement at any time after the expiry of the period of notice.
  - c) 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.

#### ARTICLE 8 LIABILITIES OF GUARANTOR/S

- a) The Guarantor/s guarantees to the Bank that in the event of the Borrower failing to pay / repay any Installments or the Overdraft Facility or any part thereof on the respective Due Dates for their payment under this Agreement or failing to pay the whole of the Dues/overdraft facility on recall of the Loan, the Guarantor/s(s) shall, jointly and severally, on demand, promptly pay and make good the same to the Bank without any dispute, delay or demur.
- b) Should the Guarantor/s fail, on invocation of this guarantee by the Bank, for any reason whatsoever to settle the claim made by the Bank within a maximum period of ten days from the date of the claim, the Guarantor/s shall be bound to pay interest at the rate of 3% per month on the amounts claimed by the Bank till the date of payment without prejudice to and in addition to any other remedy that the Bank may have against the Guarantor/s.
- c) The Guarantor/s agrees that the Guarantor/s's liability shall be that of a primary obligor and not merely as a surety and the Guarantor/s's obligations and liability shall not be impaired or discharged by reason of any facility or time given by the Bank to the Borrower or any indulgence or forbearance shown in payment or any dues or repayment of the Overdraft
- d) The Bank's rights against the Guarantor/s shall remain in full force and effect notwithstanding any arrangement which may be reached between the Bank and the Borrower or notwithstanding the release of that other(s) liability and notwithstanding that any time hereafter the other Guarantor/s may cease for any reason whatsoever to be liable to the Bank, the Bank shall be at liberty to require the performance by the Guarantor/s of his obligations hereunder to the same extent in all respects as if the Guarantor/s had at all times been solely liable to perform the said obligations.
- e) The Guarantor/s hereby agrees that without his consent/concurrence, the Borrower and the Bank shall be at liberty to vary, alter, or modify the terms and conditions of this Agreement and/ documents executed by the Borrower in favour of the Bank and in particular defer, postpone or revise the repayment of the Overdraft Facility and/or payment of Installments, interest and other monies payable by the Borrower to the Bank on such terms and conditions as may be considered appropriate by the Bank including any increase in the rate of interest in accordance with the provisions of this Agreement.
- f) The Bank shall have full liberty to exercise, without notice to the Guarantor/s and without in any way affecting this guarantee, at any time and in any manner any power or powers reserved to the Bank under this Agreement to enforce, or forbear to enforce payment of the Installments or other monies due to the Bank from the Borrower or any of the remedies available to the Bank, to enter into any composition or compound with or to grant time or any other indulgence or facility to the Borrower and the Guarantor/s shall not be released by the exercise by the Bank of its liberty in regard to the matters referred to above or by any act or omission on the part of the Bank or by any other matter or thing whatsoever which under the law relating to sureties would, but for this provision, have the effect of so releasing the Guarantors and the Guarantor/s hereby waives in favour of the Bank so far as may be necessary to give effect to any of the provisions of this guarantee, all the suretyship and other rights which a Guarantor/s might otherwise be entitled to enforce.
- g) This Guarantee shall be enforceable against the Guarantor/s for the payment of the Overdraft Facility outstanding or unrealised or lost.
- h) The Guarantor/s agrees that the copy of the statement of accounts of the Bank duly certified as correct shall be binding on the Guarantor/s as sums due and payable under this Agreement.
- i) The Guarantor/s's liability hereunder shall not in any way be affected by the bankruptcy or by any petition or resolution or order for the bankruptcy of the Borrower being presented, passed or made or by any change in the constitution of the Bank or the Borrower.
- j) The Guarantor/s hereby agrees and declares that the Borrower will be free to avail of further loans or other facilities in addition to the Overdraft Facility and/or renew the same during the subsistence of this guarantee and in that event the guarantee herein contained will not be affected or vitiated in any way whatsoever but will remain in full force and effect and binding on the Guarantor/s.
- k) The Guarantor/s hereby agrees that it shall not be necessary for the Bank to exhaust its rights or take any action against the Borrower before requiring the Guarantor/s to make payment under this Agreement.
- l) The Guarantor/s agrees to make the payment of sums due and payable under this guarantee when demanded by the Bank notwithstanding that a dispute is pending between the Bank and the Borrower in respect of any provision of this Agreement or any other related or connected document.
- m) This Guarantee shall be a continuing one and shall remain in full force and effect till such time as the Borrower repays in full the Overdraft Facility together with all interest, Late Payment Charges, costs, charges and all other monies that may from time to time become due and payable unpaid to the Bank under this Agreement.
- n) The Guarantor/s agrees that notwithstanding any defect in or invalidation of this Agreement and/or incomplete documents or writings, this guarantee shall be valid and operative and the Guarantor/s shall not be discharged from his liability hereunder except by performance of this guarantee.
- o) This guarantee shall not be wholly or partially satisfied or exhausted by any payments made to or settled with the Bank by the Borrower and shall be valid and binding on the Guarantor/s and operative until repayment in full of all monies due to the Bank under this Agreement.
- p) This guarantee shall be irrevocable and shall be in full force and effect notwithstanding that the Bank may have obtained any other guarantee, corporate or personal, to secure the Overdraft Facility till such time as all the dues of the Bank including repayment of the Overdraft Facility along with the payment of interest and all other expenses and due are not paid by the Borrower.
- q) The Guarantor/s agrees and confirms that no consideration by way of fees, charges, brokerage or commission has been paid or received towards the execution of this guarantee.
- r) This guarantee shall be binding upon the each Guarantor/s's heirs, executors and administrators.

#### ARTICLE 9 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 10 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 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

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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, 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 whatsoever any information (including personal and financial information) and documents of or relating to the Borrower 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.  
The Borrower agrees that if the Borrower 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 is/are liable to pay, the Bank shall have the unqualified right to disclose or publish the Borrower 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, V and VI 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.
- 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 Chennai. 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 14.9 and subject to the provisions of any law for the time being in force in India, the Courts in the State where the Agreement is executed shall have exclusive jurisdiction in relation to this Agreement, the arbitration and all matters connected herewith and therewith...
- 12.11 The Borrower acknowledges that the Borrower has been furnished with a copy of this Agreement and all other documents in relation to this Agreement.

In witness where of the Parties here to have hereon to their hands and seals, this day, the month and year first herein above written.

**SIGNED AND DELIVERED BY  
KOTAK MAHINDRA BANK LTD.  
Through Its Authorised Signatory** \_\_\_\_\_

**MR.** \_\_\_\_\_

**In the presence of**

**SIGNED AND DELIVERED BY  
Through Its Authorized Signatory** \_\_\_\_\_

**MR.** \_\_\_\_\_

**In the presence of**

### 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          | Kotak Mahindra Bank Limited   |
| IV.   | Name and Address of Borrower                                | 1) Name: _____<br>Constitution: <input type="checkbox"/> Individual <input type="checkbox"/> Company <input type="checkbox"/> Partnership <input type="checkbox"/> Others<br>Address: _____<br>_____ Pin: _____   |
| V.    | Name and Address of Co-Borrower/s                           | 1) Name: _____<br>Constitution: <input type="checkbox"/> Individual <input type="checkbox"/> Company <input type="checkbox"/> Partnership <input type="checkbox"/> Others<br>Address: _____<br>_____ Pin: _____<br><br>2) Name: _____<br>Constitution: <input type="checkbox"/> Individual <input type="checkbox"/> Company <input type="checkbox"/> Partnership <input type="checkbox"/> Others<br>Address: _____<br>_____ Pin: _____<br><br>3) Name: _____<br>Constitution: <input type="checkbox"/> Individual <input type="checkbox"/> Company <input type="checkbox"/> Partnership <input type="checkbox"/> Others<br>Address: _____<br>_____ Pin: _____ |
| VI.   | Name and Address of Guarantor/s                             | 1) Name: _____<br>Constitution: <input type="checkbox"/> Individual <input type="checkbox"/> Company <input type="checkbox"/> Partnership <input type="checkbox"/> Others<br>Address: _____<br>_____ Pin: _____<br><br>2) Name: _____<br>Constitution: <input type="checkbox"/> Individual <input type="checkbox"/> Company <input type="checkbox"/> Partnership <input type="checkbox"/> Others<br>Address: _____<br>_____ Pin: _____<br><br>3) Name: _____<br>Constitution: <input type="checkbox"/> Individual <input type="checkbox"/> Company <input type="checkbox"/> Partnership <input type="checkbox"/> Others<br>Address: _____<br>_____ Pin: _____ |
| VII.  | Overdraft Facility Amount<br>(Amount in numbers and words): | Number: Rs. _____/-<br>Words: (Rupees _____<br>_____ Only)  |
| VIII. | Maximum Overdraft Limit                                     | Number: Rs. _____/-<br>Words: (Rupees _____<br>_____ Only)  |

For Kotak Mahindra Bank Ltd. Official

For the Customer

\_\_\_\_\_

\_\_\_\_\_

Authorised Signatory

**SCHEDULE - A**

| Item   | Particulars  |  |
|--------|--|--|
| IX.    | Tenure of the Overdraft Facility   | Tenure : _____ Months.<br>[ ] Constant Overdraft Facility  |
| X.     | Rate of Interest   | _____% per annum* (floating); linked to BR (Base Rate):<br>Base Rate+ ____% p.a., current BR being ____% p.a.<br>Rate of interest is calculated on end of the day balance of overdraft account and charged on monthly basis. |
| XI.    | Overdue Interest   | <b>Same as ROI</b> % p.a. compounded monthly   |
| XII.   | Overline Interest  | <b>18%</b> p.a. compounded monthly<br><b>(3% over and above the normal OD rate subject to a minimum of 18%)</b>  |
| XIII.  | Premature closure charges  | The premature closure charges shall be computed as [6% of operating limit if within lock in period of 6 months & 5% of operating limit if otherwise + applicable service tax + surcharge] of the Operating Limit             |
| XIV.   | Swap charges (for placement of inchoate cheque)  | Upto Rs. 500 Per swap instance   |
| XV.    | Non Utilisation Charge   | To be computed at [1]% of the average Operating Limit if utilisation is below 10%.   |
| XVI.   | Percentage of outstanding for Minimum Amount Due inclusive of interest<br><br>Date of next month by which the Minimum Amount Due to be deposited in the Account. | <b>100%</b><br><br>Such <b>Amount Due</b> should be deposited in the account by end of next month.   |
| XVII.  | Annual Review Charges  | 1.5% of the renewal limit or Rs. 5000 whichever is higher.   |
| XVIII. | Non Maintenance of Minimum Credit Turnover Charges   | Upto 1% of sanctioned limit / 12 months with applicable service tax & surcharge.   |
| XIX.   | Collection charges   | Waived   |
| XX.    | Cheque re-presentation charge  | Waived   |
| XXI.   | Other terms and conditions   | All terms and conditions of the sanction letter dated _____ shall be deemed to form a part of this Agreement as if the same have been specifically incorporated herein.  |

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)**

**Name of the Co-Borrower/s (s)**

**Signature of the Co-Borrower/s (s)**

**Name of the Guarantor/s (s)**

**Signature of the Guarantor/s (s)**

**Signed and Delivered by the within named:**

**Kotak Mahindra Bank Limited by the hand of Mr. \_\_\_\_\_**

**Its Authorized Signatory \_\_\_\_\_**

\*Please affix the rubber stamp with signature in case where borrower/Co-Borrower/s/Guarantor/s is a company/partnership/proprietorship \*\*No Rubber Stamp to be affixed in case the borrower/Co-Borrower/s/Guarantor/s is an individual \*\*\* Signature of borrower/Co-Borrower/s/Guarantor/s to be taken at the bottom of all pages