

**MASTER TERMS AND CONDITIONS**  
**(Applicable for Channel Finance)**

These **MASTER TERMS AND CONDITIONS** (“T&Cs”) shall be applicable to channel finance extended/to be extended by **TATA CAPITAL LIMITED**, a company incorporated under the provisions of the Companies Act, 1956, CIN No. U65990MH1991PLC060670, having its registered office at 11<sup>th</sup> Floor, Tower A, Peninsula Business Park, Ganpatrao Kadam Marg, Lower Parel, Mumbai 400 013 (hereinafter referred to as the “**Lender**” which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its successors, novatees, transferees and assigns) to its borrowers / dealer and is registered on registered on 17/11/2023 with the Joint Sub-Registrar at Mumbai under registration No. BBE-3/22820/2023.

**WHEREAS:**

The Facility (*defined hereinafter*) which would be provided to the Dealer up to the amount as specified in and subject to the terms and conditions as mentioned in the Facility Documents (*defined hereinafter*).

**1. DEFINITIONS AND INTERPRETATION**

1.1 The following words and expressions shall, unless the context otherwise requires, have the following meaning in the Facility Documents:

- a) “**Affiliates**” includes any body-corporate, partnership, association, foundation, other entity (whether incorporated or not) or person, which through ownership or otherwise, directly or indirectly, is Controlled by, under common Control with, or in Control of such person. Further in case of an individual, Affiliate shall include the Relative (as defined in the Companies Act, 2013) of such individual.
- b) “**Applicable Law**” includes any law, directive, rule, regulation, guideline, circular, notification, clarification, guidelines, instruction, requirement, constitution, decree, judgment, legislation, order, ordinance, regulation, statute, treaty or other legislative measure having the force of law in any jurisdiction from time to time, and “lawful” and “unlawful” shall be construed accordingly.
- c) “**Application Form**” means the application form submitted by the Dealer for applying for the Facility.
- d) “**Authorisations**” include approvals, clearances, licenses, actions, authorisations, consents, resolutions, filings, rulings, permits, certifications, exemptions etc. for undertaking, performing or enforcing the terms of the Facility Documents.
- e) “**Authority**” includes any government or any governmental or semi-governmental agency or body, regulatory authority or judicial or quasi-judicial body or administrative entity/person, public department or statutory authority.
- f) “**Borrower**” or “**Dealer**” means the borrower / dealer as mentioned in the respective Facility Documents.
- g) “**Business Day**” means a day (other than a Saturday or Sunday or a public holiday as defined under Section 25 of the Negotiable Instruments Act, 1881 or as may be otherwise notified by the Lender) on which the relevant office of the Lender, as specified in the Facility Documents is open for normal business transactions.
- h) “**Control**” (and its cognate expressions) means, in relation to an entity, the power, ability or right, directly or indirectly, to direct the management or policy decisions of that entity and/or to appoint the majority of directors or management body (as applicable) of the relevant entity, in any manner whatsoever.
- i) “**Credit Limit**” means the maximum limit sanctioned by the Lender as more particularly described in the Facility Documents.
- j) “**Default**” includes any Event of Default (as hereinafter defined) and any event which with the lapse of time or notice would become an Event of Default.
- k) “**Debt Service Reserve Accounts**” or “**DSRA**” means the debt service reserve accounts maintained by an Obligor and includes any fixed deposits, cash or deposits, wherein the DSRA Amount has been/shall be deposited by the Obligor(s) and the same is maintained, pursuant to the Facility Documents.
- l) “**DSRA Amount**” means an amount equivalent to the interest in relation to the Facility falling due in next number of months as specified in the Facility Documents, maintained in DSRA in accordance with the terms of the Facility

Documents during the tenure of the Facility and/or until all outstanding amounts under the Facility are repaid to the satisfaction of the Lender in accordance with the terms of the Facility Documents.

- m) **“Due Date(s)”** shall mean the date(s) on which any amounts in respect of the Outstandings are payable by Obligors to the Lender as more specifically mentioned in the Facility Documents.
- n) **“Earlier Facility”** means channel finance facility already availed by the Dealer, under an earlier channel finance agreement executed by and between the Dealer and the Lender for Goods invoiced by the Sellers as also further availed temporary limits over and above the maximum facility limit covered under such earlier channel finance agreement, pursuant to the temporary letters of sanction and that the Dealer has requested that the outstanding dues / overdrawn limit under the Earlier Facility be merged with the Facility.
- o) **“Encumbrance”** means any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, assignment, security interest or other encumbrances of any kind securing or conferring any priority of payment in respect of any obligation of any person and includes without limitation any right granted by a transaction which, in legal terms, is not the granting of security but which has an economic or financial effect similar to the granting of security (including comfort letters, undertakings etc.) under Applicable Law;
- p) **“Execution Date”** shall mean the date of signing of the Specific Agreement.
- q) **“Facility”** means the credit facility(ies) availed/to be availed by the Dealer from the Lender from time to time and shall mean and include wherever the context so requires the Existing Facility as well.
- r) **“Facility Documents”** includes Application Form, sanction letter, if any, these T&Cs, the Specific Agreement, and all other agreements, instruments, undertakings, indentures, deeds, writings and other documents executed or entered into, or to be executed or entered into, by the Obligors, the Lender and/or any other person, in relation, or pertaining, to the Facility and the transactions contemplated under the Facility Documents, and includes all modifications and amendments thereto.
- s) **“Financial Statements”** mean the certified true copies of audited financial statements.
- t) **“Good”** or **“Goods”** shall mean the different categories of good(s) purchased by the Dealer in the course of dealership as may be acceptable to the Lender from time to time and as set out in the Facility Documents.
- u) **“Guarantor”** means the guarantor, if any, as mentioned in the respective Facility Documents.
- v) **“IBC”** shall mean the Insolvency and Bankruptcy Code, 2016 along with all rules and regulations thereunder and all such amendments to the same made from time to time and shall also include any succeeding enactment in that regard for the time being in force.
- w) **“Indebtedness”** means any indebtedness incurred for or in respect of: (a) monies borrowed; (b) any amount raised under any other transaction (however structured) having the commercial effect of a borrowing; and (c) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) and (b) above.
- x) **“Indemnified Person”** means: (i) the Lender, its Affiliates and any attorney, agent or other person appointed by them; and (ii) any officers, partners, shareholders, directors, employees or agents of any of the above persons.
- y) **“Instalments”** shall mean the periodical instalments and as provided in the Facility Documents and as may be computed by the Lender from time to time in relation to the Facility required to amortise the Facility with interest (rounded off to the next rupee) within such period as may be determined by the Lender from time to time.
- z) **“Interest”** includes the interest in relation to the Facility at the Rate of Interest as specified in the Facility Documents wherever applicable.
- aa) **“Long Term Lending Rate”** or **“LTLR”** shall mean the floating benchmark rate of interest for long term loans / credit facilities determined by the Lender from time to time on the basis of its cost of funds plus its spread / margin thereon, which will be reset at such intervals as decided by the Lender. Such benchmark rate of interest will be decided at the sole discretion of the Lender and in the event of an assignment of the benefits, rights and obligations under the Facility Documents, the benchmark rate of interest may be decided at the discretion of such transferee/assignee with the benchmark rate of such transferee/assignee.
- bb) **“Losses”** include any and all costs, charges, expenses, damages, penalties, fine, imposts, payments, losses, demands, liabilities, claims, actions, proceedings, penalties, fines, damages, judgments, orders or other sanctions.
- cc) **“Material Adverse Change”** means the occurrence of any event(s) or circumstance(s) which has or could reasonably be expected to have a Material Adverse Effect.

- dd) **“Material Adverse Effect”** means a material adverse effect on or a material adverse change (in the judgement of the Lender) in: (a) the business, operations, property, assets, condition (financial or otherwise) or prospects of the Obligors; (b) the ability of the Obligors to enter into and to perform its obligations under the Facility Documents or any other related document to which any of the Obligors is or will be a party; or (c) the validity or enforceability of the Facility Documents or any other related document or the rights or remedies of the Lender thereunder; or (d) the international capital or loan market; or (e) the political, financial or economic condition of Republic of India, and shall also mean and include any event whether domestic or international; which in the opinion of the Lender could have an adverse effect.
- ee) **“Obligors”** shall mean the Dealer/Borrower, co-borrower, security provider and the Guarantor collectively and the expression **“Obligor”** shall mean any one of them.
- ff) **“Outstandings”** or **“Obligations”** shall include, at any time, all amounts payable by the Obligors to the Lender pursuant to the Facility Documents including but not limited to the present and future obligations and liabilities of the Obligors to pay/ repay without limitation the principal amount of the Facility, Interest and Penal Interest thereon, other charges set out in the Facility Documents and all stamp duties, Taxes, expenses, fees, liquidated damages, indemnities, costs, charges and expenses including without limitation any statutory or legislative charges, penalties, if any, in connection with the Facility; and such other expenses incurred in relation to any exercise by the Lender of its right, together with legal fees and court costs.
- gg) **“Payment Instrument(s)”** or **“PI(s)”** means any instrument/instruction, electronic or in writing, for transfer of funds as may be notified by the RBI and shall include, without limitation, post-dated cheques, inchoate cheques, instructions for direct debit from a bank account, a message for transfer of funds sent electronically, physically or through an image of instrument for transfer of funds sent electronically, an electronic file containing the details of the funds transfer sent by electronic media, payment through an electronic truncated cheque, various types of plastic cards, electronic clearing system (ECS), National Automated Clearing House (NACH), demand draft or such other instrument / instruction / clearing service as may be notified by RBI from time to time for transfer of funds and acceptable to the Lender.
- hh) **“Penal Interest”** means the amounts which the Obligors are liable to pay at the rate/quantum set out in the Facility Documents for delay in payment of any amounts due as per the Facility Documents.
- ii) **“Foreclosure Charges”** shall mean the charges levied by the Lender in the event of prepayment/foreclosure of the Facility or part thereof as specified in the Facility Documents and as may be stipulated by the Lender from time to time.
- jj) **“Purpose”** shall mean the purpose for which the Facility is sanctioned as specified in the Facility Documents.
- kk) **“Rate of Interest”** shall mean the Rate of Interest applicable for the Facility and as more specifically mentioned in the Facility Documents and as may be amended by the Lender from time to time in accordance with the Facility Documents.
- ll) **“RBI”** means the Reserve Bank of India.
- mm) **“Retail Financier”** shall mean and includes banks, financial institutions, non-banking financial companies, corporate banks which funds the customers of the Dealer for acquiring Goods from the Dealers.
- nn) **“Security”** shall mean such security (including without limitation mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, assignment, security interest or other Encumbrance of any kind under Applicable Law) as may be created, or agreed to be created, by the Obligors in favour of the Lender to secure the due payment/repayment of the Outstandings by the Obligors to the Lender and/or the performance of the obligations under the Facility Documents by the Obligors.
- oo) **“Secured Assets”** shall mean and include assets, security or properties of any of the Obligors of every kind, nature, character and description (whether immovable, movable, tangible, intangible, absolute, accrued, fixed or otherwise) as operated, hired, rented, owned or leased by a person from time to time, including cash, cash equivalents, receivables, securities, accounts and note receivables, real estate, plant and machinery, equipment, patents, copyrights, domain names, trademarks, brands and other intellectual property, raw materials, inventory, furniture, fixtures, insurance or any other assets of any kind as specified in the Facility Documents, over which a Security is created/to be created under the terms of the Facility Documents for the purpose of securing the Obligations or any part thereof.

- pp) **“Seller”** shall mean and include any person which supplies goods / provides services to the Dealer in pursuance of the purchase order / indents placed by the Dealer, the details of such Seller are as set out in the Facility Documents.
- qq) **“Short Term Lending Rate”** or **“STLR”** shall mean the floating benchmark rate of interest for short term loans/credit facilities determined by the Lender from time to time on the basis of its cost of funds plus its spread / margin thereon which will be reset at such intervals as decided by the Lender. Such benchmark rate of interest will be decided at the sole discretion of the Lender and in the event of an assignment of the benefits, rights and obligations under the Facility Documents, the benchmark rate of interest may be decided at the discretion of such transferee/assignee with the benchmark rate of such transferee/assignee.
- rr) **“Specific Agreement”** shall mean the agreement executed/to be executed *inter alia* between the Dealer/Borrower and the Lender recording specific terms of the Facility.
- ss) **“Tax”** or **“Taxes”** includes any and all present and future taxes, duties, imposts, cess, levies, surcharge, including without limitation, with respect to or on gross receipts, sales, services, turn-over, ad valorem or value addition, use, consumption, property, franchise, capital, occupation or payroll, license, excise, documents (such as stamp duties), profit, gains (including capital gains), severance, production, withholding, alternative or add-on minimum, transfer or environmental, and other customs and taxes, duties, assessments, cess, imposts, surcharge, charges and/or fees of any kind whatsoever, together with any interest or penalty, addition to tax or additional amount howsoever imposed, withheld, levied, or assessed by any Authority. Taxes shall include any variation or change therein, or the rates thereof, during the term of this Agreement, or the imposition of any new or further taxes (including Goods and Services Tax) but shall not include tax on the income of any Party.
- 1.2 The division of these T&Cs into clauses, sub-clauses and paragraphs, and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of these T&Cs.
- 1.3 References to any gender includes any other gender, the plural shall include the singular and vice versa.
- 1.4 Reference to any agreement, document, instrument, statute, enactment, ordinance, order, regulation etc. shall be construed to include a reference to the amendments, extensions, re-enactments, supplementals, restatements, novations and/or consolidations thereto from time to time.
- 1.5 Reference to the terms **“person”** or **“persons”** shall mean and include reference to any individual, sole proprietorship, unincorporated association/organization, body corporate, company, partnership, Hindu Undivided Family, limited liability partnership, joint venture, Authority or trust or any other entity or organization and shall include all persons as defined under section 3 (23) of IBC and/or section 2 (zg) of Real Estate (Regulation and Development) Act, 2016.
- 1.6 Any reference to the terms Borrower/Dealer, Guarantor, and/or Obligor shall be deemed to include all the Borrowers/Dealers, Guarantors and/or Obligors, unless repugnant to the context or meaning thereof, be deemed to include:
- 1.6.1 In case of a company or a limited liability partnership, its successors and permitted assigns,
- 1.6.2 In case of a partnership firm any or each of the partners and survivor(s) of them and the partners from time to time (both in their personal capacity and as partners of the firm) and their respective heirs, legal representatives, executors, administrators and permitted assigns, successors of the firm;
- 1.6.3 in case of a sole proprietorship and individual, respective heirs, administrators, executors and legal representatives of the person;
- 1.6.4 in case of a Hindu Undivided Family, the Karta and any or each of the adult members and their survivor(s) and his/her/their respective heirs, legal representatives, executors, administrators and permitted assigns;
- 1.6.5 in case of a Society, its governing body, successors and permitted assigns; and
- 1.6.6 in case of a Trust, the Trustees for the time and its successors and permitted assigns.
- 1.7 Save and except as specifically provided in the Facility Documents any determination with respect to the ‘materiality’ or ‘reasonability’ of any matter including of any event, quantity, degree, occurrence, circumstance, change, fact, information, document, authorisation, proceeding, act, omission, claims, breach, default or otherwise shall be made by the Lender in its sole and absolute discretion.
- 1.8 The words “include”, “including” and “in particular” shall be construed without limitation and as being by way of illustration only and shall not be construed as limiting the generality of any foregoing words;

1.9 All the Schedules, Annexures and Exhibits to the Facility Documents shall form an integral part of the relevant Facility Documents.

## 2. FACILITY AND DISBURSEMENT

2.1 The Lender may at its sole and absolute discretion lend to the Dealer and the Dealer agrees to borrow from the Lender, the Facility for the Purpose and on the terms and conditions set out in the Facility Documents to the extent of Credit Limit as more particularly set out in the Facility Documents or as may be agreed between the Lender and the Dealer from time to time. The Credit Limit may be subject to such lower internal limits that the Lender may stipulate from time to time for different category of Goods and Seller ("**Internal Credit Limit**") and hence the Internal Credit Limit is interchangeable between different categories of Goods and Seller within the Credit Limit.

2.2 The Dealer further acknowledges that the Lender may at its sole and absolute discretion and without any prior intimation to the Dealer enhance or reduce the Credit Limit and/or Internal Credit Limit and the same shall be binding upon the Dealer. However, if requested in writing by the Dealer, upon receipt of a formal written request in the form, substance and manner as may be specified by the Lender, the Lender may at its sole and absolute discretion increase the Credit Limit on a specific occasion or for such period of time as the Lender may deem fit on a temporary basis. Any such temporary increase in the Credit Limit does not assure the Dealer of the enhanced Credit Limit and upon the expiry of the agreed period or the occasion, the temporary Credit Limit shall lapse.

2.3 For the purpose of availing the Facility, the Lender may require the Dealer to maintain different transaction accounts ("**Transaction Accounts**") with the Lender which shall be in the nature of a revolving credit account for each category of Goods. The purpose of the Transaction Account is only to enable the Lender to record the dues of the Dealer in its books of accounts and all such entries shall be final and binding on the Dealer. Such Transaction Accounts may be combined by the Lender for the purpose of recording the transactions between the Lender and the Dealer and the Lender may apply any credit balance (whether or not then due) at any time held by the Lender for the account of the Dealer or any guarantor in or towards satisfaction of any sums then due and payable by the Dealer or such Guarantor. The Lender may apply or set off any amount owing by Lender to the Dealer in discharge (in whole or in part) of any amount owing or accrued due by the Dealer or any Guarantor to Lender (whether such amount is owing or due from the Dealer or such Guarantor to the Lender or otherwise or is payable presently or contingently and deal with the same in the manner it deems fit.

2.4 The Lender may in its sole and absolute discretion, on receiving such request from the Dealer, permit the Dealer to drawdown additional moneys which together with the moneys already drawn by the Dealer under the Facility may exceed the Internal Credit Limit and/or the Credit Limit, ("**Overdrawn Money**"). In such event, the Lender may charge such Interest on the Overdrawn Money as Lender may in its sole and absolute discretion deem fit. Such Interest may be recovered by the Lender from the Dealer in such manner as the Lender may deem fit. The Dealer shall be responsible to verify from the Lender the Rate of Interest chargeable prior to making any request for such Overdrawn Moneys. Subject to such Interest, it is hereby further clarified that such Overdrawn Money shall also be subject to and governed by the provisions of the Facility Documents.

2.5 The Dealer may drawdown the Facility either in tranches or by one-time drawdown. In the event of drawdown in tranches, the Lender may at its discretion make applicable different or same Rate of Interest, tenure, for each tranche.

2.6 The Dealer may, within the availability period as stipulated in the Facility Documents, deliver a Disbursement Request to the Lender.

2.7 The Dealer shall place his/her/its request with the Seller for the purchase of the Goods indicating its requirements for the Goods in the letter of intent with a copy of the same endorsed to the Lender for availing the Facility for such purchase.

2.8 Based on the available Internal Credit Limit which shall be intimated by the Lender to the Seller and the request made by the Dealer, whichever is lesser in value and subject to the availability of the required Goods, the Lender, upon Invoice being raised by the Seller for such available goods for sale recording the lien of the Lender thereon. The Dealer has authorized the Seller to raise Invoice(s) on behalf of the Dealer and in this regard, the Seller shall raise the Invoice on behalf of the Dealer.

### **3. TENURE**

#### **3.1 Tenure for the Facility**

3.1.1 The Facility is intended to be a continuing facility unless recalled by the Lender. The Lender shall review the Credit Facility annually or at such other shorter periodic basis as the Lender may decide from time to time. Pursuant to such review, the Lender may decide to either, (a) discontinue the Credit Facility, or (b) renew / rollover the Credit Facility on the same terms and conditions, or (c) renew/ rollover the Credit Facility or such modified terms and conditions as Lender may deem fit. At the conclusion of each review of the Credit Facility, the Lender shall issue a written notice to the Dealer indicating the Lender's decision at such review of the Credit Facility. In case of renewal of the Facility, the provisions of the Facility Documents shall continue to be made applicable till revised relevant Facility Document is issued / executed in respect of such renewal and thereafter the provisions of these T&Cs shall be read and construed in accordance with such revised Facility Documents.

3.1.2 In the event the Facility is renewed by the Lender as aforesaid, the Dealer shall, if required and deemed necessary by the Lender, execute such supplemental agreements and/or such other deeds, documents or other writings for the same, in favour of Lender as it may deem fit.

#### **3.2 Tenure for each tranche**

3.2.1 The amount disbursed pursuant to each Disbursement Request shall be repaid within such period of time from the date of disbursement of such amounts by the Lender as may be decided by the Lender from time to time. The tenure of tranche applicable to different category of Goods as on date of the Facility Documents is more particularly set out in Facility Documents. There may be different tranches for different categories of Goods. The Due Date(s) of each tranche will be at the end of the tenure of such tranche, for e.g. if tenure is for 30 days, the Due Date(s) will be the 31<sup>st</sup> day. The tenure of each tranche may vary from time to time and which may be recorded separately by way of letters, e-mail, or fax from the Lender. However, the same shall not be construed as novation of the Facility Documents.

### **4. INTEREST AND REPAYMENT**

4.1 The Interest on the Facility shall be charged at the Rate of Interest set out in the Facility Documents and shall be charged from the Disbursement Date and the frequency of the Interest payment shall be as more particularly set out in the Specific Agreement. In case of a fixed Rate of Interest, the Rate of Interest shall be fixed for the period mentioned in the Facility Documents and upon expiry of the period of fixed Rate of Interest, the Facility shall attract floating Rate of Interest. In case of a floating Rate of Interest, the Borrower shall pay Interest to the Lender on the principal amount of the Facility outstanding at the Rate of Interest specified in the Facility Documents. Such floating Rate of Interest shall thereafter vary in accordance with the LTLR and/or STLR announced by the Lender from time to time plus/minus the spread/margin. The Rate of Interest and the LTLR and/or STLR shall be subject to review based on respective guidelines / directives issued by RBI in relation to any variation in the respective LTLR and/or STLR and monetary measures impacting the Rate of Interest applicable to banks/financial institutions from time to time. The Lender shall have the right to charge Interest at such revised rates, depending upon the LTLR and/or STLR, to give effect to any revision made as per the aforementioned guideline/directives of RBI. The Obligors agree that in the cases of floating, the Lender shall have the right to increase or decrease the Rate of Interest payable by increasing /decreasing the spread or otherwise. The said change in Rate of Interest payable may be carried out irrespective of any change in the LTLR and/or STLR. Notwithstanding any variation in LTLR and/or STLR due to any downward revision, the Borrower shall be liable to pay a minimum Rate of Interest as stipulated in the Facility Documents.

4.2 The Lender shall declare and display such revision in its Rate of Interest and the same shall be declared and announced on its website and/or displayed/notified on notice boards at its various branches and the same shall be deemed to be a notice to the Borrower for such revision. The Borrower hereby agrees that it shall be the duty of the Borrower to ensure that it keeps itself updated of any such changes or variations by visiting the website or the relevant branch of the Lender. The Lender shall also notify the Borrower of such change in the Rate of Interest. Such revised Rate of Interest shall be applicable prospectively. The Borrower shall in addition, pay and/or reimburse to the Lender, as the case may be, interest tax and any other Tax or other levy as may be levied on, or in respect of Interest payments under

these presents. The Borrower shall not dispute the same or raise any objection with regard to the payment of the Interest and charges and the amount thereof.

- 4.3 The revised Rate of Interest would be payable by the Borrower from the date of change in the Rate of Interest.
- 4.4 All amounts payable by the Obligors to the Lender under Facility Documents shall be paid on or before the relevant Due Date(s) for such payment without any delay or demur and without any deduction whatsoever by way of set off or counterclaim or otherwise of any amount due or alleged to be due or outstanding from the Lender or any other person(s) and notwithstanding any legal limitation, disability or incapacity of the Obligors.
- 4.5 The Lender shall not be required to give any notice, reminder or intimation to the Obligors regarding their obligation to pay / repay the amount payable hereunder and it shall be entirely the Obligors' responsibility to ensure prompt and regular repayment of the amount payable by the Obligors to the Lender in the manner provided under the Facility Documents.
- 4.6 The Lender reserves the right to call upon the Obligors to accelerate the payment of Outstandings / other amounts, if the financial position of the Obligors so warrant, at the sole and absolute discretion of the Lender.
- 4.7 The Dealer shall pay / repay all monies payable under the Facility on or before the Due Date(s) for each tranche as may be specified by THE Lender, details whereof are set out in the Facility Documents.
- 4.8 If the Dealer is unable to repay on or before the Due Date(s) for each tranche as may be specified by the Lender at the time of the disbursement of moneys for the tranche, the amount so disbursed shall become due by the Dealer on the Due Date(s).
- 4.9 Notwithstanding the provisions of the Facility Documents, in the event the Facility is recalled / terminated by the Lender in accordance with the provisions of the Facility Documents, the Outstandings shall become due and payable immediately and the Obligors shall be liable to pay / repay the entire Outstandings forthwith or within such period as may be specified by the Lender. In the event the Obligors fails to pay/repay such Outstandings on or before the respective Due Date(s) or in case of any other Default, the Obligors shall be liable to pay Outstandings in accordance with the provisions of the Facility Documents.
- 4.10 In the event, the Lender extends the Facility to its customers who are acquiring the Goods from the Dealer under hire purchase/loan/lease scheme of Lender ("**Finance Scheme**") and converts it into contracts by customer with Lender, then the net finance amount of such contracts may be adjusted against the Outstandings under the Facility. If the Dealer decides to repay in the manner as hereinbelow, the following process shall apply:
  - 4.10.1 The Dealer shall identify/source the customers and sell the Goods under the Finance Scheme for the customers and the contract file along with the agreement will be lodged with Lender for booking within the tenure of the tranche from the respective dates of disbursement for each tranche in respect of the payment of invoices.
  - 4.10.2 As and when any of the Goods are converted under the Finance Schemes, the net finance amount of the said Goods shall be adjusted against the amount recoverable against the Facility. Each tranche of the finance amount paid by Lender will either be converted by the Dealer under the Finance Schemes offered by Lender within the aforesaid period. In case of cash sale or sale financed through other financiers including an affiliate / associate of Lender or such other Financiers approved by Lender ("**Approved Financiers**") then such proceeds received out of cash sale or under finance provided by any Approved Financier shall be utilized immediately.
  - 4.10.3 If the Dealer is unable to sell the Goods under the Finance Scheme within the tenure of the tranche, the amount so disbursed shall be repaid by the Dealer on the Due Date(s) of each tranche irrespective of the fact whether the Goods are sold under the Finance Scheme or otherwise.
  - 4.10.4 If the Goods so purchased are financed by Approved Financiers, then the Dealer hereby expressly authorizes and issues mandate to such Approved Financiers to make payment of net finance amount under the respective contracts to Lender which shall be valid and effectual discharge to such Approved Financiers.

## 5. **MODE OF REPAYMENT**

- 5.1 The Dealer shall repay/pay the monies in respect of the Facility through any PI(s). The Lender may, in its sole discretion, require the Dealer to adopt or switch to any alternate mode of payment and the Dealer shall comply with such request, without any demur or delay.

- 5.2 The Dealer shall issue, in favour of the Lender, the PI(s) as agreed with the Lender towards payment/repayment of the Instalments. The PI(s) issued by the Dealer in respect of the Facility may also be used by the Lender for any subsequent Facility availed by the Dealer from the Lender and all the provisions hereof shall apply thereto. Wherever required, the Dealer shall issue irrevocable instructions (in a form and substance satisfactory to the Lender) to the Dealer's bankers to ensure periodic payment to the Lender pursuant to the PI(s) issued by the Dealer. The failure of the Dealer's bank for any reason to so transfer any such amounts to the Lender shall tantamount to a failure by the Dealer to pay the amounts and shall constitute an Event of Default. The Dealer shall provide to the Lender a confirmation (in a form and substance satisfactory to the Lender) of the acceptance by the Dealer's bank of the above instructions.
- 5.3 Save and except with the prior written consent of the Lender, the Dealer shall not, under any circumstances, revoke, cancel or alter the instructions or cancel or issue stop-payment instructions with respect to the PI(s) issued or do or omit to do anything which may result in the Dealer's bank not transferring the amounts equal to the Instalments/amounts due under the Facility Documents to the bank account of the Lender on the relevant Due Date(s). Any attempt to do so shall be considered as an Event of Default.
- 5.4 If any amounts (not being the principal amount of the Facility or interest thereon) are outstanding for payment by the Dealer either under the Facility Documents or on account of Indebtedness of the Dealer to the Lender, under this Facility, the Lender shall be entitled to encash the PI(s) for the satisfaction of such outstanding amounts notwithstanding that PI(s) have been issued for repayment of the principal amount of the Facility and/or interest thereon, and the Dealer shall continue to be indebted to the Lender for the Facility and/or interest, as the case may be.
- 5.5 Notwithstanding anything contained in the Facility Documents, and irrespective of the mode of payment selected by the Dealer in the Facility Documents, upon any default by the Dealer in payment of one or more Instalments on the Due Date(s) pertaining to the Facility, any non-realization of the Instalments on the Due Date(s) by the Lender, the Lender shall be entitled, without prejudice to its other rights under the Facility Documents and Applicable Law, to present and/or re-present the PI(s), if any, issued by the Dealer in favour of the Lender in connection with the Facility. Irrespective of the mode of payment/date of payment, selected by the Dealer in the Facility Documents, the Lender shall be entitled to require the payment and/or collection of the Instalments and all other amounts comprising the Outstandings, by any other PI(s), if any, issued by the Dealer in favour of the Lender or utilizing any other mode or manner of payment or repayment of the Instalments and all other amounts comprising the Outstandings.
- 5.6 All PI(s) issued by the Dealer in favour of the Lender are for the purpose of discharge of the Outstandings that may be due to the Lender under the Facility and that the same are not proposed to be issued as and by way of a security for any purpose whatsoever. The PI(s) are intended to be used at any time by the Lender as the Lender may consider fit and proper, to recover the Outstandings owed by the Dealer to the Lender, and the Dealer, by executing the Application Form and other relevant Facility Documents, has unconditionally and irrevocably authorised the Lender for the same.
- 5.7 By execution of the Application Form and other relevant Facility Documents, the Dealer has unconditionally and irrevocably authorised the Lender to fill one or more of the PI(s) delivered to the Lender for an aggregate amount not exceeding the maximum amount due by the Dealer to the Lender under the Facility Documents (including those pertaining to any amount subsequently availed by the Dealer) without notice to Dealer in this behalf. In the absence of such authority having been given by the Dealer to the Lender, the Lender would not have granted the Facility to the Dealer.
- 5.8 The authority given by the Dealer to the Lender herein to fill in the details of the PI(s) 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 a material alteration of the said PI(s) by the Lender. By execution of the Facility Documents, the Dealer has agreed and confirmed that in the event the acts of the Lender in filling the PI(s) 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 within the meaning of the Negotiable Instruments Act, 1881:
- 5.8.1 the Dealer has provided Dealer's consent for such an alteration and that by reason of such alteration, the PI(s) shall/should not be construed to be void or otherwise unenforceable and the Dealer has agreed and accepted to honor such PI(s) when presented for payment;

- 5.8.2 the Dealer has confirmed that such alteration is made to record the common intention of the Lender and Dealer, which common intention is to fill in the PI(s) with the amounts due by the Dealer to the Lender and to present the same for payment on such dates as the Lender may in its absolute and sole discretion decide.
- 5.9 In this regard the Dealer has also agreed to irrevocably nominate, constitute and appoint the Lender acting through any of its officers, agents as the true and lawful attorney for the Lender on its behalf and its cost and risk to do, execute and perform all or any of the following acts, deeds, matters and things that is to say:-
- 5.9.1 To appoint or engage any agent, courier agencies, correspondent banks for ensuring safe holding of PI(s) and having the same picked up, processed and cleared at the Dealer's risks and costs;
- 5.9.2 Generally to do, perform and execute all acts, deeds, matters and things relating to or concerning or touching the repayment of the Facility;
- 5.9.3 For the better doing, performing and executing all the matters and things aforesaid, the Dealer hereby further grants unto the said Lender full power and authority to substitute and appoint in its place and stead on such terms as it may think fit one or more attorney(s) to exercise for the Dealer as the Dealer'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 Lender may from time to time think fit;
- 5.9.4 The Dealer has also agreed to ratify and confirm all and whatsoever that the Lender shall do or cause to be done in or about the premises by virtue of the powers herein given; and
- 5.10 The authority and powers given to the Lender under the Facility Documents is for a consideration and is irrevocable under Section 202 of the Indian Contract Act, 1882 and such authority/power shall survive the death/winding up/dissolution of the Dealer. Further, the Dealer will be required to honor all the PI(s) when presented for payment by the Lender and not to take any steps, which in any way are likely to affect the payment thereunder to the Lender.
- 5.11 If the Lender for any reason modifies the amount of the Instalments, the Dealer shall issue fresh PI(s) to the Dealer's bank to ensure that the amount of the modified Instalments is transferred to the Lender under PI(s) and the Dealer shall provide the Lender with proof of these instructions and the acceptance thereof by the Dealer's bank. Failure to provide such fresh instructions shall be considered as an Event of Default by the Dealer.
- 5.12 If the Due Date(s) in respect of any amounts payable in respect of the Facility falls on a day which is not a Business Day at the place where the payment is to be made, the immediately preceding Business Day shall be the Due Date(s) for such payment.
- 5.13 Credit for payments by any method will be given only on realisation or on the relative Due Date(s), whichever is later. The acceptance by the Lender of any payment which is less than the full Instalments or other amounts due and owing at such time shall not constitute a waiver of the Lender's right to receive payment in full at such time or at any subsequent time or a waiver of any other right whatsoever of the Lender under the Facility Documents or Applicable Law.
- 5.14 The Dealer shall promptly issue fresh PI(s), as and when requested by the Lender, if the PI(s) submitted by the Dealer to the Lender are exhausted or about to exhaust or if the Lender is facing any difficulty/impediment for any reason whatsoever in presenting such PI(s) or if required at any time by the Lender at its sole discretion.
- 5.15 The Lender shall not in any way be responsible for delay, omission, or neglect in encashment, damage or loss of any PI(s) for any reasons whatsoever, and shall not be liable to the Dealer in this respect.
- 5.16 The Dealer may, subject to prior approval by the Lender, be permitted to swap/exchange the PI(s) issued to the Lender with alternate PI(s) subject to payment to the Lender of the charges as specified in the Facility Documents.
- 5.17 Any dishonour of any Payment Instruments, would constitute an offence under Section 138 of the Negotiable Instruments Act, 1881 or Section 25 of the Payment and Settlement Systems Act, 2007, as the case maybe.
- 5.18 If any one or more than one or all the PI(s) delivered to the Lender by the Dealer:
- 5.18.1 is/are lost, destroyed or misplaced while in custody of the Lender or its agents, or
- 5.18.2 becomes non-encashable due to any reason;
- then, the Dealer /the Dealer's executors/heirs/successors shall, within the timelines specified in the Facility Documents, of receipt of any intimation of such loss, destruction or non-encashment of such PI(s) or misplacement (as the case may be) from the Lender or immediately on such PI(s) or any of those being or becoming non-encashable due to any reason, immediately deliver to the Lender such numbers of fresh PI(s) to replace such PI(s). The replacement

- PI(s) shall be drawn in the manner mentioned in Facility Documents or as directed by the Lender. Any non-presentation on the part of the Lender of any PI(s) (due to any reason whatsoever) shall not in any manner affect the liability of an Obligor to pay/repay the Outstandings or its other obligation under the Facility Documents or in respect of the Facility.
- 5.19 The Dealer shall not give any instructions to the Lender, to not deposit or otherwise to not encash any or all of the PI(s) given by it. In the event of the Dealer or any other person on behalf of the Dealer giving such instructions, then it shall be presumed that the same was done to avoid prosecution under the provisions of the Negotiable Instruments Act, 1881/Payment and Settlement Systems Act, 2007. Any dishonour of the PI(s) or their being returned unpaid for any reason shall give rise to the presumption that, the Dealer from the very inception had no intention to honour the PI(s) and the same were given with a malicious intention to fraudulently obtain the Facility and the Dealer shall be liable to be prosecuted under the provisions of any law applicable in this regard.
- 5.20 The Dealer shall have and shall maintain sufficient balance in the account of the drawee bank for payment of PI(s) issued by the Dealer on and immediately prior to the Due Date(s) when the relevant PI(s) become mature and payable and thereafter to honour any such PI(s).
- 5.21 No notice, reminder or intimation shall be required to be given by the Lender to the Dealer prior to the presentation of any PI(s) to the drawee banks for encashment thereof.
- 5.22 In case of PI(s), PI(s) shall be drawn on a bank acceptable to the Lender and situated in a locality in the city/ town where the concerned branch of the Lender is situated. The number of such PI(s) shall be equal to the Instalments payable by the Dealer to the Lender.
- 5.23 In the event that the Dealer does not deliver to the Lender PI(s) in respect of all the Instalments payable by the Dealer to the Lender in settlement of the Outstandings to the Lender under the Facility Documents at the same time and chooses to do so in Instalments, the Dealer shall at least 6 (six) months prior to the date on which the last PI(s) already delivered by the Dealer to the Lender becomes due for payment, deliver to the Lender the next set of PI(s) in respect of balance Instalments payable by the Dealer to the Lender in settlement of the Outstandings to the Lender under the Facility Documents.
- 5.24 In case of any failure to receive the Instalments or any other amounts due, through the electronic clearing system (debit) for any reason whatsoever as specified by the Dealer, the Lender shall, irrespective of the mode of payment selected by the Dealer in the Facility Documents, be entitled to require the payment and/or collection of the Instalments/other amounts, or the PI(s), if any, submitted by the Dealer, by means of electronic clearing system (debit). The Lender may adopt the aforesaid process by itself or through such other person permitted for the same.
- 5.25 **Tax Deduction**
- 5.25.1 All payments to be made by the Obligors to the Lender under the Facility Documents shall be made free and clear of taxes and without any tax deduction, unless a tax deduction is required under the Applicable Law.
- 5.25.2 If an Obligor makes a tax deduction that is not required by Applicable Law, while making any payments to the Lender, the sum payable by such Obligor shall be increased to the extent necessary to ensure that the Lender receives a sum, net of any tax deduction, equal to the sum which it would have received had no tax deduction been made.
- 5.25.3 An Obligor shall promptly upon becoming aware that it must make a tax deduction (or that there is any change in the rate or the basis of a tax deduction) notify the Lender accordingly.
- 5.25.4 If an Obligor is required to make a tax deduction, it shall immediately make the necessary payment required in connection with that tax deduction to the relevant authorities, which would in any case be within the time allowed under the Applicable Law.
- 5.25.5 An Obligor shall provide to the Lender, the TDS certificate in the Form No. 16A of the Income Tax Act, 1961 (“IT Act”) downloaded only from the TDS Reconciliation Analysis and Correction Enabling System (“TRACES”) website on a quarterly basis within timelines specified in the Facility Documents from the end of the relevant quarter and ensure that the TDS amount is reflected in the Form 26AS statement under the IT Act of the Lender. If the foregoing is complied with and where an Obligor has paid gross interest amount, the Lender will refund to the Dealer an amount equivalent to the TDS amount paid by such Obligor within timelines specified in the Facility Documents of upon receipt of the TDS Certificate.

- 5.25.6 However, TDS refund claim will not be entertained by the Lender after the timelines given in the Facility Documents of the succeeding financial year.
- 5.25.7 In the event of any subsequent change in the “F” status reflected in the Form 26AS statement under the IT Act of the Lender, the Lender shall be entitled to forthwith debit the TDS amount to the Obligor’s relevant account and the same shall be considered as an Outstandings and shall be recoverable along with all other applicable costs, charges and expenses.
- 5.25.8 Where an Obligor pays the net interest amount after deducting the tax deductible at source (“TDS”) to the Lender, such Obligor shall deposit the TDS with government treasury within the time specified by law and to provide the Lender, TDS certificate in Form 16A under the IT Act for each quarter within timelines specified in the Facility Documents from the end of the relevant quarter. Within such time, such Obligor shall also ensure that the TDS amount is reflected in the Form 26AS statement under the IT Act of the Lender with “F” status. In the event such Obligor fails to comply with the foregoing, the Lender reserves the right to debit the TDS amount to such Obligor’s relevant account and the same shall be considered as an Outstandings and shall be recoverable along with all other applicable costs, charges and expenses.
- 5.25.9 In such an event, an Obligor may request for credit of the TDS amount by furnishing of the TDS certificate not later than the number of days, as specified in the Facility Documents, of the succeeding financial year. Provided that no refund shall be granted of the Penal Interest and all other applicable, costs, charges and expenses debited to such Obligor’s account.

**5.26 Tax Indemnity**

- 5.26.1 Without prejudice to Clause 5.25 (*Tax Deduction*), if the Lender is required to make any payment of or on account of Tax on or in relation to any sum received or receivable under or in connection with the Facility Documents (including any sum deemed for purposes of Tax to be received or receivable by the Lender, whether or not actually received or receivable) or if any liability in respect of any such payment is asserted, imposed, levied or assessed against the Lender, the Obligors shall forthwith upon demand by the Lender, indemnify the Lender *qua* such payment or liability together with any interest, penalties, costs and expenses payable or incurred in connection therewith.
- 5.26.2 The Lender shall notify the Dealer of the event by reason of which it is entitled to do so.
- 5.26.3 The Obligors shall:
  - 5.26.3.1 pay, when due, all Taxes required by Applicable Law to be deducted or withheld by it from any amounts paid or payable under the Facility Documents;
  - 5.26.3.2 forthwith on demand, indemnify the Lender against any loss or liability, which the Lender incurs as a consequence of the non-payment in full or in part, of those Taxes which are required to be paid by the Dealer in pursuance to the Facility Documents.

**6. METHOD OF APPROPRIATION**

- 6.1 Unless otherwise agreed to or decided by the Lender, any payment received by the Lender in relation to the Facility Documents and when received by the Lender shall be appropriated towards the Outstandings in the following order viz:
  - 6.1.1 Cost, charges, expenses and other monies and interest thereon;
  - 6.1.2 Penal Interest, if any;
  - 6.1.3 Interest payable in terms of the Facility Documents; and/or
  - 6.1.4 Repayment of Instalments of principal amount of the Facility under the Facility Documents.
- 6.2 The Lender may, at its absolute discretion, appropriate any payments made by the Obligors under the Facility Documents towards payments due to the Lender from the Obligors under another agreement or transaction entered into by the Obligors with the Lender and/or towards any other Indebtedness of the Obligors to the Lender and such appropriation shall be final and binding upon the Obligors who shall continue to remain indebted to the Lender for payment of Outstandings under the Facility Documents. The Obligors shall continue to be liable for any deficiency in the amount due to the Lender by the Obligors after adjustment, if any, of the net proceeds of sale, realization, recovery and/or insurance claim.

## **7. GUARANTEE**

- 7.1 The Guarantor in consideration of the Lender agreeing to grant the Facility to the Borrower/Dealer, shall comply with the following in relation to the guarantee provided by the Guarantor under the terms of the Facility Documents.
- 7.1.1 If the Borrower/Dealer commits default/s in payment on the Due Date(s) of any Outstandings, the Guarantor shall forthwith on demand without demur or dispute pay to the Lender such Outstandings in respect of which default shall have been committed by the Borrower/Dealer with Penal Interest thereon from its respective Due Date(s) till the date of realization by the Lender in the manner as set out in the Facility Documents together with all Losses which the Lender has suffered or incurred or may have to incur or suffer including costs of enforcement or attempted enforcement or payment by suit or otherwise or by sale or realisation or attempted sale or realization of any Secured Assets for such Facility or otherwise howsoever or any costs, charges or expenses which the Lender may incur by being joined in any proceeding to which the Lender may be made or may make itself a party either with or without others in connection with any proceedings or action.
- 7.1.2 The Guarantor shall keep the Lender fully indemnified against all Losses arising from any failure of the Obligors to carry out or fulfill any obligation and/or liability under the Facility Documents.
- 7.1.3 The Guarantor shall observe and perform the terms and conditions of the Facility Documents as a principal obligor and guarantee the due performance and observance thereof by the Obligors and pay the Outstandings on demand (which may be made by the Lender without first exercising any other rights under the Facility Documents or in law) without any demur or protest.
- 7.1.4 The guarantee provided shall be absolute, irrevocable, continuing and the obligations of each Guarantor under the same are several and shall be valid till all Outstandings are paid/repaid to the satisfaction of the Lender.
- 7.1.5 The guarantee shall be in addition to and shall not merge with or otherwise prejudice or affect any other right, remedy, guarantee, indemnity or Security available to the Lender under the Facility Documents and in law or otherwise, and may be enforced notwithstanding the same or any Security created in respect of the Secured Assets or other property / security in favour of the Lender.
- 7.1.6 A notice of demand by the Lender against the Guarantor shall be the final and conclusive evidence that the Borrower/Dealer has committed a default and that the monies and the amounts claimed thereunder are due and payable by the Dealer to the Lender, and the Guarantor shall not be entitled to challenge the notice on the ground that no default has been committed or the amount mentioned therein as due and payable is not due and payable or on any other ground.
- 7.1.7 The Guarantor shall ensure that the Borrower/Dealer hands over to the Lender, possession of the Secured Assets as and when the Borrower/Dealer becomes liable to do so or as and when the Lender becomes entitled to possess the Secured Assets under and pursuant to the Facility Documents and the Guarantor shall help and assist the Lender in recovering the possession of the Secured Assets.
- 7.1.8 The liability of the Guarantor under the Facility Documents shall not be altered, affected, impaired nor shall the guarantee be discharged or diminished by reason of: (a) death, lunacy, incapacity, insolvency, bankruptcy or winding up, liquidation, dissolution, reorganization or de-merger (as the case may be), of an Obligor or its partners or Karta (as the case may be), or absence of power or irregularity on the part of an Obligor to enter into the Facility Documents, (b) Any time granted to an Obligor or any indulgence shown in respect of the terms, either in the form of releasing or handing back to the Dealer, the Secured Assets after its possession by the Lender, or in any other manner, with or without notice to the Guarantor, (c) the Lender compounding, discharging, releasing or varying the liability of or omitting to claim or enforce payment from the Dealer or any other person, (d) the Guarantor hereby accords its consent for any variance made to the Facility Documents;(e) reconstitution or amalgamation of an Obligor or any change in the management, constitution or name of an Obligor, (f) any contract made between the Lender and the Dealer by which the Dealer or Security be released in part or in full; (g) any act or omission which would not have discharged or affected the liability of the Guarantor had it been the principal debtor instead of Guarantor or by anything done or omitted which but for this provision might operate to exonerate or otherwise release the Guarantor; (h) any act, omission, commission, forbearance, neglect or delay of the Lender in the enforcement or waiver of any of the terms of

contract between the Lender and/or any Obligor; (i) the Lender enforcing or not enforcing any Security or other right under the Facility Documents or in law, (j) any dispute or disagreement whatsoever under or in relation to any Outstanding between the Lender and an Obligor or any other person; (k) suspension or cancellation of the debt under the Facility/Outstandings owed by a Dealer by any act of legislation and/or by any act of State, or (l) any circumstances whatsoever, including those by which the undertaking/s of the Guarantor is/are/be taken over or nationalized by an Authority under the Industries Development and Regulations Act, 1951 or any other act or Applicable Law.

- 7.1.9 The Lender shall be entitled to take any proceeding (legal or otherwise) against the Guarantor prior to, simultaneously or subsequent to any proceeding (legal or otherwise) against the Dealer or any other person or entity. The Lender's right on the Secured Assets or right to possess the same shall not be extinguished by reason of any judgment, decree or order obtained against the Obligors.
- 7.1.10 The guarantee provided by the Guarantor shall not be considered as satisfied or discharged by reason of any intermediate demands by Lender or payment(s) or payment of the whole or any part of the Outstandings owing to the Lender or by reason of the account of the Dealer in respect of the Outstandings guaranteed being at any time in credit but shall constitute a continuing security for the Outstandings from time to time.
- 7.1.11 The Guarantor shall not be entitled to the benefit of subrogation to the Security held by the Lender until all monies due to the Lender secured by such Security are fully repaid and also if the Security is held by the Lender for any other indebtedness of the Dealer. The Lender shall be under no liability to marshal in favour of a Guarantor any securities or any of the funds or property which the Lender may be entitled to receive or upon which the Lender has claim.
- 7.1.12 To give effect to the Guarantee, the Lender is and shall be at liberty to act as though the Guarantor/s was/were the principal debtor to the Lender for all payments guaranteed by the Guarantor(s) to the Lender, and the Guarantor waives in favour of the Lender all or any of the Guarantor's rights as guarantor so far as may be necessary to give effect to the provisions of the guarantee. The Guarantor also waives all the rights available to the Guarantor under section 133, 134, 135, 139 and 141 of the Indian Contract Act, 1872 until all monies due to the Lender secured by such Security is fully repaid and also if the same Security is held by the Lender for any other Indebtedness of the Dealer.
- 7.2 The Guarantor has not received and has not entered into any arrangement in relation to any commission, brokerage or fees or any other consideration directly or indirectly from the Dealer for guaranteeing the Outstandings

## **8. SECURITY**

- 8.1 The Facility together with all interests, costs, fees and expenses and all other monies payable under the Facility Documents or any other moneys due from time to time from the Borrower to the Lender in whatsoever capacity, shall be secured in the form and manner/acceptable to the satisfaction of the Lender by way of:
- 8.1.1 **Hypothecation** - In the event the Outstandings are secured by way of hypothecation over the applicable Secured Assets of the relevant Obligor providing the Security then the terms and conditions as provide in Schedule A of Part II hereto shall be applicable to the Facility.
- 8.1.2 **Mortgage** - In the event the Outstandings are secured by way of mortgage over the applicable Secured Assets of the relevant Obligor providing the Security then the terms and conditions as provide in Schedule B of Part II hereto shall be applicable to the Facility.
- 8.1.3 **DSRA** - In the event the Outstandings are secured by way of hypothecation/lien/charge on the DSRA and DSRA Amount of the relevant Obligor then the terms and conditions of the relevant Facility Documents shall be applicable to the Facility.
- 8.1.4 **Pledge** - In the event the Outstandings are secured by way of pledge over the pledged securities of the relevant Obligor providing the Security then the terms and conditions as provide in Part C of Schedule I hereto shall be applicable to the Facility.
- 8.1.5 **Lien** - In the event the Outstandings are secured by way of lien/charge on stocks, shares, securities, property, book debts, all moneys in all accounts whether current, savings overdraft, fixed or other deposits, held with or

in custody, legal or constructive, of the **relevant** Obligor then the terms and conditions of the relevant Facility Documents shall be applicable to the Facility.

8.2 The Outstandings shall be secured by such other Security as may be mentioned in the Facility Documents.

## **9. ADDITIONAL SECURITY**

9.1. If, at any time during the subsistence of the Facility Documents, the Lender is of the opinion that any of the Security provided by the Obligors has fallen below the margin stipulated under the Facility Documents or has become inadequate to cover the outstanding balance of the Facility in the opinion of the Lender, then, on the Lender's advice, the Obligors shall provide and furnish such additional Security/securities including hypothecation/pledge of the Obligors' other Secured Assets and/or mortgage of or charge over any of the Obligors movable or immovable properties, as may be acceptable to the Lender to cover such deficiency in the margin or as stipulated by the Lender. The Obligors shall make out to the satisfaction of the Lender a good and marketable title to the properties free from all Encumbrance to be mortgaged as Security (if any) for the Facility and comply with all such formalities as may be necessary for the said purpose. The Obligors shall, whenever required by the Lender give full particulars to the Lender of all the assets of the Obligors and shall furnish and verify all statements, reports, return, certificates and information from time to time and execute all necessary documents to give effect to the Security.

- (a) Until the ultimate balance owing by the Obligors to the Lender has been paid or satisfied in full, the Lender shall have a lien/charge on all property and assets of the Obligors from time to time in the possession of the Lender and a charge over all stocks, shares and marketable or other securities from time to time and may get any or all of them registered in the name of the Lender or its nominees whether the same be held for safe custody or otherwise.
- (b) The Borrower expressly accepts that if the Obligors fail to pay any monies when due or which may be declared due prior to the Due Date(s) when it would otherwise have become due or commits any other default under the Facility Documents) with the Lender under which the Borrower is enjoying any financial/credit/other facility; then and in such event the Lender shall, without prejudice to any of the specific rights under each of the agreements, be absolutely entitled to exercise all or any of rights under any of the Borrower's agreement (including the Facility Documents) with the Lender by exercising its general right of lien and set off in respect of the Securities created under such agreements.

## **10. CONTINUING SECURITY**

The charge hereunder created shall be a continuing charge for repayment to the Lender of the Facility together with interest, Penal Interest, Foreclosure Charges, costs, damages, fees and expenses and repayment or payment of all other monies due to the Lender under the Facility Documents, and the liability of the Obligors shall not be affected, impaired or discharged by insolvency of any of the Obligors.

The Obligors undertake that the Secured Assets, the sale realisations, insurance proceeds and all documents related to the Security shall always be held as an exclusive property of the Lender and will be dealt with according to the directions issued by the Lender. The Obligors shall not suffer or allow to suffer any attachment or distress to the Secured Assets or any parts thereof or sell, create, or cause to be created, any charge by way of hypothecation, mortgage, pledge, lien, third party interests or any Encumbrance otherwise on the Secured Assets or allow anything that may prejudice or endanger the Security herein nor shall they, without the consent of the Lender in writing, sell, transfer or shift (except in the ordinary course of its business of transportation) the Secured Assets to any other state or place other than the one where it is registered. The Lender shall be at liberty to incur all such expenses as may be necessary, which shall be at the cost of reimbursement thereof by the Obligor, to the extent of which there shall be a charge on the Secured Assets, to preserve and perfect the Lender's Security on the Secured Assets.

## **11. APPOINTMENT OF RECEIVER**

- a) If after granting or during the continuance of the Facility, the Obligors defaults in paying any monies secured by the Facility Documents or upon a breach of the terms and conditions of the Facility Documents or upon any Event of

Default under the Facility Documents, or in the sole judgment of the Lender circumstances occur that may prejudice or imperil the Secured Assets, then in such event, the Lender may in writing appoint or remove one or more Receivers of the Security created by the Facility Documents under section 69A of The Transfer of Property Act, 1882. All powers provisions and trusts contained in Section 69A of The Transfer of Property Act, 1882 and all other applicable laws shall apply to the Receiver appointed by the Lender.

- b) The Lender or any Receiver that the Lender appoints will not be liable for any loss or damage any Obligor may suffer if the Lender or such Receiver exercises any of their rights and powers under law or the Facility Documents.
- c) The Obligors shall pay the shortfall or deficiency, if the net sum realized by such sale/assignment is insufficient to pay the dues secured by the Facility Documents. The Lender shall not be in any way responsible or liable for any loss or damage that may be suffered by any Obligor by reason of the Lender exercising or not exercising its rights under the Facility Documents.
- d) If any surplus remains with the Lender after payment of the dues secured by the Facility Documents, then it will apply it in payment or liquidation of any other moneys due from any Obligor to the Lender, whether solely or jointly with any other person.
- e) On occurrence of any Event of Default, the Lender or any Receiver appointed by the Lender, without prejudice to any of its other rights, shall have the right to enter any premises where the Secured Assets are located to take possession of and/or collect all or any part of the Secured Assets and to dispose of and/or deal with such Secured Assets in such manner, terms and subject to such conditions as the Lender and/or the Receiver appointed by the Lender may deem fit.

## **12. RELEASE OF SECURITY**

Upon full and final payment by the Borrower to the Lender of all amounts (including without limitation the principal amount, interest, Penal Interest, costs, charges, fees, expenses, claims or other amount of whatsoever nature) payable in accordance with the terms hereof, the Lender shall release the Security in favour of the Borrower or such other person as the Borrower may request.

## **13. COVENANTS**

- (a) The Obligors shall keep and maintain in good and marketable condition the Secured Assets at the Obligors' own expense and replace all such parts whether broken or damaged, as are the normal practice adopted for the maintenance of the Secured Assets. The Obligors shall engage mechanics, dealers, service facilities expressly authorized by the manufacturer of the Secured Assets to effect repairs and to service the Secured Assets. The Obligors shall ensure that any third party/any dealer for the Secured Assets, by or through whom this transaction may have been introduced, negotiated or conducted shall not be deemed to be an agent of the Lender and that the Lender shall not be liable for any representations or statements made by such dealer to the Obligors.
- (b) The Lender shall not be responsible for delay of delivery, or non-delivery, or for lost, stolen, seized, accidents of the Secured Assets, or any defect, damage in the quality of the Secured Assets or any defect or dispute of any nature in the title (even if the Secured Assets are found to be stolen).
- (c) If an Obligor fails to comply with any of the terms of the Facility Documents, the Lender may (without having the obligation to do so and without prejudice to its rights) take such steps as it may deem fit to keep and maintain the Secured Assets or insure or renew such insurance at the Obligors' costs, charges and expenses, which shall be reimbursed by the Obligors on demand by the Lender.
- (d) The Obligors shall have paid and shall bear and pay all their respective personal Taxes payable to the Government of India or to the Government of any State or Municipal Corporation or any local authority punctually so that he/it does not suffer any attachment proceedings arising due to non-payment of such statutory dues and demands which may jeopardize the Secured Assets by way of seizure and/or confiscation of the same by any authority and thereby consequently creating/extending the hypothecation/pledged/mortgaged of the Secured Assets by the Obligors in favour of the Lender. If required by the Lender, the Obligors shall produce receipt thereof evidencing payments.
- (e) Each of the Obligors has agreed, acknowledged, confirmed, undertaken and covenanted on continuous basis that in case Secured Assets include goods and stocks / plant and machinery, (as maybe applicable):

- (i) The relevant Obligors shall not remove or cause or permit to be removed any of the Secured Assets from the place presently kept / stored save and except the Secured Assets which is worn out or needs to be replaced nor shall the relevant Obligors divert or cause to permit any of the Secured Assets to be diverted while in transit to be brought into or stored at the said place. The Secured Assets include tangible movable property and that none of them is embedded in the earth or permanently fastened or attached to the earth. However such removal/ replacement of any of the Secured Assets shall be with the prior approval of the Lender in writing.
  - (ii) At their own expense, the Obligors shall keep the Secured Assets in marketable and good condition.
  - (iii) If required by the Lender, the relevant Obligors shall place notice boards with the Lender's name legibly and distinctly printed in a conspicuous position at the entrance of and inside the factory/ godown / premises or other places where the Secured Assets are kept or shall be brought during the continuance of the Facility Documents.
  - (iv) The relevant Obligors shall furnish to the Lender whenever required by the Lender full and correct particulars/statements of all the Secured Assets and shall allow the Lender or its authorized agent to take inspection of such Secured Assets and of all records and shall provide such evidence as the Lender may require as to the cost and value thereof. Further if any of the Secured Assets (or any part of it) is shipped or transport though rail etc at any time, the relevant Obligors shall, if the Lender so requires, hand over the bills of lading and / or shipping documents or railway receipt and / or other documents of title endorsed in favour of the Lender and in default of the relevant Obligors doing so the Lender shall be entitled to enter and take possession thereof wherever they may be found.
  - (v) The relevant Obligors undertake to give prior written notice to the Lender of its intention to change the location to store the Secured Assets, mentioning the particular type or class of Secured Assets affected and the address of the new place of storage.
  - (vi) The relevant Obligors may in the ordinary course of its business, sell the Secured Assets comprising goods and stocks (or any part of it) unless prohibited to do so by the Lender.
  - (vii) The Borrower and / or the relevant Obligors will store the hypothecated goods in a manner ordinarily stored in the business activity of the relevant Obligors.
- (f) Each of the Obligors has agreed, acknowledged, confirmed, undertaken and covenanted on continuous basis that in case Secured Assets includes book debts (as maybe applicable):
- (i) The relevant Obligors shall furnish to the Lender on the last day of each and every month or at such intervals as may be decided by the Lender and notified to the relevant Obligors and at any other time whenever required by the Lender, full and correct particulars/statements of all the Secured Assets and shall allow the Lender or its service providers to take inspection of all the books of accounts and shall produce such evidence as the Lender may require as to the value thereof. It shall be lawful for the Lender at any time and from time to time during the continuance of the security to appoint and employ at the expense of the Obligors in all respects and for such period as the Lender shall think fit one or more person(s) or a firm or a company to inspect the value of all or any of the Secured Assets on behalf of the Lender.
  - (ii) The Obligors shall not receive, compound or realize any of the Secured Assets nor do anything whereby the recovery of the same may be impeded without the prior written consent of the Lender and shall keep proper books of account of our business and shall at any time when required produce such books for inspection of the Lender and allow the Lender (through its employees and agents) to have access thereto and to make copies of or extracts therefrom.
  - (iii) The relevant Obligors shall be at liberty in the ordinary course of business to recover all or any of the Secured Assets comprising book debts hereby hypothecated but the Obligors shall upon receipt of the proceeds of every sale of the Secured Assets comprising book debts pay the same forthwith to the Lender to be applied in reduction of the Borrower's indebtedness to the Lender in respect of the Facility. The Obligors shall not recover any of the Secured Assets comprising book debts upon being prohibited in writing by the Lender from doing so.

#### 14. OBLIGORS' UNDERTAKING AND OBLIGATIONS

By way of execution of the Application Form and the relevant Facility Documents, each of the Obligors has agreed, acknowledged, confirmed, undertaken and covenanted that:

- 14.1. The Dealer's liability and obligations to repay the Outstandings and the Lender's right at its option to charge Penal Interest shall be absolute and unconditional and the Dealer shall pay to the Lender the Outstandings, regardless of any circumstances and disputes, and with time being of the essence of the contracts.
- 14.2. No action or any other steps have been taken or any legal proceedings been initiated or threatened by or against the relevant Obligors for winding-up, dissolution, liquidation, administration or re-organization or for the appointment of a receiver, administrator, administrative receiver, trustee or similar officer for any or all of its assets or revenues.
- 14.3. It is hereby clarified that once the Lender has made payments against the Invoice(s) to the Seller, the Dealer shall be deemed to have represented, warranted, undertaken and confirmed to the Lender that the Dealer has unconditionally accepted the Invoices raised by the Seller and the Lender shall not be requested or required to confirm or verify in any manner the amount, validity, authenticity or acceptance of the Invoices. The Lender shall be entitled to act on the basis of the Invoice details forwarded by the Seller;
- 14.4. All payments made by the Lender shall be considered as payments made under the Facility as may be agreed between the Lender and the Dealer;
- 14.5. Once the sales proceeds are credited as above by the Lender to the Seller, the payments thus made will remain irrevocable and unaltered under any circumstances and if there is any claim by the Dealer, for any reason whatsoever, arising from the supplies/disbursal made by the Seller, it shall be a matter between the Dealer and the Seller and neither the Lender nor the payments made by the Lender to the Seller shall be party to any such dispute or claim whatsoever;
- 14.6. The Lender shall have the right to appoint, whenever they consider necessary, any chartered accountant / cost accountant / firm of chartered accountants for carrying out any specific assignment/s, to examine the financial and/or cost accounting systems and procedures adopted by the Obligors or as concurrent/internal auditors. The Obligors shall give full co-operation and provide the necessary assistance to the chartered accountant / cost accountant / firm of chartered accountants so appointed by the Lender in carrying out its examination and the same shall be at the sole costs and expenses of the Obligors. The costs, charges and expenses including professional fees and travelling and other expenses for such examination shall be payable by the Obligors. In the event, the Obligors fail to make such payment, the Lender can pay such expenses to the chartered accountant / cost accountant / firm of chartered accountants, and the Obligors shall be liable to reimburse the said expenses to the Lender, together with interest thereon at the same rate as on defaulted amounts from the date of such payment by the Lender.
- 14.7. Notwithstanding anything contained in these T&Cs, (i) the Obligors shall provide such Security as may be required under the Facility Documents and (ii) the Lender may call upon the Obligor to provide for additional Security for securing the Facility and then upon notice to that effect by the Lender, the Obligors shall promptly provide and furnish such additional security in accordance with the Facility Documents, as may be acceptable to the Lender.
- 14.8. The Obligors shall have no right of lien or right to set-off (whether under law or contract or otherwise) upon any money against/towards the Outstandings.
- 14.9. The Obligors acknowledges that the Lender shall have sole and absolute discretion, without assigning reasons, and without any prior notice to the Obligors, cancel the undisbursed portion of the Facility. The Lender shall intimate the Borrower regarding such cancellation.
- 14.10. The Obligors shall notify the Lender of any change in its address and/or the status, terms or place of employment, nationality and/or citizenship.
- 14.11. The Obligors shall sign, execute, register, provide and/or deliver all such agreements, deeds, documents, instruments etc. as may be required by the Lender from time to time.
- 14.12. The Obligors have a clear and marketable title to the Security and the same is free from any prior charge, lien or Encumbrance of whatsoever nature except as intimated to the Lender in writing and the Obligors shall continue to remain in occupation/ possession of the Security and shall not part with the possession thereof.
- 14.13. There are no lis-pendens, attachment, any suit or proceedings or other Encumbrance or legal dispute of any nature against the Security (if applicable) that may have been created in favour of the Lender under the Facility Documents.

- 14.14. The Dealer shall not create any further charge, lien and Encumbrance on (i) the assets and /or property obtained by utilizing the Facility (ii) charge created in favour of the Lender under the Facility Documents without the written consent of the Lender.
- 14.15. The Obligors shall maintain the Security in good order and condition and all necessary repairs, additions and improvements thereto will be made during the currency of the Facility and that the Obligors shall ensure that the value of the Security does not diminish.
- 14.16. In the event, the Seller supplies Goods and requisitions payments therefore from the Lender under the Facility and the Lender is unable to effect the payment to the Seller for any reason whatsoever, then the Dealer shall, upon a requisition in writing from the Seller, make the payment forthwith directly to the Seller with respect to the Goods. In the said circumstances, the Lender shall not be regarded as a party to the transaction.
- 14.17. **Lien and Cross Default:** Any default by the Obligors under any agreement, arrangement, guarantee, and/or under any of its/their Indebtedness (whether actual or contingent, or whether primary or collateral, or whether joint and/ or several), with the Lender, shall constitute an Event of Default under the Facility. The Lender, shall have a paramount lien and right of set-off on/against all other, present as well as future monies, securities, deposits of any kind and nature, all other assets and properties belonging to the Obligors' credit (whether held singly or jointly with any other person), which are deposited with/under the control of the Lender pursuant to any contract entered/to be entered into by the Obligors in any capacity, notwithstanding that such deposits may not be expressed in the same currency as the Indebtedness. The Lender shall be entitled and authorized to exercise such right of lien and set-off against all such amounts/assets/properties for settlement of the Outstandings with or without any further notice to any Obligor. It shall be the Obligors' sole responsibility and liability to settle all disputes/objections with such joint account holders. If so required, the Lender shall be well within their rights to exercise the right of set-off against the money lying in the joint account(s) or in any deposit/bond/other assets held jointly, for settlement of Outstandings. The Obligors shall pay all Taxes, rates, duties (including stamp duties), charges and other imposts and obligations, existing as well as future, in respect of the Facility Documents, the transactions hereunder and all writings executed pursuant to or in connection with the Facility Documents, and, if the Obligors do not pay the same, the Lender may (without being obligated to do so) pay the same on behalf of the Obligors in which case the Obligors shall be liable to forthwith repay the same to the Lender together with interest thereon at the same rate as is applicable to the Facility and, till such payment /repayment. In the event in any judicial or other proceeding, any of the Facility Documents are found or held to be inadequately or inappropriately stamped or any plea to that effect is taken, the Obligors shall forthwith do the needful for ensuring that the document in question is adequately and appropriately stamped.
- 14.18. The Obligors shall abide by and perform all its obligations, to supply goods to Purchasers in pursuance of the purchase orders/indents to be placed by them and would continue to make such supplies in accordance therewith from time to time.
- 14.19. The Obligors will forthwith inform the Lender:
- 14.19.1. upon occurrence of a Material Adverse Change or a Default;
  - 14.19.2. on receiving a notice of application/petition being filed/ intended to be filed for the insolvency /winding up of the Obligor;
  - 14.19.3. The Obligors shall at all times during the currency of the Facility ensure that the Obligors have duly paid all Taxes and statutory dues.
- 14.20. The Obligors shall, without any dispute, accept the statement of accounts and computation of interest provided by the Lender, as final, binding and conclusive evidence and proof of the correctness of the amounts mentioned in such statements of account and/or computation of interest furnished by the Lender and shall be bound by the same.
- 14.21. The Dealer hereby acknowledges that the Dealer shall inform the Lender about the agreement entered with any third party for generating Invoices through online portal/mechanism and such agreement shall be co-extensive and co-terminus till such time the Outstandings have been completely repaid by the Dealer under the Facility Documents and shall not terminate such agreement without the prior written consent of the Lender.
- 14.22. The Lender shall, in addition to the various rights referred to in the clauses above, be irrevocably entitled and authorized to contact the Obligors' employers and require them to make deductions from the salary/wages payable by the employer to the Obligors and to remit the same to the Lender until all the Outstandings of the Obligors to the

Lender is/are completely discharged. The deductions shall be of such amounts, and to such extent, as the Lender may communicate to (and instruct) the Obligors' employers. The Obligors shall not have, or raise/create, any objections to such deductions. No law or contract governing the Obligors and/or the Obligors' employer prevents or restricts in any manner the aforesaid right of the Lender to require such deduction and payment by the Obligors' employer to the Lender. Provided however that in the event the said amounts so deducted are insufficient to pay/repay the Outstandings to the Lender in full, the unpaid amounts remaining due to the Lender shall be paid by the Obligors in such manner as the Lender may in its-sole discretion decide and the payment shall be made by the Obligors accordingly.

14.23. In the event of cancellation of the Facility by the Dealer, in addition to the cancellation charges payable by the Obligors, the Obligors shall also be liable to pay the outstanding upfront fees, non-refundable processing fee, additional processing fees and all other charges payable by the Obligors to the Lender.

14.24. Unless otherwise approved by the Lender in writing, the Obligors shall not:

- 14.24.1. make any change in its constitution or permit any change in its ownership or control whereby the effective beneficial ownership or control of the Obligor changes;
- 14.24.2. create, assume or incur any further Indebtedness;
- 14.24.3. declare any dividend if any Obligation under the Facility remains unpaid on its Due Date(s);
- 14.24.4. use the Facility for any anti- social, speculative or illegal purpose or for any other purpose other than the Purpose; and
- 14.24.5. implement any scheme of expansion and acquisition of fixed assets.

## **15. REPRESENTATIONS AND WARRANTIES**

15.1. Each Obligor hereby represents and warrants to the Lender on a continuing basis that:

- 15.1.1. Each Obligor is duly organized, validly existing and in good standing under the laws of India and has the legal right and full power and all Authorisations to enter into the Facility Documents, and perform all transactions contemplated therein;
- 15.1.2. Each of the Obligors have the power to own their assets and carry on its business and are in compliance with Applicable Law;
- 15.1.3. The Obligations are a legal, valid, binding and enforceable debt and terms against the Obligors and their estate and effects;
- 15.1.4. No Default or Material Adverse Change has occurred or is subsisting;
- 15.1.5. The execution and performance by the Obligors of the Facility Documents to which they are a party do not in conflict with or result in any violation or breach of or default under any provision of any Applicable Law or its constitutional documents;
- 15.1.6. There are no arrears on Taxes or other statutory dues and has completed all necessary filings;
- 15.1.7. No suit, litigation, proceeding, investigation, corporate action, creditor's process etc. by an Authority or any other person is ongoing or pending or threatened against the Obligors or in respect of their assets;
- 15.1.8. The Dealer is a registered channel partner of the Sellers / manufacturer(s) or its distributions company(ies) details of which are set out in the Facility Documents and has purchased the Goods from the Seller;
- 15.1.9. The Dealer shall ensure that regardless of the occurrence of any event which may result in or which may give reason to believe that there may be work stoppage, slowdown, labour dispute, strike, any labour related disruption of its own staff or other impediment, there will be no disruption in the due performance of the obligations of the Dealer under the Facility Documents;
- 15.1.10. All the sale proceeds with respect to the Goods purchased against the Disbursement shall be used for the purpose of the repayment of the said Facility. The Lender has agreed to extend this Facility to the Dealer based on the said representation. In the event, the sale proceeds from the Goods are not used for repayments under this Facility or are misappropriated for any other purpose including for payment under any other Facility, and it comes to the knowledge of Lender, the same shall amount to criminal breach of trust and Lender shall have the right to adequate relief in law for such breach as well;

- 15.1.11. If Securities are created to secure the Earlier Facility, the same shall continue to remain valid, subsisting and available for the Facility, till all the outstanding dues / Overdrawn Limit/ temporary limit and all other costs, charges and expenses under the Earlier Facility are repaid in full and shall not be discharged, extinguished or released by the grant of the Facility;
- 15.1.12. The Goods may be invoiced either by the manufacturers and / or distribution company and such the Facility will be governed by the provisions of the Facility Documents, irrespective of the change in the identity of the Sellers i.e. either the manufacturers or its distribution company and process of delivery of Goods. The Dealer and the Obligors unconditionally admit the liability for the payment of the Outstandings for the transaction structure referred in this clause and repayment thereof shall be governed by the provisions of the Facility Documents;
- 15.1.13. The Lender shall, in its absolute discretion, be entitled to disallow enhancing the limit of the Facility;
- 15.1.14. That each disbursement / tranche pursuant to the Facility Documents shall be a separate debt and the same shall be repaid by the Dealer and the Obligors on each respective Due Date(s) failing which the remaining unutilized Credit Limit of the Facility shall at the sole and absolute discretion of Lender get frozen for all purposes whatsoever;
- 15.1.15. That no interest will be payable by the Lender on negative balance of the Dealer and the Obligors with the Lender;
- 15.1.16. That Dealer and the Obligors are entitled to receive from the Sellers and also from Retail Financiers certain payments on account of commission, incentives and other charges at such intervals as may be fixed by the Sellers (hereinafter "**Receivables**");
- 15.1.17. The Dealer shall maintain stock of Goods equivalent to the Outstandings under this Facility. The Dealer agrees that Goods acquired out of the Credit Facility granted by Lender shall be treated as unpaid stock in all statements including drawing power statements submitted to the working capital bankers of the Dealer;
- 15.1.18. The Dealer shall not mix the Goods acquired out of the Facility from the Lender with other good(s) and shall always keep such good(s) separate and identifiable;
- 15.1.19. The Dealer and the Obligors shall furnish to the Lender whenever required by the Lender full and correct particulars/statements of all the assets and shall allow the Lender or its authorized agent to take inspection without necessity of any notice, of such assets and of all records and shall provide such evidence as the Lender as may be require as to the cost and value thereof;
- 15.1.20. The "Know Your Customer" ("**KYC**") requirements of the Lender have been and shall be fulfilled and all other terms and conditions as may be prescribed by RBI or by the Lender from time to time have been and shall be complied with;
- 15.1.21. The Financial Statements of the Obligors and all other statements delivered to the Lender were prepared in accordance with accounting standards applicable in India from time to time consistently applied, save to the extent expressly disclosed in such Financial Statements and give a true and fair view and represent the Obligors' financial condition and operations and contingent liabilities, if any;
- 15.1.22. Neither any of the Obligors nor any of its directors/partners has been declared to be a wilful defaulter. In the event of a person having being identified as a wilful defaulter, the Obligors shall take expeditious and effective steps for removal of such person from directorship/partnership;
- 15.1.23. All information provided by the Obligors are true, accurate and complete and all projections provided by the Obligors have been prepared on the basis of latest information and on the basis of reasonable assumptions;
- 15.1.24. No Obligor enjoys immunity against any legal action or proceeding under any Applicable Law or otherwise;
- 15.1.25. None of the Obligors is in breach of any material agreement to which it is a party including without limitation any agreement entered into with a bank/financial institution/lender. The term material agreement being one which could, in the opinion of the Lender, prejudice any of the rights of the Lender under any Facility Document; and
- 15.1.26. The Obligors and each of their Affiliates and their directors / partners / proprietor etc. do not appear on the RBI's list of defaulters and Export & Credit Guarantee Corporation's ("**ECGC**") caution list or any sanctions or terrorist list published by the United Nations or RBI. Further, if any such proceeding is initiated by any of such

departments, the Lender shall be promptly informed of the same. In the event, the Lender discovers that the said representation was incorrect at a later stage, or in case of non-reporting of any subsequent proceedings, the Lender shall be fully empowered to take any criminal action / other suitable proceedings against the Obligors. Further, the Obligors and their associates / group companies / family concerns and their directors / partners / proprietor etc. names do not appear on any lists, notifications or directions issued by the RBI with respect to anti-money laundering or combating financing of terrorism or any sanctions lists published by the United Nations Security Council with respect to terrorist related activities.

- 15.2. Each of the Obligors acknowledges that the business activities of the Lender are governed by the "Tata Code of Conduct" ("**Code**"), a copy of which is available on [www.tatacapital.com](http://www.tatacapital.com). Each of the Obligors undertake that it will promptly report any violation or potential violation of the Code by any employee or representative of the Lender to the Local Ethics Counselor or the Chief Ethics Counselor by email addressed to [ethics@tatacapital.com](mailto:ethics@tatacapital.com), or by a mail addressed to the Local Ethics Counselor or the Chief Ethics Counselor at the address mentioned in the title clause of this T&Cs. The Lender, in turn, undertakes that it will maintain confidentiality of all communication received; and
- 15.3. The Obligors hereby agree, confirm and acknowledge that it is on the basis of the representations and warranties hereinabove and the terms of the Facility Documents that the Lender has agreed to make available the Facility to the Dealer.

## **16. COSTS AND EXPENSES**

- 16.1. The Obligors hereby agree that the processing fees and other fees and charges paid to the Lender are non-refundable in nature and that the Obligors shall pay the costs, fees, charges etc. as mentioned in the Facility Documents. In addition to the same, the Obligors shall pay all the costs, Taxes, charges, fees (including attorney fees), expenses, advances, duties, stamp duties (including any increase or differential duties and penalties payable due to an instrument or copy thereof (including electronic record) being brought in any state other than where the same was executed), registration fees/charges, court fees, penalties etc. as may be applicable for / in relation to preparation, negotiation, preservation, performance, execution, enforcement and/or realisation: (i) of/under the Facility Documents, and/or (ii) in relation to the Facility, and/or (iii) in relation to repossession and maintenance of any asset that may be provided as security, release of security etc. from time to time.
- 16.2. The Lender may, without being obligated to do so, in its sole discretion incur any of the costs, Taxes, charges, fees (including attorney fees), expenses, advances, duties, stamp duties, registration fees/charges, court fees, penalties etc. as mentioned in Clause 16.1 above and the Obligors shall forthwith reimburse all such sums paid/incurred by the Lender upon demand. All such sums shall carry interest from the date of payment by the Lender till such reimbursement to the Lender at the Rate of Interest and Penal Interest specified in the Facility Documents. For this purpose without prejudice to any of its other rights, the Lender shall be entitled to debit the Obligors' accounts pending recovery.
- 16.3. In the event of dishonour of any PI(s) issued by the Obligors, the Obligor shall be liable to a flat charge separately for each dishonour of PI(s) so issued by the Obligors ("**Dishonour Charges**") as set out in the Facility Documents. In case of dishonouring / non-payment on the second presentation, a further charge would be levied. The levy of Dishonour Charges is without prejudice to the rights of the Lender under the Facility Documents or Applicable Laws.
- 16.4. The Lender, may at the risk and cost of the Obligors, engage one or more person(s) to verify any facts or information furnished by, concerning or pertaining to the Obligors and/or in relation to the Facility Documents and/or to collect the Outstandings and may furnish to such person(s) such documents, information, facts and figures as the Lender thinks fit and may delegate to such person(s) the right and authority to perform and execute all acts, deeds, matters and things connected therewith, or incidental thereto, as the Lender thinks fit.
- 16.5. The charges including dishonour charges, Foreclosure Charges cancellation charges and/or other charges etc. mentioned in the Facility Documents are indicative charges as on the date of signing of the Facility Documents and the Lender in its sole and absolute discretion reserves its right to periodically review and revise the same and the Obligors expressly waive any requirement of prior consent. Further, the Lender may waive or re-negotiate any or all of the charges at its sole discretion. The Lender shall intimate the Dealer of any such revision and declare such revised charges

on its website [www.tatacapital.com](http://www.tatacapital.com). The Dealer shall be liable to pay the revised charges without any demur and shall not be entitled to raise any objections for any such revision.

## **17. INDEMNITY**

- 17.1.** The Obligors shall be jointly and severally liable to indemnify and keep the Indemnified Person(s) indemnified and harmless, within timelines specified in the Facility Documents of demand, against any Losses incurred as a result of:
- 17.1.1. the occurrence of any Default or investigation of any event which it believes to be a Default;
  - 17.1.2. breach of any of the terms and/or conditions of the Facility Documents; and/ or
  - 17.1.3. Any representation and/or warranty provided by the Obligors found to be or becoming untrue, misleading or false in any respect whatsoever.
- 17.2.** The Obligors acknowledge the inherent risks involved in sending the instructions/communications/documents to or by the Lender via facsimile, untested telexes and faxes, telegraph, cable or emails or any other electronic mode and hereby agree and confirm that all risks shall be fully borne by the Dealer and the Dealer hereby assumes full responsibility for the same, and undertakes to indemnify the Lender and keep the Lender indemnified and harmless at all times from and against any and all Losses including any claims and demands by any third party or any other, actions, demands, liabilities, costs, charges, damages, Losses, expenses and consequences of whatever nature (including legal fees on a full indemnity basis) and howsoever arising which may be brought or preferred against the Lender or that the Lender may or may have to suffer, incur or sustain by reason or on account of the Lender having so acted whether wrongly or mistakenly or not, or of the Lender failing to act wholly or in part in accordance with the instructions so received which could be a result of any miscommunication, or technological error beyond the control of the Lender considering the mode in which the same was conveyed.

## **18. EVENTS OF DEFAULT**

- 18.1.** Each of the following shall be an event of default (each an “**Event of Default**”): -
- (a) An Obligor committing default in payment of the Outstandings on or before the respective Due Date(s);
  - (b) Breach by an Obligor of any of the undertakings, covenants, terms and/or conditions etc. of the Facility Documents and/or any of the declaration, representation and/or warranty etc. provided by the Obligors found to be or becoming untrue, misleading, incorrect or false in any respect whatsoever;
  - (c) Failure by an Obligor to comply with Applicable Law, including regulations and rules as issued by Authority;
  - (d) Occurrence of an event which may lead to Material Adverse Effect;
  - (e) The sale proceeds from the Goods are not used for repayment under the Facility or are misappropriated for any other purpose including for payment under any other facility and the same comes to the knowledge of the Lender;
  - (f) Termination of agreement between the Dealer and the Seller;
  - (g) Termination of agreement between the Dealer and any third party that manages the online portal;
  - (h) If a cross default as below occurs:
    - (i) any debt of an Obligor is not paid when due nor within any originally applicable grace period;
    - (ii) any default (however described) relating to any debt;
    - (iii) any commitment for any debt of an Obligor is cancelled or suspended by a creditor/lender as a result of a default (however described);
    - (iv) Any creditor of an Obligor becomes entitled to declare any debt due and payable prior to its specified maturity as a result of a default (however described);
    - (v) any Encumbrance over any asset of an Obligor to secure any other debt becomes enforceable; or
    - (vi) If there is a Default, under one or more agreements or instruments entered between: (i) Lender and an Obligor; or (ii) Lender and any Affiliates/associate/promoter/partner/director of an Obligor; or (iii) an Obligor or its Affiliates/associate/promoter/partner/director with any of its lenders.
  - (i) Any litigation, suit, proceeding etc. is initiated, filed, applied or threatened against an Obligor, including without limitation by any lender, bank or financial institution, and including without limitation for the winding-up, liquidation and/or insolvency of an Obligor or the appointment of a judicial manager or interim or other resolution

professional of any of the Obligors and/or initiation, filing, application or threat of analogous proceeding against any of the Obligors in any jurisdiction;

- (j) An Obligor enters into any scheme of arrangement or compromise with the Obligor's creditors or such a scheme of arrangement or compromise is proposed or, a receiver or receiver and/or manager is appointed over any of the Obligor's assets,
- (k) An Obligor ceases or threatens to cease to carry on its business;
- (l) Demise or permanent disablement of an Obligor;
- (m) Commitment of any fraud by an Obligor;
- (n) Non-satisfaction of a Conditions Precedent or any other conditions that may be prescribed under the Facility Documents; or
- (o) Subsequent to the grant of the Facility, if an Obligor (being an individual) is divorced or any proceeding is taken or commenced or initiated in any family court for the same or otherwise or if there is a family settlement or a dispute amongst the partners;
- (p) If any litigation or proceedings (including arbitration or conciliation proceedings) is initiated against or orders or decrees are passed against or notice are received by an Obligor;
- (q) If the security, if any, created in favour of the Lender ceases to inure to the benefit of the Lender; and/or
- (r) If an Obligor has defaulted under any agreement entered into with the Lender or its subsidiaries/fellow subsidiaries/Affiliates/any other entity forming part of Tata Group.

18.2. The decision of the Lender as to whether or not an Event of Default has occurred shall be final and binding upon the Obligors.

## **19. CONSEQUENCES OF EVENT OF DEFAULT**

Without prejudice to or affecting or diluting the rights of the Lender under the Facility Documents or under any Facility Documents, if a Default occurs or is outstanding, the Lender may at any time with immediate effect by a notice in writing to any of the Obligors:

- 19.1. cancel the Facility, whereupon no further utilisation may be made of the Facility; and/or
- 19.2. declare all Outstandings due, owing or outstanding (whether or not then otherwise due) under the Facility as being immediately due and payable or otherwise payable on demand; and/or
- 19.3. enforce the Security, if any, as may have been provided to secure the Outstandings; and / or
- 19.4. entitled to demand stoppage of all supplies of the Goods by the Sellers to the Dealer and for termination of the dealership arrangement with the Sellers; and / or
- 19.5. entitled to intimate the Seller to stop further supply of Goods to the Dealer and terminate the Dealership Arrangement by and between the Seller and Dealer; and/or
- 19.6. entitled to demand, claim and receive from the Sellers and Retail Financiers the Receivables payable to the Dealer and adjust the same against the Outstandings.

## **20. INSURANCE**

20.1. The Secured Assets being hypothecated/mortgaged to the Lender will be comprehensively insured (at the own expense of the Obligors during the continuance of the Security) with such insurance company as may be required by the Lender against all losses and damages by riot, civil commotion risks, accident, fire, theft, and all other risks usually covered by insurance including third party risks. The Obligors shall punctually pay all premia payable for the insurance and maintain the policies in full force and effect and not to do or cause to be done anything whereby the policy gets vitiated, and shall renew the policy from time to time and ensure that the Secured Assets hypothecated/mortgaged to the Lender remain insured throughout the term/pendency of the Facility Documents or while any monies due or payable to the Lender under the Facility are Outstandings and the original policies of insurance and renewal notes shall be immediately deposited with the Lender. The insurance policy to be taken out under the Facility Documents shall be in the name of the Borrower and the Lender shall be described as loss payee under such insurance. The Lender shall be entitled to appropriate any monies received from the insurance company towards the Obligors' obligation to the Lender

in respect of the Facility. The Lender shall not be liable for any loss on account of non-renewal of insurance of the Secured Assets and/ or delay/ non-payment by the insurance company of any settlement claim by the Obligors.

- 20.2. In order to safeguard the Security for the Facility and to ensure that the Lender's lien is marked on the insurance, the Lender may get the insurance done on behalf of the Obligors, by being a facilitator and by making the premium payment to the approved insurance company through the Obligors' PI(s). However, any non-payment on the part of the Lender due to any reason including occurrence of any Event of Default by the Obligors, will not affect the liability of the Obligors to pay the necessary insurance premium and to keep the Secured Assets insured. The first claim on any insurance proceeds shall be that of the Lender with respect to insurance policy and its renewal as stipulated from time to time and the Obligors shall pay reasonable amount as nominal compensation for the services rendered by the Lender for facilitating the above mentioned arrangement with the insurance company and ensuring that the Lender's name is marked under insurance.
- 20.3. In addition to repayment, the Lender may provide an insurance payment facility to the Obligors. In such an event the Obligors shall pay to the Lender the amounts towards insurance premium for the Secured Assets which may be loaded to the Instalments. In the event of Obligors opting for such facility then, on a yearly basis the Lender shall payout the said amounts to the insurance company.

## 21. RIGHT TO DELEGATE

The Lender shall, without prejudice to its rights to perform such activities itself or through its office employees, be entitled to appoint one or more person(s) ("**Service Providers**") as the Lender may select and to delegate to such party all or any of its functions, rights and powers under the Facility Documents including the rights and authority to receive on behalf of the Lender from the Obligors all Outstandings and to perform and execute all lawful acts, deeds, matters and things connected therewith and incidental thereto. The Obligors expressly and irrevocably consents that for any claim against the service providers, the Lender shall not be liable and the claim of the Obligors on this account shall be against the service providers only.

## 22. CONDITIONS PRECEDENT

- 22.1. The Facility may be disbursed by the Lender to the Dealer, in one or more tranches on fulfilment of the following conditions precedent ("**Conditions Precedent**"). Failure to fulfil the Conditions Precedent could result in the Lender refusing to disburse the Facility. The Conditions Precedent required to be fulfilled are:
- 22.1.1. The Obligors shall have provided to the Lender, such details, documentary evidences and information as may be required by the Lender under its know your customer norms;
  - 22.1.2. The Obligors shall have provided to the Lender such PI(s) as may be required by the Lender.
  - 22.1.3. The Obligors shall have obtained and delivered all Authorisations/documents that may be required by the Lender including without limitation:
    - 22.1.3.1. All the constitutional documents and Authorisations including corporate authorisations and resolutions and/or authority letter etc. including any certifications in relation to the same as may be required by the Lender from time to time;
    - 22.1.3.2. The relevant Obligor(s) shall have delivered to the Lender a certificate issued by the relevant Assessing Officer (as defined under the Income Tax Act, 1961) under the provisions of Section 281(1)(ii) of the Income Tax Act, 1961, wherever applicable;
    - 22.1.3.3. The Obligors shall have delivered to the Lender specimen signatures of the authorized signatories of Obligors duly verified by the Obligors' principal bankers;
    - 22.1.3.4. The Dealer shall, if required by the Lender, cause the Guarantors to execute and hand over to the Lender an irrevocable and unconditional personal/corporate guarantee in favour of the Lender; and / or
    - 22.1.3.5. Any other document(s) as may be required by the Lender in its sole and absolute discretion.

## 23. ASSIGNMENT

- 23.1. The Obligors shall not transfer or assign any of its rights or liabilities under the Facility Documents to any person without the prior written consent of the Lender.
- 23.2. The Obligors agree that notwithstanding anything to the contrary contained in any of the Facility Documents, the Lender shall have the right to assign and / or transfer and / or novate and / or otherwise securitise its rights or obligations or any part thereof under the Facility Documents, and / or the Outstandings and/or enter into indemnity or other arrangements for risk sharing, whether with or without recourse to the Lender, to one or more scheduled commercial banks or any other person whether located / placed in India or outside India, without any reference or notice to the Obligors. The Obligors shall not, however, claim any privity of contract with any such entity to whom the Outstandings and/or the rights or obligations under the Facility Documents have been assigned / transferred / securitised or the Lender have entered into indemnity or arrangements for risk sharing.
- 23.3. The Dealer irrevocably and unconditionally confirm that it shall continue to be bound by the terms of the Facility Documents and the other documents in relation to the Facility notwithstanding such transfer or assignment by the Lender.

#### **24. DISCLOSURE AND DATA PRIVACY**

- 24.1. The Obligors agree and authorize the Lender to disclose, from time to time, any information and data relating to the Obligors (including personal sensitive data or information and any information that requires a consent under the Information Technology Act, 2008 and/or any other statute) and/or the Facility and/or other facilities availed by the Obligors and/or the 'financial information' as defined in Section 3(13) of IBC, in or outside India without requirement of any notice or intimation:
  - 24.1.1. to any of its Affiliates and to any member of Tata group or any of their employees, agents, representatives etc.;
  - 24.1.2. to third parties engaged by the Lender or any member of Tata group for purposes such as marketing of services and products;
  - 24.1.3. to any rating agency, insurer or insurance broker of, or direct or indirect provider of credit protection to the Lender or any member of Tata Group;
  - 24.1.4. to any of the service providers or professional advisers of a member of Tata group with the rights to further share it with their sub-contractors in any jurisdiction;
  - 24.1.5. to any credit bureau, database/databanks, corporate, banks, financial institutions etc;
  - 24.1.6. to any Authority or other person as required by Applicable Law;
  - 24.1.7. to any person pursuant to an order or direction of an Authority;
  - 24.1.8. to any credit information company, other agencies or any information utility or other lenders of the Obligors including who may also use, process the said information and data disclosed by the Lender in the manner as deemed fit by them, and who may for consideration or otherwise furnish such processed information and data or products thereof prepared by them, to banks/financial institutions and other credit guarantors or registered users, as may be specified by the RBI;
  - 24.1.9. to any other person:
    - 24.1.9.1. to (or through) whom the Lender assigns or transfers or novates (or may potentially assign or transfer or novate) all or any of its rights and obligations under the Facility Documents/Facility; and/or
    - 24.1.9.2. pursuant to the processing or management of data relating to the Facility or the Obligors; and/or
    - 24.1.9.3. as the Lender may deem fit.
- 24.2. The Obligors agree as a pre-condition of the Facility given to the Dealer by the Lender that in case the Obligors commit default in the payment/repayment of the Outstandings on the Due Date(s), the Lender and/or RBI will have an unqualified right to disclose or publish the name/s of the Obligors or the name/s of their partner/s or directors as defaulter/s in such manner and through such medium as the Lender or RBI in their absolute discretion may think fit including the photographs of the Dealer and/or Obligors or any of their directors, partners, members or personnel.

- 24.3. The Obligors hereby authorise the Lender to carry out their electronic KYC authentication and to fetch electronic KYC data from Aadhaar data base and/or from any other sources as permitted by Applicable Law.
- 24.4. The Obligors expressly authorise/consent to the Lender, its various service providers or agents, including for marketing, collections and recovery agents to contact the Obligors telephonically, through e-mails, telephones, messages, SMS, Whatsapp or other applications or otherwise even if the names of the Obligors appear in the Do Not Call or Do Not Disturb Register to inform the Obligors about the marketing schemes, various financial and/or investment products and/or offerings of other services, Outstandings under the Facility Documents or any other aspect pertaining to any facilities availed or to be availed by the Obligors. The Obligors also expressly declare that such e-mails, telephonic calls, messages, SMS, Whatsapp messages etc. from the tele-callers, agents and/or service provider of the Lender and its associates, Affiliates and/or group companies will not cause any inconvenience to them and/or their family members. The Obligors expressly and irrevocably consents that for any claim against the service providers, the Lender shall not be liable and the claim of the Obligors (or any of them) on this account shall be against the service providers and/or tele-callers. The Obligors agree to the use of e-mails, messages, SMS, Whatsapp and/or other applications for communication or sharing of information or documents, agree to abide by the terms and conditions of such applications and agree to the risks associated with such applications or sharing of information through them.

## **25. NOTICE/COMMUNICATION**

- 25.1. Any notice, demand, statement or communication by the Lender to the Obligors:-
- 25.1.1. may be sent to the Obligors by personal delivery, post sms, mms, whatsapp, e-mail, facsimile, website or other written or recorded form of electronic communication to their address set out in the Facility Documents or the address of the Obligors last known to the Lender;
  - 25.1.2. if sent by post to an address in India, shall be deemed to have been served forty-eight (48) hours after posting, and if sent by post to an address outside India, shall be deemed to have been served seventy-two (72) hours after posting; and
  - 25.1.3. if sent by facsimile, sms, mms, whatsapp, e-mail or other written or recorded form of electronic communication, shall be deemed to have been served at the time of sending,
- 25.2. Any notice or communication by the Obligors shall be in writing, may only be sent by personal delivery or pre-paid post addressed to the Lender through which the relevant Facility is granted to the Obligors, and will only be effective when actually received by the Lender. No oral communication shall bind the Lender.
- 25.3. The Obligors agree and confirm that any notice or communication sent to any of the Obligors shall be deemed to have been sent to and received by all other Obligors as well.

## **26. RECORDS OF FACILITY**

The Lender shall maintain or cause to be maintained in accordance with its usual practice, electronic/computerised accounting systems at its office, evidencing the amounts disbursed and due under the Facility Documents and such computer generated/maintained certificate/statement/accounts from the Lender's electronic terminals shall not be contested by the Obligors and the entries made therein shall be conclusive evidence of the existence and amounts of the obligations of the Obligors and amounts realised, recovered and expended including in any legal action or proceedings arising out of or in connection with the Facility Documents and the Obligors shall not contest the same.

## **27. SEVERABILITY**

Each of the provisions of the Facility Documents are intended to be and shall be construed as independent and several of each other. Invalidity, illegality or unenforceability of any provision (in whole or part) of the terms and conditions of the Facility Documents in any jurisdiction shall not affect such provision in any other jurisdiction or invalidate or affect the remaining provisions (including in case of partial invalidity, the valid part of the affected provision) of the Facility Documents.

## **28. MISCELLANEOUS TERMS**

- 28.1. In the event any changes are required to be made in any of the Facility Documents based on guidelines / directives issued by the RBI to the non-banking financial companies from time to time, such changes shall be deemed to be incorporated in the Facility Documents as if the same were part of the documents since inception and thereafter such amended terms and conditions will thereupon apply to and be binding on the Obligors. Without prejudice to the aforesaid, the Lender may in its sole discretion ask the Obligors to co-operate with the Lender to make those changes in the Facility Documents and the Obligors shall be bound by the same.
- 28.2. The Facility Documents shall operate as a letter of continuity in favour of the Lender, to be enforceable for the repayment of the Outstandings and/or all sums remaining unpaid under the Facility now or hereafter, pursuant to the Facility Documents (as may be amended and modified from time to time) together with Interest, and other charges and all other costs, charges and expenses which may be or become payable in connection therewith.
- 28.3. Notwithstanding any suspension or termination of the Facility, all rights and remedies of the Lender as per the Facility Documents shall continue to survive until the receipt by the Lender of the Outstandings in full to its satisfaction.
- 28.4. The rights, powers and remedies given to the Lender by the Facility Documents shall be in addition to all rights powers and remedies given to the Lender by virtue of any other security, statute, or rule of law.
- 28.5. Nothing contained in the Facility Documents shall be deemed to limit or affect prejudicially the rights and powers of the Lender under any Applicable Law.
- 28.6. Any forbearance or failure or delay by the Lender in exercising any right, power or remedy under the Facility Documents or grant of time, extension or indulgence to an Obligor by the Lender shall not be deemed to be waiver of such right, power or remedy, and any single or partial exercise of any right, power or remedy under the Facility Documents shall not preclude the further exercise thereof and every right and remedy of the Lender shall continue in full force and effect until such right, power or remedy is specifically waived by an instrument in writing executed by the Lender.
- 28.7. In the event of there being more than one Borrower and/or Guarantor the respective liabilities of each of the Borrowers and Guarantors hereunder shall be joint and several.
- 28.8. The Lender shall be entitled to enforce the Facility Documents and its rights and benefits created thereunder and to seek any and all remedies to the extent permissible under Applicable Laws from time to time.
- 28.9. Save and except modified under the Facility Documents, all terms and conditions as applicable to utilization requests shall mutatis mutandis apply to online utilization request made under the Facility Documents.

## **29. ARBITRATION**

If any dispute, difference or claim arises between any of the Obligors and the Lender in connection with the Facility or as to the interpretation, validity, implementation or effect of the Facility Documents or as to the rights and liabilities of the parties under these T&Cs or alleged breach of the Facility Documents or anything done or omitted to be done pursuant to the Facility Documents, the same shall be settled by arbitration to be held in accordance with the Arbitration and Conciliation Act, 1996, or any statutory amendments thereto as per the terms and procedures and at such place as agreed in the Specific Agreement. The award of the arbitrator shall be final and binding on all parties concerned. The arbitration proceedings shall be in English language. The cost of arbitration shall be borne by the Borrower.

## **30. GOVERNING LAW AND JURISDICTION**

These T&Cs and the Facility Documents are governed by and shall be construed in accordance with the laws of India. Subject to the provisions of Clause 29 above, 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 the Facility Documents including, without limitation, a petition for appointment of an arbitrator or arbitrators under Section 11 of the Arbitration and Conciliation Act, 1996 shall be instituted only in competent courts at the place as mentioned in the Facility Documents.

## **31. PROTECTIVE CLAUSES**

Neither the liability of the Obligor nor the validity or enforceability of the Facility Documents shall be prejudiced, affected or discharged by:

- 31.1. the amendment, variation or modification of any document referred to therein, except to the extent specifically varied or modified with the consent of the persons as required, pursuant to the terms of such document;
- 31.2. any change or restructuring of the corporate structure of an Obligor;
- 31.3. the invalidity, irregularity or unenforceability of any obligation or liability of the Parties (including the Obligor) to the Facility Documents;
- 31.4. any deficiency in the powers of the Obligor or any other person to enter into or perform any of their respective obligations under the Facility Documents or any irregularity in the exercise thereof or any lack of authority by any person purporting to act on its behalf;
- 31.5. the insolvency or liquidation or any incapacity, disability, death or limitation or any change in the constitution, status, control or ownership of the Obligor or any other person, as the case may be;
- 31.6. any other charge, guarantee or right or remedy available to the Lender being or becoming wholly or partly void, voidable, unenforceable or impaired by the Lender at any time releasing, refraining from enforcing, varying or in any other way dealing with any of them or any power, right or remedy that the Lender may now or hereafter have from or against an Obligor or any other person;
- 31.7. any act, omission, event or circumstance which would or may but for this provision operate to prejudice, affect or discharge the Facility Documents or the liability of the Obligor, as the case may be under the Facility Documents or any other right, power or remedy conferred upon the Lender by the Facility Documents or by any Applicable Law; or
- 31.8. any other matter or thing whatsoever.

## Schedule I

### Part A HYPOTHECATION

#### 1. Security by hypothecation of Secured Assets

- (a) The Facility together with all interests, costs, fees and expenses and all other monies payable in terms of the Facility Documents or any other finance or moneys due from time to time from the Obligors to the Lender in whatsoever capacity, shall be secured by way of hypothecation of the Secured Assets having an exclusivity/ranking as mentioned in the Facility Documents, as described in the Facility Documents, in favour of the Lender and in the form and manner/acceptable to the satisfaction of the Lender.
- (b) The charge/hypothecation so created shall continue in full force so long as all the amounts due under the terms of the Facility Documents have been paid by the Obligors to the Lender and until the Lender issues a certificate discharging the Security created pursuant to the Facility Documents and stating that the Facility and the other amounts payable under the Facility Documents have been discharged and paid in full and the charge shall not be affected, impaired or discharged by the winding up or insolvency (voluntary or otherwise) or by any merger or amalgamation, reconstruction, takeover of the management, dissolution or appropriation of the business or assets or nationalisation (as the case may be) of the relevant Obligors. Any direct or indirect transfer/alienation of the Secured Assets would be deemed to be criminal breach of trust and a case of cheating entitling the Lender to file/pursue a First Information Report ("FIR") or a criminal complaint against the Obligors.
- (c) The relevant Obligors shall take all necessary actions and make all the filings required to be filed in relation to the security interest created hereunder and it shall ensure that the security interest hereunder is duly registered with the ROC, CERSAI and/or any other authority or regulatory body with whom relevant filings are required to be made to perfect the Security created under the Facility Documents and protect the Security, including without limitation relevant filings to be made with information utilities pursuant to the provisions of the IBC, as and when applicable, within the stipulated period. The relevant Obligors shall promptly, upon receipt, deliver to the Lender certified true copies of the receipts, confirmations, certificates and other documents evidencing perfection of the Security created under the Facility Documents.
- (d) At any time after the occurrence of an Event of Default (which is continuing), the Lender may have a receiver or receivers appointed for the Secured Assets or any part thereof.
- (e) The Obligors shall pay the shortfall or deficiency, if the net sum realized by such sale/assignment is insufficient to pay the dues secured by the Facility Documents. The Lender shall not be in any way responsible or liable for any loss or damage that may be suffered by the Obligors by reason of the Lender exercising or not exercising its rights under the Facility Documents.
- (f) The Lender shall be at liberty to apply any other moneys in the hands of the Lender standing to any Obligor's credit or belonging to any Obligor in or towards the payment of the balances under the Facility/ Obligations, provided that nothing contained in the Facility Documents shall in any manner prejudice or affect any other remedy of the Lender against the Obligors.
- (g) The Obligors assures the Lender that, subject to the security created under the Facility Documents, all Security (present and future) whether hypothecated or which may be hypothecated in future, are and will be the Obligors' absolute and unencumbered property with full power of disposition and realization. The Obligors shall not create any Encumbrance over the Secured Assets without obtaining the prior written consent of the Lender.

**Schedule I**  
**Part B**  
**MORTGAGE**

1. The Obligors shall execute necessary deeds, documents, agreements and/or declarations as may be stipulated by the Lender ("**Mortgage Documents**") to create the mortgage over the Secured Assets having an exclusivity / ranking as mentioned in the Facility Documents in favour of the Lender under the terms of the Facility Documents.
2. The Security to be created under the Mortgage Documents shall be a continuing security and shall remain in full force and effect, notwithstanding any intermediate payment or settlement of account or other matter or thing whatsoever and in particular the intermediate satisfaction by the Obligors of any part of the Outstandings, and is in addition and without prejudice, to any other security, guarantee, lien, indemnity or other right or remedy which the Lender may now or hereafter hold for the Outstandings.
3. The Secured Assets shall be the absolute property of the Obligors and at the sole disposal of the Obligors, and free from any charge, trust, pledge, lien, claim or Encumbrance (other than as may be disclosed to the Lender in writing).
4. The Obligors shall undertake all necessary actions as required under Applicable Law and as may be stipulated by the Lender to create and perfect the Security created/to be created under the terms of the Mortgage Documents.
5. The Obligors shall not sell, lease or dispose of the Secured Assets or any part thereof or create thereon any mortgage, lien or charge howsoever or other Encumbrance of any kind whatsoever without the prior written consent of the Lender and so long as the Outstandings remain unpaid, the Obligors shall not deal with or dispose of any interest in the Secured Assets and / or any part thereof in a manner prejudicial to the interests of the Lender.
6. The Lender may by writing, at any time after the Security created under the Mortgage Documents become enforceable, appoint one or more persons, entities or any authorised officer or officers of such person as receiver of the Secured Assets or any part thereof and may remove any such receiver so appointed and appoint another in his stead. The appointment of a Receiver may be made either before or after the Lender shall have entered into or taken possession of the Secured Assets.
7. Upon full and final payment by the Obligors to the Lender of the Outstandings to the satisfaction of the Lender, the Lender shall release the Security in favour of the Obligors.
8. The Obligors waive the application of Sections 61, 65A and 67A of the Transfer of Property Act, 1882.
9. The Obligors shall ensure that the Secured Assets mortgaged and/or charged continues to remain the absolute property of the Obligors and at the disposal of the Obligors, save and except, to the extent any dispositions expressly permitted in writing by the Lender.
10. Further, for the purposes of enabling the Lender to have a claim to the extent provided under the Facility Documents over all other secured and unsecured lenders, the relevant Obligors shall electronically file a copy of the Mortgage Documents along with duly completed Form CHG 1 as prescribed under the Companies Act, 2013 with the concerned Registrar of Companies along with the requisite filing fee within the prescribed period without payment of penalty and shall deliver copies thereof to the Lender.

## SCHEDULE I

### Part C

#### PLEDGE

The Facility together with all interests, costs, fees and expenses and all other monies payable under the Facility Documents or any other moneys due from time to time from the Borrower to the Lender in whatsoever capacity, shall be secured by way of pledge of the Pledged Securities having an exclusivity/ ranking as mentioned in the Facility Documents in favour of the Lender/Security Trustee and in the form and manner/acceptable to the satisfaction of the Lender.

Unless the context otherwise requires, for the purpose of Part C of Schedule I of these T&Cs and other Facility Documents, the following words and expressions shall mean and have the following meaning:

#### **1. Definitions:**

- (a) **“Actual Margin”** means, at the relevant time, the amount equivalent to the current market value of the Collateral less the Outstandings, as determined by the Lender at its sole discretion.
- (b) **“Additional Pledged Securities”** means such securities or financial assets as may be accepted by the Lender from time to time, in its absolute discretion, as security for the Outstandings and shall include (without limitation); all instruments, consents, approvals, permissions, no-objections, confirmations, agreements, deeds and documents delivered or required to be delivered in connection with the creation and perfection of any pledge and charge on the Additional Pledged Securities in favour of the Lender, and all right, title, benefit, interest and entitlement in connection with such Additional Pledged Securities or accruing thereto and proceeds arising from sale and other realization of such Additional Pledged Securities or any part thereof from time to time including, without limitation, (i) dividends paid or payable in cash or paid or payable other than in cash in respect of, such Additional Pledged Securities and instruments and other property received, receivable or otherwise distributed in respect of, or in exchange for any Additional Pledged Securities; (ii) dividends and other distributions paid or payable in cash in respect of or in connection with any liquidation or dissolution or in connection with a reduction of capital; (iii) cash paid, payable or otherwise distributed in respect of buy-back of, or in exchange for, any Additional Pledged Securities; and (iv) any accretions to or in respect of any Additional Pledged Securities including any bonus shares, rights shares, sums, distributions and monies received.
- (c) **“Collateral”** collectively means, the Pledged Securities at any time, together with the instruments, consents, approvals, permissions, no-objections, confirmations (including any confirmations from Depository Participant in relation to the pledge of shares), agreements, deeds and documents delivered or required to be delivered in connection with the creation and perfection of the pledge and charge on the Pledged Securities including without limitation all rights, title and interest in connection therewith or accruing thereto and proceeds arising therefrom from time to time including, (but not limited to) any distributions received / to be received and monies, including but not limited to (i) dividends paid or payable other than in cash in respect of, and instruments and other property received, receivable or otherwise distributed in respect of, or in exchange for any Pledged Securities; (ii) dividends and other distributions paid or payable in cash in respect of or in connection with any liquidation or dissolution or in connection with a reduction of capital; (iii) cash paid, payable or otherwise distributed in respect of buy-back of, or in exchange for, any Pledged Securities; (iv) any sums, distributions and monies received and at any time held by the Lender; and (v) the Obligors’ DP Accounts
- (d) **“Deposited Documents”** means
  - a. copies of the pledge form to be filed by the Obligors with the Depository Participant requesting the creation of the pledge and confirming the availability of the Pledged Securities for the pledge;
  - b. the intimation received from the Depository by the Obligors confirming the creation and the noting of the pledge over the Pledged Securities in favour of the Lender and the transfer of the Pledged Securities from the “free balances” to the “pledged balances”;
  - c. certified copies of the statement of accounts in respect of the Pledged Securities issued by the Depository Participant confirming the holding of the Pledged Securities by them as the beneficial owner thereof;
  - d. the irrevocable Power of Attorney; and;

- e. any other documents relating to and any distributions and accretions in respect of the Collateral that are required to be deposited pursuant to the Facility Documents.
- (e) **“Depository”** shall have the meaning given to it in Section 2(e) of the Depositories Act, 1996.
  - (f) **“Depositories Regulations”** shall mean SEBI (Depositories and Participants) Regulations, 1996.
  - (g) **“Depository Participant”** shall be as mentioned under the Facility Documents.
  - (h) **“Facility Value”** means the amount equivalent to the sum total of the amount of the Loan to Value.
  - (i) **“Loan to Value”** means the percentage (determined and adjusted by the Lender at its absolute discretion from time to time) of the market value of each asset comprised in the Collateral on which the Lender may provide the maximum amount of financing against such asset subject to the terms of the Facility Documents. Without prejudice to the right of the Lender to vary the Loan to Value of the Pledged Securities from time to time, the current Loan to Value assigned by the Lender to the Pledged Securities as at the date of these T&Cs and as more particularly set out in the Facility Documents.
  - (j) **“Obligors’ DP Accounts”** collectively means the respective accounts of the Obligors maintained with the respective Obligors’ Depository Participant.
  - (k) **“Pledge Request Form”** shall mean the form required to be filed for recording pledge of shares in accordance with the Depository and the Depository Regulations and the rules thereunder and such other documents required to be filed thereunder in relation to a pledge, including Annexure W under the Depository Regulations.
  - (l) **“Required Margin”** means, at any time the difference between (a) the market value of the Collateral, and (b) the Facility Value of the Collateral, as determined by the Lender in accordance with its policies prevailing from time to time.
  - (m) **“Pledged Securities”** means the fully paid up equity shares of the companies, listed debentures, bonds, mutual funds, Additional Pledged Securities and any other securities defined under Securities Contract Regulation Act which are more particularly described in the Facility Documents, as may be modified or amended from time to time, as may be accepted by the Lender as security for repayment of the Outstandings to enable the Obligors to achieve the required Facility Value to avail the Facility or such part thereof and shall include (without limitation); all instruments, consents, approvals, permissions, no-objections, confirmations, agreements, deeds and documents delivered or required to be delivered in connection with the creation and perfection of the pledge and charge on the security in favour of the Lender including without limitation the Deposited Documents, and all right, title, benefit, interest and entitlement in connection with the Pledged Securities or accruing thereto and proceeds arising from sale and other realization of the Pledged Securities or any part thereof from time to time including, without limitation, (i) dividends paid or payable in cash or paid or payable other than in cash in respect of, the Pledged Securities and instruments and other property received, receivable or otherwise distributed in respect of, or in exchange for any Pledged Securities; (ii) dividends and other distributions paid or payable in cash in respect of or in connection with any liquidation or dissolution or in connection with a reduction of capital; (iii) interest in case of debt instruments, (iv) cash paid, payable or otherwise distributed in respect of buy-back of, or in exchange for, any Pledged Securities; and (v) any accretions to or in respect of the Pledged Securities including any bonus shares, rights shares, sums, distributions and monies received.
  - (n) **“Pledged Securities Transfer Form”** means the form prescribed under the Companies Act, 2013 for transfer of securities in relation to the Pledged Securities of the Obligors.
  - (o) **“Share Certificate”** means the certificate issued / to be issued by the Obligors to the Lender in respect of the shares held by them.

**2. For the creation of the pledge over the Pledged Securities, the Obligors shall undertake the following:**

- (a) Being the present beneficial owner of the Collateral, the Obligors shall follow the procedure prescribed under Regulation 58 of the Depository Regulations for creating pledge with respect to the Pledged Securities in favour of the Lender. Without prejudice to the generality of the foregoing, the Obligors shall issue such request, including the Pledged Securities Transfer Form to the Depository through Depository Participant, requesting the creation of the pledge, and signing such other documents and doing all such acts, deeds and things as shall be necessary in accordance with the Depository Regulations to effect the pledge of Collateral in favour of the Lender. Forthwith upon the Depository recording and registering in its register the pledge of the Collateral in the name of the Lender confirming the creation of

the pledge in its records to the Depository, the pledge shall be deemed to have been duly created in favour of the Lender and the Obligors shall ensure that all the documentary and other evidence and entries are recorded in terms of Regulation 58 of the Depository Regulations, and the name of the Lender, is registered by Depository Participant as the pledgee so as to ensure that effective and valid pledge on the Collateral are created in favour of the Lender. The Obligors shall do all such actions and execute such documents and agreements as may be necessary for the valid creation and perfection of the pledge in accordance with the terms of the Facility Documents.

- (b) Upon the successful completion of the procedures prescribed in clause 1(a) above, the Obligors acknowledge that the pledge over the Collateral in favour of the Lender shall come into effect. Upon the creation of the pledge in favour of the Lender, all rights, title, claims, demand, benefits and interests, including without limitation the right to proceeds of sale and other realization of the Collateral or such part thereof of the Borrower shall be automatically transferred in favour of the Lender in accordance with the terms of the Facility Documents. The Obligors shall also deposit the Deposited Documents at the time of the execution of the Facility Documents. The decision as to valuation of the Collateral and Margin Money shall be in the exclusive discretion of the Lender and will be binding on the Obligors.
- (c) All the proceeds of the sale, transfer, or disposal in any manner whatsoever of the Collateral shall stand pledged to the Lender as Security for the Outstandings.
- (d) All Pledged Securities delivered, pursuant to the provisions of the Facility Documents, and any bonus or rights received under the Pledged Securities shall become and form part of the Pledged Securities.
- (e) The Obligors do not have in their possession, any physical share certificates in respect of the Pledged Securities nor the Obligors have made any application to the relevant company for the issue of any physical certificates.
- (f) Any accretions to the Pledged Securities including bonus shares, rights shares, and any Additional Pledged Securities which are required to be pledged in accordance with the terms of the Facility Documents, shall be in dematerialized form.
- (g) The Pledged Securities have been duly authorized and validly issued and allotted and are fully paid;
- (h) During the continuance of the pledge, the Obligors as the beneficial owner of the Pledged Securities shall not dematerialize or apply for the dematerialization of any units comprising of the Pledged Securities without the prior written consent of the Lender;
- (i) In the event the Lender invokes the pledge on the Pledged Securities, the Lender may without prejudice to its other rights in law as pledgee, be inter alia entitled to have itself registered as the owner of the Pledged Securities in the records of the applicable Depository;
- (j) The Lender reserves the right to take any action as may be deemed reasonably necessary for the protection and/or perfection of the Security by way of pledge over the Collateral, including, without limitation, following an Event of Default, to transfer the Collateral in the name of the Lender and/or its nominee during the continuance of the pledge in accordance with the provisions of the Facility Documents.

### **3. Changes to Pledged Securities**

- (a) If the pledge over the Pledged Securities created by the Obligors under the Facility Documents are to be withdrawn from the pledge created in favour of the Lender or in case any Additional Pledged Securities are pledged by the Obligors in addition to the existing pledge or in substitution of any pledge withdrawn, the procedure laid down under Clause 2 (above) shall be followed, including without limitation, in the case of Additional Pledged Securities, the Obligors shall execute a confirmation letter in favour of the Lender in the form and manner specified by the Lender.
- (b) Any change in the Pledged Securities pledged and/or the pledge of Additional Pledged Securities (in accordance with Clause 2 above) may be effected by a modification to or amendment to the Facility Documents with the written consent/approval of the Lender. Such change in Facility Documents would, inter alia, include addition of Additional Pledged Securities, withdrawal of existing Pledged Securities or substitution of the Pledged Securities by Additional Pledged

Securities. Such modification to or amendment of the Facility Documents shall be deemed to have formed a part and parcel of the Facility Documents and would not require execution of a fresh agreement.

- (c) If the Obligors are required to pledge at any time or from time to time any Additional Pledged Securities so as to meet or continue to meet the margin requirements as stated in Clause 4 hereinafter (Margin Requirements), the Obligors shall (i) forthwith pledge with the Lender such Additional Pledged Securities acceptable to the Lender; and (ii) deliver to the Lender (a) the Deposited Documents relating to such Additional Pledged Securities along with such further documents indicating the entry for the pledge in respect of such Additional Pledged Securities, and/or a letter from the Obligors to the Lender in the form acceptable to the Lender, confirming the creation of the pledge with respect to the Additional Pledged Securities which in the opinion of the Lender is necessary to create or perfect the security expressed to be created under or pursuant to the Facility Documents and which are acceptable to the Lender and (b) certified true copy of any other relevant Authority required in connection with the pledging and charging of such Additional Pledged Securities in favour of the Lender for the benefit of the Lender and thereafter, such Additional Pledged Securities, together with the Pledged Securities, shall comprise the Collateral under the Facility Documents.
- (d) The Obligors represent that in the event any Additional Pledged Securities are to be furnished and that it is their intention to pledge and charge the same in favour of the Lender, the Obligors undertake that they shall assign, transfer and charge to and for the benefit of the Lender, such Additional Pledged Securities along with all the rights, title, claims, demand, benefits and interest of the Obligors, in, to, under or in respect of such Additional Pledged Securities and the proceeds of sale and other realization of the Additional Pledged Securities or such part thereof. The Obligor shall take such steps as may be required by the Lender and deposit and deliver to the Lender all such documents, deeds and other writings as may be necessary or required by the Lender and relating to the Additional Pledged Securities as Security for the due discharge, redemption and repayment of the Obligations. With regard to any Additional Pledged Securities to be furnished by the Obligors pursuant to the Facility Documents, there shall be no prior existing right, title, claim or interest of any third party whosever in relation to or over such Additional Pledged Securities or any part thereof.

#### **4. Continuing Security**

- (a) The Security created under the Facility Documents is a continuing security for the payment, discharge and performance of all Obligations by the Obligors, regardless of any intermediate payment or satisfaction by the Obligors.
- (b) Unless released, the Obligations of the Obligors under the Facility Documents shall not be discharged or impaired by and shall not be affected by any act, omission or circumstances which, but for this provision, might operate to release or otherwise exonerate the Obligors from the Obligations under the Facility Documents or affect such Obligations, including (but without limitation) and whether or not known to the Obligors:
  - i. any forbearance, concession, waiver, release of or granting of any time or any other indulgence to the Obligors;
  - ii. any assertion of, or failure to assert, or delay in asserting, any right, power or remedy against the Obligors;
  - iii. any taking, holding, reviewing, exchanging, varying, releasing, waiving or omitting to take, perfecting or enforcing any rights, remedies or security against or granted by the Obligors or any other person;
  - iv. any irregularity, invalidity or unenforceability of any Obligations of the Obligors under the Facility Documents which or any Applicable Law (in effect from any date after the date after the date of these T&Cs) purporting to reduce or otherwise affect any of such Obligations to the intent that the Obligors' Obligations under the Facility Documents will remain in full force and must be construed accordingly as if there were no such irregularity, unenforceability, invalidity, law or order;
  - v. any amendment or other modification to any Facility Documents, so that references to any Facility Documents shall include each such amendment or modification;
  - vi. any assignment by the Lender to any person of any of its rights, benefits, duties and obligations under and in accordance with the Facility Documents;
  - vii. any bankruptcy proceeding, winding up, merger, amalgamation, reconstruction or otherwise of the relevant Obligor with any other trust or by the takeover of management or nationalisation of the Obligors or other incapacity or lack of power or authority or other circumstance of, or any change in the constitution or identity or loss of identity by the relevant Obligor;

- viii. any other act, event, neglect, omission or circumstance whatsoever (however caused or arising and whether or not similar to any of the foregoing) which would or might, operate to impair or discharge any of the Obligations under the Facility Documents.
- (c) Nothing contained in the Facility Documents shall operate so as to merge or otherwise prejudice, affect or exclude any of the Lender's rights or remedies in respect of any present or future Security, guarantee, obligation or decree for the Indebtedness of the Obligors or liability to the Lender nor shall it preclude the Lender from enforcing the Security under the Facility Documents without enforcing in the first instance any other security furnished by any other party to the Lender.
- (d) No course of dealing and no failure or delay by the Lender in exercising, in whole or in part, any power, remedy, discretion, authority or other right under the Facility Documents or any other agreement shall waive or impair, or be construed to be a waiver of or an acquiescence in, such or any other power, remedy, discretion, authority or right under the Facility Documents or in any manner preclude its additional or future exercise, nor shall the action of the Lender with respect to any default, or any acquiescence by it therein, affect or impair any right, power or remedy of the Lender with respect to any other default.

## **5. Margin Requirements**

- (a) The Obligors shall at all times ensure that the Actual Margin is not less than the Required Margin. If at any time the Actual Margin is less than the Required Margin by the percentage as set out in the Facility Documents or more, the Obligors shall within such number of days of the notice thereof as set out in the Facility Documents, provide Additional Pledged Securities acceptable to the Lender and/or reduce the Outstandings to restore the Actual Margin at least to the level of the Required Margin. If the Obligors fail to top-up with Additional Pledged Securities in the manner as aforesaid, the Lender shall be entitled at its own discretion to sell, dispose of or redeem any or all the Pledged Securities held as Collateral without being liable for any loss or damage or diminution in value sustained thereby. The sale/redemption proceeds shall be applied in reduction of the Indebtedness of the Obligors to the Lender, in such order as the Lender deems fit. In addition to the above, the Lender shall be entitled, but not obligated to, and the Obligors authorize the Lender to take on behalf of the Obligors, all actions that will be deemed necessary to mitigate any loss or preserve the Collateral. The Lender's determination of the Actual Margin and Required Margin is and shall be conclusive, final and binding on the Obligors. It is hereby clarified that the computation of the value of the Pledged Securities shall be based on the Market Price.
- (b) The Lender's standard internal facility-to-security value criteria, stipulated margin standards and requirements, top-up and sell-out periods, requirements and procedures, are at all times determined by the Lender in its discretion based on the Lender's internal policies prevailing from time to time, and that such internal criteria, standards, requirements and/or procedures shall be applied to the Obligors, and the Obligors shall be notified of any change thereof. In the event that the terms and conditions of the Facility Documents are inconsistent with or contrary to such revised criteria, standards, requirements and/or procedures, the Lender shall so inform the Obligors of such inconsistency and the terms of Facility Documents shall thereafter be deemed to have been and stand amended or modified to the extent necessary without the requirement of any further action on the part of the Lender.

## **6. Rights in Respect of the Collateral**

- (a) **Voting Rights**
- i. The Obligors may, unless Default has occurred and is continuing, exercise any voting rights in respect of the Collateral, provided that the Obligors shall not vote in any manner that is inconsistent with the terms of the Facility Documents or which would give rise to Default, and will not vote in favour of any resolution which would have the effect of altering the rights of the Lender or pursuant to the Facility Documents, or the terms of the pledges or any rights attaching to the pledges or the Collateral in any way.
- ii. Subject to the other provisions of the Facility Documents, once Default has occurred, the Lender shall be entitled to exercise all consequential rights (including voting rights) pertaining to the Collateral.

(b) **Dividends, Interests and other Distributions:** So long as no Default shall have occurred, the Obligors shall be entitled to receive and retain any and all dividends/interest paid in respect of the Collateral provided however that, any and all:

- i. Dividends/interest paid or payable other than in cash and other distributions or property received, receivable or otherwise distributed in respect of, or in exchange for, any Collateral;
- ii. Dividends/interest and other distributions paid or payable in cash in respect of or in connection with any liquidation or dissolution or in connection with a reduction of capital;
- iii. Cash paid, payable or otherwise distributed in respect of the principal of, or in buy-back of, or in exchange for, any Collateral;

shall (whether or not Default shall have occurred and be continuing) be forthwith delivered to the Lender to hold as part of the Collateral and shall, if received by the Obligors, be received in trust for the benefit of the Lender and shall be segregated from the other property or funds of the Borrower, and be forthwith delivered to the Lender as Collateral in the same form as so received (with any necessary endorsement); and

- iv. In case the Lender has the Pledged Securities (or any accretions by way of rights shares, bonus shares or otherwise) transferred to its name during the continuance of the pledge, the Lender will credit all dividends/ interest received in respect of the Pledged Securities and all such accretions into the account of the Borrower (so long as no Default shall have occurred).