

GENERAL CONDITIONS (08 -VI)
AS APPLICABLE TO CONSORTIUM TERM LOAN

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ARTICLE I
APPLICABILITY

Section 1.1 – APPLICABILITY OF GENERAL CONDITIONS

These **General Conditions** shall, if the Facility Agreement so provides, be applicable to the Facility provided / agreed to be provided by the Consortium of Lenders.

Section 1.2 – INCONSISTENCY

If there is any inconsistency between the General Conditions and the Facility Agreement, the Facility Agreement will prevail.

ARTICLE II
DEFINITIONS AND CONSTRUCTION

Section 2.1 - DEFINITIONS

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

“Business Day” means a day on which the respective Lenders and/or the Lead Bank (as the case may be), are open for normal business transactions.

“Completion Date” shall have the meaning ascribed thereto in Section 2.6(a) of the Facility Agreement.

"Credit Application" means the application/request for the Facility made by the Borrower to the respective Lenders or the collective application/request made by the Borrower to the Lead Bank for the Facility and all information, particulars and clarifications furnished by the Borrower to the Lenders from time to time in respect thereof.

“Due Date” means, in respect of -

- i) an installment of principal amount of the Facility - the date on which the installment falls due as stipulated in Schedule III of the Facility Agreement;
 - ii) interest - the date on which interest falls due as stipulated in Section 2.2 of the Facility Agreement;
 - iii) any other amount payable under the Facility Agreement and/or any other Transaction Documents - the date on which such amount falls due in terms of the Facility Agreement and/or any other Transaction Documents,
- or such other dates on which any amounts including principal, interest or other monies, fall due in terms of the Facility Agreement and/or any other Transaction Documents .

“EMI” means equated monthly instalments of amounts payable by the Borrower to the Lenders in respect of the Facility and comprising of principal amount of the Facility and interest thereon.

"Event of Default" means any of the Events of Default specified in Section 8.1 hereof.

“Facility” shall have the meaning ascribed thereto in Section 2.1 of the Facility Agreement.

"Facility Agreement" means the particular facility agreement entered into between the Borrower and the particular Consortium of Lenders in respect of the Facility and includes the General Conditions as applied thereto, and all schedules, supplements, modifications, novations, deed(s) of accession and amendments to such Facility Agreement. Unless the term ‘General Conditions’ is used separately, the term ‘Facility Agreement’ or ‘this Agreement’ or the “Facility Agreement”, wherever used in the Facility Agreement or the General Conditions, shall be deemed to refer to the Facility Agreement read together with and including the General Conditions.

“Financing Plan” means the financing plan set out in Schedule II of the Facility Agreement.

“Foreign Lending Agency” means the foreign lending agency if any, described in the Facility Agreement.

“Indebtedness” means any indebtedness whatsoever of the Borrower at any time for or in respect of monies borrowed, contracted or raised (whether or not for cash consideration) or liabilities contracted by whatever means (including under guarantees, indemnities, acceptance, credits, deposits, hire-purchase and leasing).

"Intellectual Property" means all patents, trademarks, permits, service marks, brands, trade names, trade secrets, proprietary information and knowledge, technology, computer programs, databases, copyrights, licences, franchises, formulae, designs, rights of confidential information and all other intellectual property.

“Intellectual Property Rights” mean all rights, benefits, title or interest in or to any Intellectual Property, anywhere in the world (whether registered or not and including all applications for the same).

“Interest Payment Date” means at any relevant time, and in relation to each Lender, the date(s) of payment of interest as set out in Schedule III of the Facility Agreement, or such other date(s) as may be specified by the Lenders.

“Last Date of Drawal” shall have the meaning ascribed thereto in Section 2.5 of the Facility Agreement.

“Maximum Lending Rate” means the rate of interest per annum equivalent to the percentage rate specified in Schedule III of the Facility Agreement or such other rate of interest as may be specified by the Lenders from time to time as its Maximum Lending Rate.

“Material Adverse Effect” means the effect or consequence of any event or circumstance which is or is likely to be:

- (a) adverse to the ability of the Borrower or any person to perform or comply with any of their respective obligations under the Facility Agreement or any Transaction Document in accordance with their respective terms; or
- (b) prejudicial to:
 - i) any of the businesses, operations or financial condition of the Borrower or of any person who is party to any Transaction Document; or

ii) the Project.

“Project” means the Borrower’s project described in Schedule II of the Facility Agreement.

“Project Cost” means the cost of the Project as set out in Schedule II of the Facility Agreement.

“Project Documents” – include all agreements, deeds, instruments, writings and other documents executed or entered into, or to be executed or entered into, by the Borrower, or by any person in its favour, in relation or pertaining to the Project and each such Project Document as amended, supplemented, modified, acceded, novated to from time to time.

“Purpose” means the purpose for which the Facility is agreed to be provided / provided to the Borrower and as more specifically set out in Section 2.1 of the Facility Agreement.

“RBI” means Reserve Bank of India.

“Security Cover” means the ratio of the aggregate value (as per its most recent audited accounts) of the Borrower’s gross fixed assets and capital work in progress as reduced by all intangible assets and accumulated depreciation (including un-provided depreciation, if any), and as further reduced by the Borrower’s net fixed assets excluded from the purview of the security for the Facility, to all Indebtedness (as per its most recent audited accounts) having a first pari passu charge over the fixed assets of the Borrower. Revaluation of assets would not be taken into account for determining the Security Cover.

“Tranche” - shall have the meaning ascribed thereto in Section 3.1 hereof.

“Transaction Documents” - include the letters of sanction / credit arrangement letters in relation to the Facility issued by the Lenders, the Facility Agreement, these General Conditions, and all agreements, instruments, undertakings, indentures, deeds, writings and other documents (whether financing, security or otherwise) executed or entered into, or to be executed or entered into, by the Borrower or, as the case may be, the related person, in relation, or pertaining, to the transactions contemplated by, or under the Facility Agreement or any Transaction Document, and each such Transaction Document as amended from time to time.

All capitalised terms used but not defined in the General Conditions shall have the respective meanings assigned to them under the Facility Agreement.

Section 2.2 - CONSTRUCTION

In the Facility Agreement, unless the contrary intention appears :-

(a) a reference to:

"amendment" includes a supplement, modification, novation, deed of accession, replacement or re-enactment and "amended" is to be construed accordingly;

"assets" include all properties whatsoever, both present and future, (whether tangible, intangible or otherwise) (including Intellectual Property and Intellectual Property Rights), investments, cash-flows, revenues, rights, benefits, interests and title of every description;

"authorisation" includes an authorisation, consent, clearance, approval, permission, resolution, licence, exemption, filing and registration;

“control” includes the power to direct the management and policies of an entity, whether through the ownership of voting capital, by contract or otherwise;

“encumbrance” includes a mortgage, charge, lien of any description whatsoever, (statutory or otherwise), pledge, negative pledge, negative lien, hypothecation, assignment, deposit and/or escrow arrangements, comforts, preference, priority or other security agreement / interest of any kind or nature whatsoever including, without limitation, (i) any conditional sale or title retention agreements, any financing or similar statement or notice filed under any recording or notice statute, and any lease having substantially the same effect as any of the foregoing, and (ii) any designation of loss payees or beneficiaries or any similar arrangement under any insurance contract.

“person” includes an individual, corporation, partnership, joint venture, association of persons, trust, unincorporated organisation, government (central, state or otherwise), sovereign state, or any agency, department, authority or political subdivision thereof, international organisation, agency or authority (in each case, whether or not having separate legal personality) and shall include their respective successors and assigns and in case of an individual shall include his legal representatives, administrators, executors and heirs and in case of a trust shall include the trustee or the trustees for the time being.

“law” includes any constitution, statute, law, rule, regulation, ordinance, judgement, order, decree, authorisation, or any published directive, guideline, requirement or governmental restriction having the force of law, or any determination by, or interpretation of any of the foregoing by, any judicial authority, whether in effect as of the date of the Facility Agreement or thereafter and each as amended from time to time.

“related person” means the security provider and/or such other person who has/have executed / furnished the respective Transaction Documents in favour of / with the Lenders and/or the Lead Bank in relation, or pertaining, to the transactions contemplated by, or under the respective Transaction Documents.

“repayment” includes "redemption" and vice-versa and repaid, repayable, repay, redeemed, redeemable and redemption shall be construed accordingly.

(b) a reference to a Sub-clause, Section or a Schedule of the Facility Agreement or the General Conditions shall denote a reference to such Sub-clause, Section or Schedule as specified, of the Facility Agreement or the General Conditions;

(c) the singular includes the plural (and vice versa);

(d) the index to and the headings in the Facility Agreement are inserted for convenience of reference only and are to be ignored in construing and interpreting the Facility Agreement;

(e) reference to the words “include” or “including” shall be construed without limitation;

(f) reference to a gender shall include references to the female, male and neuter genders;

(g) all approvals, permissions, waivers, consents, confirmations or acceptance required from the Lenders for any matter shall require the “prior”, “written” approval, permission, consent or acceptance of the Lenders;

(h) the words ‘hereof’, ‘herein’, and ‘hereto’ and words of similar import when used with reference to a specific Section or Sub-clause in, or Schedule to, the Facility Agreement or the General Conditions shall refer to such Section or Sub-clause in, or Schedule to, the Facility Agreement or as the case may be, the General Conditions, and when used otherwise than in connection with specific Sections, Sub-clauses or Schedules, shall refer to the Facility Agreement as a whole;

(i) in the event of any disagreement or dispute between the Lenders and the Borrower regarding the occurrence, determination and/or materiality of any matter including of any event, occurrence, circumstance, change, fact, information, document, authorisation, proceeding, act, omission, claims, breach, default or otherwise, the opinion of the Lenders as to the materiality, occurrence or determination of any of the foregoing shall be final and

binding on the Borrower.

ARTICLE III DISBURSEMENT, INTEREST, OTHER CHARGES AND REPAYMENT

Section 3.1 - TERMS OF DISBURSEMENT

Disbursements under the Facility shall be made by the Lenders subject to the Borrower complying with the provisions of the Facility Agreement and the other Transaction Documents. Such disbursements may be made by the Lenders in one or more installments (each a "Tranche") as may be decided by the Lenders.

If the Facility is denominated in Rupees, all disbursements shall be by cheques / authorisations and if the Facility is denominated in foreign currencies, all disbursements shall be by authorisations. All the collection/remittance charges will be borne by the Borrower. The Borrower shall not raise any claims against the Lenders of any nature and for any reason whatsoever.

Section 3.2 - ADJUSTMENT OF OVERDUES

The Lenders may at their sole discretion deduct from sums to be lent and advanced to the Borrower any monies then remaining due and payable by the Borrower to the Lenders, whether under the Facility Agreement or otherwise. Upon such deduction, the then remaining undrawn amounts of the Facility shall stand reduced to that extent.

Section 3.3 - INTEREST

i) The Borrower shall pay to the Lenders interest on the principal amount of the Facility in accordance with the terms of the Facility Agreement.

The Borrower shall also pay to the Lenders interest on all amounts specified in Section 3.7 hereof, at the Maximum Lending Rate or at the Applicable Interest Rate(s), whichever is higher, or at such other rate as may be specified by the Lenders from time to time.

ii) In the event of default by the Borrower in repayment / payment of the principal amount of the Facility and interest thereon and any other monies in accordance with the terms of the Facility Agreement and/or the other Transaction Documents, the Borrower shall pay interest on such defaulted amounts at the Maximum Lending Rate or at the Applicable Interest Rate(s), whichever is higher, or at such other rate as may be specified by the Lenders from time to time, from the respective Due Dates till the date of repayment / payment thereof to the satisfaction of the Lenders; Such default interest shall become payable upon the footing of compound interest with monthly rests.

iii) The interest rates mentioned in Sub-clauses (i) and (ii) above shall until creation of final security for the Facility in accordance with the Facility Agreement be increased by the same percentage as provided in the Facility Agreement for disbursements made pending creation of full and final security in accordance with the Facility Agreement.

iv) Rates of interest are subject to change from time to time as per RBI guidelines or directives issued from time to time. The rate of interest and other terms and conditions are also, at the discretion of the Lenders, subject to change / review from time to time as per the guidelines issued by the Lenders from time to time. The Lenders will provide prior notice of such change to the Borrower.

v) The Borrower shall pay default interest on excess drawings, irregularity, delay in submission of audited accounts, etc. at the rate/s specified in Schedule III of the Facility Agreement or such other rate as may be specified by the Lenders from time to time, from the respective date/s of default till the default is remedied. Such default interest shall become payable upon the footing of compound interest with monthly rests

Section 3.4 - **IMPOSTS, COSTS AND CHARGES**

- i) The Borrower shall, bear all interest tax as may be levied from time to time under the Interest Tax Act, 1974 and all other imposts, duties and taxes (of any description whatsoever) as may be levied from time to time by the Government or other authority pertaining to or in connection with the Facility.
- ii) The Borrower shall pay all costs, charges (including legal fees, cost of investigation of title to the Borrower's assets and protection of the Lenders' interest) and expenses in any way incurred by the Lenders and such stamp duty, other duties, taxes, charges and penalties if and when the Borrower is required to pay according to the laws for the time being in force.
- iii) In the event of the Borrower failing to pay the monies referred to in sub-clause (i) and (ii) above, the Lenders will be at liberty (but shall not be obliged) to pay the same. The Borrower shall reimburse all sums paid by the Lenders in accordance with the provisions contained herein.

Clause for non-resident Borrower

- iv) All payments by the Borrower under the Facility Agreement shall be made free and clear of and without any deduction, except to the extent that the Borrower is required by law to make payment subject to any taxes. If any tax or amounts in respect of tax must be deducted, or any other deductions must be made, from any amounts payable or paid by the Borrower, the Borrower shall pay such additional amounts as may be necessary to ensure that the Lenders receives a net amount equal to the full amount which it would have received had payment not been made subject to tax or other deduction. Provided that, all taxes required by law to be deducted by the Borrower from any amounts of interest paid or payable under the Facility Agreement shall be paid by the Borrower when due and the Borrower shall, within 30 days of the payment being made or within the statutory timeframe prescribed under the law, deliver to the Lenders evidence satisfactory to the Lenders in accordance with the prevailing tax laws as may be amended from time to time that the tax has been deducted at source and duly remitted to the appropriate authority.

Clause for resident Borrower

- iv) All payments by the Borrower under the Facility Agreement shall be made free and clear of and without any deduction, except to the extent that the Borrower is required by law to make payment subject to any tax deduction at source under the applicable law. Provided that, all taxes required by law to be deducted by the Borrower from any amounts paid or payable under the Facility Agreement shall be deducted by the Borrower as per the tax laws from any amounts of interest paid or payable under the Facility Agreement and the Borrower shall, within the statutory timeframe prescribed under the law, deliver to the Lenders evidence satisfactory to the Lenders in accordance with the prevailing tax laws as may be amended from time to time, that the tax has been deducted at source and duly remitted to the appropriate authority.

Section 3.5 - **PREMATURE REPAYMENT**

The Borrower shall not, without the approval of the Lenders (which approval may be given subject to such terms and conditions as may be stipulated by the Lenders including payment of prepayment charges), prepay the outstanding principal amounts of the Facility in full or in part, before the Due Dates. If the Lenders permit the Borrower to prepay the outstanding principal amounts of the Facility as stated above, the Borrower shall make proportionate prepayment to the Lenders and comply with such conditions (including payment of

prepayment charges) as may be stipulated by the Lenders.

Section 3.6 - **DUE DATE OF PAYMENT**

If the Due Date in respect of an installment of the principal amount of the **Facility**, interest, front end fee or any other payment 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 for such payment.

Interest and all other charges shall accrue from day to day and shall be computed on the basis of 365 or 366 days year (as applicable) and the actual number of days elapsed.

Section 3.7 - **REIMBURSEMENT OF EXPENSES**

The Borrower shall reimburse all sums paid and/or expenses incurred by the Lenders under the Facility Agreement and/or the other Transaction Documents within 15 days from the date of notice of demand from the Lenders. All such sums shall be debited to the Borrower's loan account and shall carry interest at the rate specified in Section 3.3 (i) hereof from the date of payment / incurring by the Lenders till such reimbursement to the Lenders.

Section 3.8 - **APPROPRIATION OF PAYMENTS**

(i) Any amounts due and payable by the Borrower under the Facility Agreement and the other Transaction Documents may be appropriated by the Lenders towards such dues in the following order:

- (a) Interest on fees, costs, charges, expenses and other monies;
- (b) Fees, costs, charges, expenses and other monies;
- (c) Default Interest;
- (d) Additional Interest;
- (e) Interest;
- (f) Prepayment Premium; and
- (g) Repayment Instalments.

(ii) Notwithstanding anything contained in clause (i) above, the Lenders may, at their absolute discretion, appropriate any payments made by the Borrower under the Facility Agreement and/or the other Transaction Documents in any manner other than as stated above and/or appropriate the same towards any other dues payable by the Borrower to the Lenders under the Facility Agreement and/or the other Transaction Documents and/or other financing arrangements entered into between the Borrower and the Lenders, and such appropriation by the Lenders shall be final and binding on the Borrower in all respects.

Section 3.9 – PROVISIONS RELATING TO ALTERATION IN THE CURRENCY / FACILITY / CURRENCY OR INTEREST SWAPS IF THE FACILITY IS DENOMINATED IN FOREIGN CURRENCIES

If the Facility is denominated in foreign currencies, the Lenders may at any time, at its absolute discretion, substitute the original currency or its equivalent currency as the case may be of the Facility or any part thereof, with a new currency or its equivalent currency. In such an event, the liability of the Borrower in respect of the Facility or such part thereof, as regards rate of interest, repayment of principal, date and mode of such payment/repayment shall be as applicable to such new currency or its equivalent currency as intimated by the Lenders to the Borrower, which shall be final and binding on the Borrower.

¹ Applicable only for foreign currency loans

If the Facility is denominated in foreign currencies, the Lenders may, at any time, at its absolute discretion, effect currency and/or interest rate swap for the Facility or any part thereof. In such an event, the liability of the Borrower in respect of the Facility or such part thereof, as regards the currency or currencies of repayment, payment of principal, interest and all other monies payable under the Facility Agreement / rate of interest on principal of the Facility or such part thereof, shall be as intimated by the Lenders to the Borrower, which shall be final and binding on the Borrower.

The Borrower shall, if required by the Lenders, enter into forward contracts for effecting currency and/or interest rate swaps for the Facility or any part thereof, in a form and manner satisfactory to the Lenders. The Borrower shall renew the forward contracts from time to time during the tenure of the Facility.

²**Section 3.10 - PLACE AND MODE OF PAYMENTS AND CREDIT THEREFOR IF THE FACILITY IS DENOMINATED IN RUPEES**

If the Facility is denominated in Rupees, except to the extent otherwise provided in the Facility Agreement and/or the other Transaction Documents, all payments to be made by the Borrower to the Lenders and the Lead Bank in terms of the Facility Agreement and the other Transaction Documents shall be made directly to the Lenders and the Lead Bank at the offices detailed in Schedule I of the Facility Agreement or at such other place as may be specified by them, by telegraphic, telex, real time gross settlement or EFT or mail transfer to the account of the Lenders or by a payable-at-par cheque/bank draft drawn in favour of the Lenders on a scheduled bank at the place in which the aforesaid office of the Lenders is situated or such other place or to such other account as the Lenders shall notify the Borrower.

The payments as stated above shall be so made as to enable the Lenders to realise, at par, the amount on or before the relative Due Date.

Credit for all payments by cheque/bank draft/RTGS remittance will be given on realisation of the amount or the relative Due Date, whichever is later.

³**Section 3.11 - PLACE AND MODE OF PAYMENTS AND CREDIT THEREFOR IF THE FACILITY IS DENOMINATED IN FOREIGN CURRENCIES**

If the Facility is denominated in foreign currencies, notwithstanding anything contained in the Facility Agreement, but subject to Sub-clause (g) below, the Borrower shall make payments to the Lenders, whether of principal amount of the Facility, interest, premium on prepayment, if any, in equivalent rupees in lieu of foreign currencies. For the purpose of this Section 3.11, the following conditions shall apply:

- (a) The rupee sum shall be the rupee equivalent of the foreign currencies to be remitted on the Due Dates inclusive of all commissions or other bank charges and out of pocket expenses as determined by the Lenders.
- (b) The Rupee sum shall be paid by the Borrower to the Lenders 10 Business Days in advance of the Due Dates to enable the Lenders to remit the foreign currencies on the Due Dates.
- (c) Except to the extent otherwise provided in the Facility Agreement and/or the other Transaction Documents, payments of rupee sums shall be made by the Borrower to the Lenders and the Lead Bank in terms of the Facility Agreement and the other Transaction Documents shall be made directly to the Lenders and the Lead Bank at the offices detailed in

² Applicable only for foreign currency loans

³ Applicable only for foreign currency loans

Schedule I of the Facility Agreement or at such other place as may be specified by them, by telegraphic, telex, real time gross settlement or EFT or mail transfer to the account of the Lenders or by a payable-at-par cheque/bank draft drawn in favour of the Lenders on a scheduled bank at the place in which the aforesaid office of the Lenders is situated or such other place or to such other account as the Lenders shall notify the Borrower.

The payments as stated above shall be so made as to enable the Lenders to realise, at par, the amount on or before the relative Due Date.

(d) Credit for all payments by cheque/bank draft/RTGS remittance will be given on realisation of the amount or the relative Due Date, whichever is later.

(e) For the purpose of Sub-clause (a) above a statement signed by a designated officer of the Lenders shall be sufficient evidence of the Rupee equivalent of the foreign currencies, costs, commission, charges and expenses.

(f) Any difference on account of exchange fluctuations in the rates of foreign currencies involved between the payment made by the Borrower to the Lenders and the actual amounts incurred by the Lenders as referred to in Sub-clause (a) above shall be borne by or be given credit to the Borrower.

(g) If the Lenders decides not to call for payment in equivalent Rupees in the manner provided above, the Lenders shall have the right to notify the Borrower the place(s) where and the person or persons to whom the payments in foreign currencies falling due thereafter shall be made and all expenses involved in making payments in the manner so notified shall be borne by the Borrower.

(h) The amount to be paid in rupees by the Borrower shall be determined by taking the exchange rate (card rate) for TT selling rate quoted by the Lenders or any other bank as the Lenders may select.

⁴Section 3.12 - RUPEE TYING OF DEFAULTED AMOUNTS IF THE FACILITY IS DENOMINATED IN FOREIGN CURRENCIES

If the Facility is denominated in foreign currencies, without prejudice to any of the obligations of the Borrower in terms of the Facility Agreement, in the event of default by the Borrower in making payment in discharge of any of its obligations under the Facility Agreement on the Due Dates, then, notwithstanding anything to the contrary contained in the Facility Agreement, the liability of the Borrower thereafter in respect of such amounts shall be in Rupees, which sums shall be determined and notified by the Lenders to the Borrower in accordance with the provisions of Sub-clause 3.11(a) hereof ("the Rupee tied defaulted amounts").

Notwithstanding anything to the contrary contained in the Facility Agreement, the Rupee tied defaulted amounts will, during the period of default, carry interest from the respective Due Dates at the Maximum Lending Rate or the Applicable Interest Rate(s), whichever is higher, and shall be payable on the Interest Payment Dates.

⁵Section 3.13 - INCREASED COSTS IF THE FACILITY IS DENOMINATED IN FOREIGN CURRENCIES

If the Facility is denominated in foreign currencies, in the event of the Lenders being called upon to pay any additional amount by the Foreign Lending Agency in terms of their respective financing agreements or on account of factors beyond the control of the Lenders, the Borrower shall forthwith on receipt of a notice of demand from the Lenders, reimburse all such amounts to the Lenders.

⁴ Applicable only for foreign currency loans

⁵ Applicable only for foreign currency loans

Section 3.14 - **DRAWDOWN SCHEDULE**

The Borrower shall provide to the Lenders on or before signing of the Facility Agreement an irrevocable draw down schedule in writing for the entire Facility, disbursements pursuant to which shall however be subject to the provisions of Section 3.1 hereof.

Section 3.15 – **GENERAL**

The Borrower acknowledges and confirms that :

i) The rates of default interest under Section 3.3(ii) hereof and interest on reimbursement of expenses as specified in Section 3.3(i) hereof are reasonable and that they represent genuine pre-estimates of the loss expected to be incurred by the Lenders in the event of non payment of any monies by the Borrower and/or other related person in relation to the Facility.

ii) The Facility provided under the Facility Agreement is for a commercial transaction and the Borrower waives any defence available under usury or other laws relating to the charging of interest.

iii)(a) The Lenders shall have the right of set-off on the deposits of any kind and nature (including fixed deposits) held/balances lying in any accounts of the Borrower and on any monies, securities, bonds and all other assets, documents, deeds and properties held by/under the control of the Lenders / their trustees or agents (whether by way of security or otherwise pursuant to any contract entered/to be entered into by the Borrower in any capacity) to the extent of all outstanding dues, whatsoever, arising as a result of any of the Lenders' services extended to and/or used by the Borrower and/or as a result of any other facilities that may be granted by the Lenders to the Borrower. The Borrower also notes the banker's lien available to the Lenders on the aforesaid assets.

iii)(b) In addition to the above mentioned right or any other right which the Lenders may at any time be entitled whether by operation of law, contract or otherwise, the Lenders shall be entitled : (A) to combine or consolidate at any time all or any of the accounts and liabilities of the Borrower with or to any branch of the Lenders; (B) to sell or dispose off any of the Borrower's securities or properties held by the Lenders by way of public or private sale or assignment or in any other manner whatsoever without having to institute any judicial proceeding whatsoever and retain/appropriate from the proceeds derived there from the total amounts outstanding to the Lenders from the Borrower, including costs and expenses in connection with such sale / disposal / transfer / assignment; and (c) in case of cross currency set-off, to convert an obligation in one currency to another currency at a rate determined at the sole discretion of the Lenders.

iv) The Borrower shall ensure that the related person performs all obligations under the respective Transaction Documents executed / furnished by such related person in connection with the Facility.

ARTICLE IV REPRESENTATIONS AND WARRANTIES

Section 4 – **REPRESENTATIONS AND WARRANTIES**

In consideration of the Lenders having agreed to provide / provided the Facility to the Borrower in terms of the Facility Agreement, the Borrower makes the following representations, warranties and agreements and confirms that (except unless otherwise permitted by the Lenders or as otherwise disclosed to the Lenders in the Credit Application or otherwise in writing) they are, true, correct, valid and subsisting in every respect as of the date of the Facility Agreement, as of the date of each disbursement by the Lenders under the

Facility Agreement (in each case, before and after giving effect to disbursements occurring on such date) and as on each Due Date, which representations, warranties and agreements shall survive the execution and delivery of the Facility Agreement and the provision of the Facility under the Facility Agreement and repayment/payment in full of the Facility and all monies in respect thereof:

(a) **CREDIT APPLICATION**

The Credit Application, if any, is true and accurate in all material respects, is not misleading and does not omit any material fact, the omission of which would make any fact or statement therein misleading and the Credit Application shall be deemed to form part of the warranties herein contained.

(b) **STATUS AND AUTHORISATIONS**

i) The Borrower is duly incorporated and validly existing under the laws of India and has the power to enter into the Facility Agreement and the other Transaction Documents and Project Documents and to own its assets and carry on its business and operations (including the Project) as it is being or is proposed to be conducted.

ii) All acts, conditions and things required to be done, fulfilled or performed, and all authorisations required or essential, for the purpose of the Project or for the entry and delivery of the Facility Agreement and the other Transaction Documents or for the performance of the Borrower's obligations in terms of and under the Facility Agreement and the other Transaction Documents have been done, fulfilled, obtained, effected and performed and are in full force and effect and no such authorisation has been, or is threatened to be, revoked or cancelled.

iii) The Borrower has not received any notice, nor is it aware that any authorisation from concerned authority(ies) necessary or required to be obtained in present or in future, will not be granted or obtained.

iv) The Borrower has, wherever necessary, obtained import licences with list of equipment and/or necessary authorisation about eligibility, scope and validity of imports under open general licence for equipment to be imported for the Project.

v) The Borrower is in compliance in all respects with all laws and regulations affecting its assets, the Project and its business and operations.

(c) **LEGAL VALIDITY**

The Facility Agreement, the Transaction Documents and the Project Documents have been duly and validly executed by its authorised Directors/Members/Trustees or executives and the Facility Agreement constitutes, and each Transaction Document and the Project Documents constitute or when executed in accordance with its terms will constitute, legal, valid and binding obligations of the Borrower and the relevant parties thereto enforceable in accordance with their respective terms. The Borrower has taken all steps and done all acts to ensure that the Facility Agreement and each Transaction Document and Project Document is admissible in evidence in India.

(d) **NON-CONFLICT**

The entry into, delivery and performance by the Borrower of, and the transactions contemplated by, the Facility Agreement and the other Transaction Documents do not and will not conflict :

i) with any law;

ii) with the constitutional documents of the Borrower; or

iii) with any document which is binding upon the Borrower or on any of its assets.

(e) **NO DEFAULT**

- i) No default is subsisting or might result from the execution of, or the availing of the Facility under, the Facility Agreement by the Borrower.
- ii) No other event or circumstance is subsisting which constitutes (or with the giving of notice, lapse of time, determination of materiality or the fulfilment of any other applicable condition or any combination of the foregoing, might constitute) a default under any document which is binding on the Borrower or any of its assets.
- iii) The Borrower is not in breach of the terms of the Facility Agreement or any other Transaction Document and no Event of Default is subsisting.
- iv) The Borrower is not in breach of the terms of any Project Document nor (so far as it is aware) is any other party thereto, to an extent which might have a Material Adverse Effect.

(f) **TAXES ON PAYMENTS**

The Borrower agrees to pay any and all duties and all other applicable indirect taxes, duties, or levies whether present or future, including but not limited to interest tax, service tax, cess, sales tax, levied by Central/State Governments or any other statutory authority, under the applicable laws as may be amended from time to time, which may be payable in connection with the Facility Agreement.

(g) **OWNERSHIP OF ASSETS**

The Borrower has good title to, or valid leases or licences of, or is otherwise entitled to use its assets.

(h) **IMMUNITY**

- i) The execution or entering into by the Borrower of the Facility Agreement and the other Transaction Documents constitute, and its exercise of its rights and performance of its obligations under the Facility Agreement and the other Transaction Documents will constitute, private and commercial acts done and performed for private and commercial purposes.
- ii) The Borrower is not, will not be entitled to, and will not claim immunity for itself or any of its assets from suit, execution, attachment or other legal process in any proceedings in relation to the Facility Agreement and/or the other Transaction Documents.

(i) **JURISDICTION/GOVERNING LAW**

The Borrower's:

- i) irrevocable submission to the jurisdiction of courts as specified in Facility Agreement, and
- ii) agreement that the Facility Agreement and the other Transaction Documents is governed by Indian law (unless such Transaction Documents stipulate / specify otherwise), are legal, valid and binding on the Borrower under Indian law.

(j) **ACCOUNTS**

The most recent audited accounts of the Borrower delivered to the Lenders:

- i) have been prepared in accordance with accounting principles and practices generally accepted in India, consistently applied;
- ii) have been duly audited by the statutory auditors of the Borrower; and
- iii) represent a true and fair view of its financial condition as at the date to which they were drawn up,

and there has been no Material Adverse Effect since the date on which those accounts were drawn up.

(k) LITIGATION

No litigation, arbitration, administrative or other proceedings are pending or threatened against the Borrower, its directors / partners / trustees, its assets or the Project, which, if adversely determined, might have a Material Adverse Effect.

(l) INFORMATION

i) All information communicated to or supplied by or on behalf of the Borrower to the Lenders from time to time, whether in writing, electronic form or otherwise, is true, correct and complete in all respects as on the date on which it was communicated or supplied.

ii) Nothing has occurred since the date of communication or supply of any information to the Lenders which renders such information untrue or misleading in any respect and which, if disclosed, might adversely affect the decision of the Lenders to enter into, or to make disbursements under the Facility Agreement.

(m) PROJECT DOCUMENTS

i) All Project Documents delivered to the Lenders by or on behalf of the Borrower were genuine and in the case of copies, such copies were, at the date of delivery, true, complete and accurate copies in all material respects, of originals which had not been amended or superseded in any way. The services to be provided, materials to be supplied, and the easements, leases, licences and other rights granted or to be granted to the Borrower pursuant to the terms of the Project Documents provide or will provide the Borrower with all rights and property interests required to enable the Borrower to obtain all services, materials or rights (including access) required for the design, construction, start-up, operation and maintenance of the Project, including the Borrower's full and prompt performance of its obligations under the Project Documents other than those services, materials and rights that reasonably can be expected to be obtained in the ordinary course of business without material additional expense or delay.

ii) Save for the Project Documents, there are no other material agreements or contracts to which the Borrower is a party, copies of which have not been delivered to the Lenders and there are no agreements or arrangements (whether in writing or otherwise) modifying or amending any Project Document, other than those furnished to the Lenders.

(n) INTELLECTUAL PROPERTY

i) The Borrower owns, has licence to use or otherwise has the right to use, free of any pending or threatened liens, all Intellectual Property or Intellectual Property Rights, which are required or desirable for the conduct of the Borrower's business and operations and the Borrower does not, in carrying on its business and operations, infringe any Intellectual Property Rights of any person.

ii) None of the Intellectual Property or Intellectual Property Rights owned or enjoyed by the Borrower, or which the Borrower is licensed to use, which are material in the context of the Borrower's business and operations are being infringed nor, so far as the Borrower is aware, is there any infringement or threatened infringement of those Intellectual Property or Intellectual Property Rights licensed or provided to the Borrower by any person.

iii) All Intellectual Property or Intellectual Property Rights owned by the Borrower or which the Borrower is licensed to use are valid and subsisting. All actions (including registration, payment of all registration and renewal fees) required to maintain the same in full force and effect have been taken.

(o) **INSURANCES**

- i) All insurances which are required to be maintained or effected by the Borrower or any other person pursuant hereto or any of the Transaction Documents are / will be in full force and effect and no event or circumstance has occurred, nor has there been any omission to disclose a fact, which would in either case entitle any insurer to avoid or otherwise reduce its liability under any policy relating to the insurances.
- ii) The Borrower has complied / shall comply with its obligations with respect to insurances under the Facility Agreement and each Transaction Document.

(p) **NO OTHER BUSINESS**

The Borrower has not engaged in any business or activities, either alone or in partnership or joint venture.

(q) **TAX COMPLIANCE**

The Borrower has complied in all material respects with all taxation laws in all jurisdictions in which it is subject to taxation and has filed all tax returns and paid all taxes and statutory dues due and payable by it and, to the extent any taxes are not due, has established reserves that are adequate for the payment of those taxes and statutory dues. the Lenders shall not be responsible for the compliance of direct and indirect tax obligations by the Borrower.

(r) **BANKRUPTCY**

The Borrower has not taken any action and no other steps have been taken or legal proceedings started by or against it in any court of law for its winding-up, dissolution, administration or re-organisation or for the appointment of a receiver, administrator, administrative receiver, trustee or similar officer of the Borrower or of any or all of its assets.

(s) **ENVIRONMENT**

- i) The Borrower has obtained all authorisations under applicable environmental laws and is and has been in compliance with all such authorisations and laws and there are no circumstances that may at any time prevent or interfere with such compliance.
- ii) As at the date of the Facility Agreement, no further environmental authorisations other than those already obtained are required for the carrying on of the business and operations of the Borrower as currently conducted.
- iii) There is no claim pending or threatened, against the Borrower for any breach of environmental law which, if adversely determined, might have a Material Adverse Effect.

(t) **AFFILIATES**

The Borrower is not a party to any contract or agreement with, or any commitments to, whether or not in the ordinary course of business, any affiliates or group companies other than on a commercial basis and on terms no less favourable to the Borrower than those that the Borrower would have obtained had the Borrower entered into any contracts or agreements with any party other than such affiliates or group companies.

(u) **ENCUMBRANCES**

There are no encumbrances subsisting or in existence on any of the Borrower's assets.

(v) **ARRANGING OF FINANCIAL ASSISTANCE**

The Borrower has entered into effective agreements or made arrangements for raising of funds as per the Financing Plan.

(w) **WILFUL DEFAULTER**

No director/partner/member/trustee, as the case may be, of the Borrower has been declared to be a wilful defaulter and neither the name of the Borrower nor its director(s) figure in any list of defaulters circulated by RBI or any bank and financial institution nor the names of its directors appear in caution list issued by RBI, etc.

(x) **NO CONFLICT**

None of the directors / partners / manager / trustee / employee of the Borrower is a director or relative of a director of any of the Lenders nor does any director of the Lenders hold any substantial interest in the Borrower.

**ARTICLE V
PRE-DISBURSEMENT CONDITIONS**

Section 5 - CONDITIONS PRECEDENT

The obligation of the Lenders to make disbursements under the Facility Agreement shall be subject to the Borrower performing all its obligations and undertakings under the Facility Agreement besides compliance by the Borrower with the disbursement procedure stipulated by the Lenders, and compliance with the conditions, set out below to the satisfaction of the Lenders:

Section 5.1 - CONDITIONS PRECEDENT TO FIRST DISBURSEMENT

(a) **CONSTITUTIONAL DOCUMENTS**

The Borrower shall submit the following information and documents:

i) An up-to-date certified true copy of the constitutional documents such as memorandum and articles of association and certificate of incorporation and commencement of business or trust deed/bye laws/partnership deed of the Borrower and the other security provider or relevant parties in connection with the Facility.

ii) A certified true copy of a resolution of the board of directors/members/trustees of the Borrower:

(a) approving the terms and execution of, and the transactions contemplated by, the Facility Agreement and the other Transaction Documents;

(b) authorising, the affixation of the common seal on the Facility Agreement and the Transaction Documents, and/or directors or members or trustees or other authorised executives to execute the Facility Agreement and the other Transaction Documents; and

(c) authorising a person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Facility Agreement and the other Transaction Documents.

iii) A specimen signature of each such person authorised by the resolutions referred to in Sub-clauses (a)(ii)(b) and (a)(ii)(c) hereinabove.

⁶iv) A certified true copy of a resolution of the shareholders of the Borrower if required under the Companies Act, 1956, authorising, *inter alia*, the borrowing contemplated under, and the execution of, the Facility Agreement and the other Transaction Documents.

v) A certificate of the statutory auditors of the Borrower confirming that: (a) the borrowing or the availing of Facility under the Facility Agreement would not cause any borrowing limit binding on the Borrower to be exceeded, and (b) the assets to be mortgaged/charged/pledged as security for the Facility, are the absolute property of the

⁶ Applicable where the Borrower is a company

Borrower and are free from any encumbrance and that the Borrower / third party security provider has marketable and clear title to the assets secured / to be secured for the Facility.

vi) A certificate of the legal advisers of the Borrower certifying that the Borrower and its Directors/Members/Trustees have the necessary powers under the constitutional documents of the Borrower to borrow or avail the Facility and enter into the Facility Agreement and that the borrowing or availing of the Facility under the Facility Agreement would not cause any borrowing limit binding on the Borrower to be exceeded.

vii) Documentary evidence that the Borrower has complied with all of its obligations to file all of its statutory returns, forms and other documents with the relevant Registrar of Companies/ other such statutory authorities as may be prescribed under the various laws applicable to the Borrower.

viii) A copy of the Borrower's most recent audited accounts and auditor's report and un-audited accounts.

(b) PROJECT DOCUMENTS

The Borrower shall submit certified true copies of each Project Document entered into, executed by or in favour of the Borrower.

(c) AUTHORISATIONS

The Borrower shall submit the following:

i) Certified copies of each authorisation necessary or desirable in connection with the entry into, performance, validity, enforceability and admissibility of the Facility Agreement and the other Transaction Documents (and the transactions contemplated thereby), including authorisations from its secured creditors stating that they have no objection to the Borrower creating the security interests on its assets in accordance with the Facility Agreement.

ii) Documentary evidence that each of the Transaction Documents has been duly executed by the parties to it and that each of the Transaction Documents is in full force and effect.

iii) Documentary evidence that all registration, notices and filings which are necessary or desirable in relation to the Transaction Documents and the Project have been completed.

iv) Documentary evidence that the Borrower has the necessary powers and authority to enter into the Project Documents and perform all obligations thereunder. The Borrower shall submit certified copies of each authorisation necessary or desirable in connection with the entry, performance, validity, enforceability and admissibility of the Project Documents.

(d) SECURITY

Unless otherwise permitted by the Lenders, the Borrower shall create the security as stipulated in the Facility Agreement to secure the Facility.

(e) TRANSACTION DOCUMENTS

Unless otherwise permitted by the Lenders, the Borrower shall have executed or entered into all other Transaction Documents as may be required by the Lenders.

Section 5.2 – CONDITION PRECEDENT TO ALL DISBURSEMENTS

(a) SUBMISSION OF INFORMATION AND DOCUMENTS

The Borrower shall furnish to the Lenders, such information and documents, financial or otherwise, as may be required by the Lenders from time to time in relation to the Facility, its business and operations and the Project.

(b) **COMPLIANCE WITH CONDITIONS**

The Borrower shall abide and comply with such conditions as may be imposed by the Lenders from time to time during the currency of the Facility.

**ARTICLE VI
CONDITIONS APPLICABLE DURING CURRENCY OF THE FACILITY
AGREEMENT**

Section 6.1 - **INFORMATION COVENANTS**

The Borrower shall promptly:

(a) **REPRESENTATIONS AND WARRANTIES**

notify the Lenders upon becoming aware, having used best endeavours, of the occurrence of any event or the existence of any circumstances which constitutes or results in any representation, warranty, covenant or condition under the Facility Agreement being or becoming untrue or incorrect in any respect.

(b) **ACCOUNTS**

deliver to the Lenders, its duly audited annual accounts, in any event, within four months from the close of its accounting year. The Borrower shall also deliver to the Lenders, as soon as the same are available and in any event within 45 days of the end of each quarter its audited, or as the case may be, un-audited accounts for that quarter.

(c) **ADDITIONAL PROJECT DOCUMENTS AND AUTHORISATIONS**

deliver to the Lenders, and in no event later than ten days after the execution or receipt thereof by the Borrower, copies of all additional Project Documents and authorisations entered into or obtained by the Borrower, or any amendments to any Project Document or authorisations received by the Borrower and obtain and deliver to the Lenders from time to time, information regarding changes in law affecting the Borrower, its business and operations or the Project.

(d) **ADVERSE CHANGES IN IMPLEMENTATION, PROFITS AND PRODUCTION**

notify the Lenders of the circumstances and conditions which are likely to disable or disables the Borrower from implementing the Project, or which are likely to delay its completion, or which may compel or compels the Borrower to abandon the Project, or which may result in substantial overrun in the original estimate of costs, or the happening of any labour strikes, lockouts, shut-downs, fires or other similar happenings likely to have a Material Adverse Effect, with an explanation of the reasons therefore.

(e) **NOTICES**

deliver to the Lenders, copies of all notices of default, termination, or material claims or material demands made against it or by it under any Project Document or otherwise and notify the Lenders about any action or event pertaining to or having the effect of revocation, repudiation, denial or cancellation of any authorisation.

(f) **LOSS OR DAMAGE**

notify the Lenders of any material loss or damage which the Borrower may suffer due to any event, circumstances or act of God.

(g) **WINDING-UP/ REVOCATION/ DISSOLUTION AND LEGAL PROCESS**

i) notify the Lenders of any action or steps taken or legal proceedings started by or against it in any court of law for its winding-up, dissolution, revocation, administration or re-organisation or for the appointment of a receiver, administrator, administrative receiver, trustee or similar officer of the Borrower or of any or all of its assets.

ii) notify the Lenders of any litigation, arbitration, administrative or other proceedings initiated or threatened against the Borrower, its assets or the Project.

(h) **OTHER INFORMATION**

deliver to the Lenders,

(i) regular progress reports, (in a form satisfactory to the Lenders) covering any matter (including the progress of implementation and operation of the Project together with an explanation for deviations from budgeted expenditure as approved by the Lenders) and such other reports and information on any matter that the Lenders may request from time to time.

(ii) copies of all documents despatched by the Borrower to all its creditors (or any general class of them) at the same time as they are despatched.

Section 6.2 - AFFIRMATIVE COVENANTS

The Borrower hereby covenants and agrees that until all the monies due and payable by the Borrower under the Facility Agreement are fully paid off to the satisfaction of the Lenders, the Borrower shall comply with the following:

(a) **CARRYING ON BUSINESS AND OPERATIONS**

The Borrower shall:

i) maintain its corporate existence and right to carry on its business and operations and ensure that it has the right and is duly qualified to conduct its business and operations as it is conducted in all applicable jurisdictions and will obtain and maintain all franchises and rights necessary for the conduct of its business and operations in such jurisdictions;

ii) develop, maintain and implement the Project in accordance with prudent industry standards and accepted industry practices and conduct its business and operations with due diligence and efficiency and in accordance with sound technical, financial and managerial standards and business practices;

iii) comply with all its obligations under each Project Document and complete the implementation of the Project;

iv) comply and ensure compliance with the terms set out in the Facility Agreement and the other Transaction Documents.

(b) **AUTHORISATIONS**

The Borrower shall promptly obtain, maintain and comply with the terms of all authorisations necessary for entering into or performing its obligations under the Facility Agreement or for the Project or for conducting its business and operations.

(c) **UTILISATION OF THE FACILITY**

The Borrower shall use the proceeds of the Facility only for the Purpose. If, for any reason the Borrower finds itself unable to comply with this condition, it shall immediately inform the Lenders in writing of the same and the reasons therefore and shall, unless otherwise agreed to by the Lenders, repay forthwith the outstanding balance of the Facility together with interest and all other monies payable in respect thereof. The Borrower shall not utilize the proceeds of the Facility for any illegal purposes or for dealing in / against security of any banned article including articles possession / production of which is banned under any laws.

(d) **RANKING OF CLAIMS**

The Borrower shall ensure that, save as otherwise provided in the Facility Agreement and the other Transaction Documents, its obligations under the Facility Agreement and the other Transaction Documents do and will rank above and prior to all its other present and future obligations.

(e) **COMPLIANCE WITH LAWS AND PAYMENT OF TAXES**

The Borrower shall comply in all material respects with all laws applicable to or binding on it or its business and operations or affecting the Project. The Borrower shall file all relevant tax returns and pay all its taxes and statutory dues promptly when due and payable and, to the extent any taxes are not due, has established reserves that are adequate for the payment of those taxes and statutory dues. The Lenders shall not be responsible for the compliance of direct and indirect tax obligations by the Borrower.

(f) **AUDITORS**

In the event that auditors acting as the auditors for the Borrower cease acting as the auditors for any reason, the Borrower shall promptly inform the Lenders of the reasons for such cessation and shall appoint in accordance with applicable laws and maintain as its auditors, another firm of independent chartered accountants, approved by the Lenders.

(g) **WORKING CAPITAL REQUIREMENTS**

The Borrower shall make arrangements for meeting its working capital requirements to the satisfaction of the Lenders.

(h) **INSURANCE**

i) The Borrower shall insure and keep insured / cause to be insured, against such risks as may be determined by the Lenders, all its assets including the assets secured / to be secured for the Facility, whether financed out of the proceeds of the Facility or not, as are of an insurable nature, against fire, theft, lightning, explosion, earthquake, riot, strike, civil commotion, storm, tempest, flood, marine risks, erection risks, war risks, transit and other hazards incidental to the acquisition, transportation and delivery of the assets to the place of use or installation, and such other risks as may be specified by the Lenders, and for such insurance any indemnity shall be payable in any currency freely usable by the Borrower to replace or repair such assets.

ii) In the event of the Lenders / the Security Trustee being at any time apprehensive that the safety of the aforesaid assets is likely to be endangered owing to riot and/or strike (including fire arising therefrom) and/or floods, earthquakes etc. and/or also resulting in the loss of production therefrom, the Lenders / the Security Trustee may at their / its own discretion, but without being bound to do so, insure or require the Borrower to insure / cause to be insured in joint names against any damage arising therefrom. If the Lenders / the Security Trustee desire that the assets shall be insured against theft, the Borrower shall provide / cause to be provided sufficient cover therefore. The Borrower agrees that in the event of loss of insured asset, the Borrower shall submit / cause to be submitted the insurance claim to the insurance company under intimation to the Bank and in the event of receipt of claim amount directly from the insurance company the Borrower undertakes to remit / cause to be remitted the same to the Lenders / the Security Trustee. The Borrower further expressly agrees that the Lenders shall be entitled to adjust, settle, compromise or refer to arbitration any dispute arising under or in connection with any insurance and such adjustment, settlement, compromise and any award made on such arbitration shall be valid and binding

on the Borrower / the concerned person and also to receive all monies payable under any such insurance or under any claim made thereunder and to give a valid receipt therefore, and that the amount so received may be appropriated by the Lenders against the amounts payable / due and payable by the Borrower and other concerned persons under the Transaction Documents and the Borrower shall not raise question that a larger sum might or ought to have been received or be entitled to dispute its liability for the balance remaining due on any account or accounts after such credit.

iii) The aforesaid insurance shall be taken with an insurance company approved and suggested by the Lead Bank and shall be for the reinstatement value of the aforesaid assets or for such sums as may be specified / approved by the Lenders (including surveyor's and architect's fees).

iv) The aforesaid insurance shall be in the joint names of the Borrower and the Lenders / the Security Trustee and any other person or institution having an insurable interest in the aforesaid assets (pursuant to the approval of the Lenders).

v) The Borrower shall duly pay / cause to be paid all premia and other sums payable for the aforesaid purpose. The Borrower agrees that, in the event of failure on the part of the Borrower / the concerned person to insure the assets or to pay the insurance premia or other sums referred to above, the Lenders / the Security Trustee may, at their / its sole discretion, get the aforesaid assets insured or pay the insurance premia and other sums referred to above, as the case may be.

vi) The Borrower shall deliver / cause to be delivered to the Lenders / the Security Trustee promptly and in no event, later than 10 days after the same are issued, originals of all policies of insurance and renewals thereof and endorsements thereto.

vii) Within thirty (30) days after the close of each financial year, the Borrower shall furnish to the Lead Bank, a report signed by an authorized official describing, (i) any changes to the coverage offered by the insurance policies and confirming that such insurance policies continue to cover such risks as are required to protect the Lenders' interest, (ii) any claims made thereunder, (iii) the status of any such claims, (iv) any effect or likely effect of certain identified events, circumstances or conditions occurring, at or affecting the Project, and (v) whether insurance premiums then due and payable by the Borrower have been paid.

(i) SHARE CAPITAL

The Borrower shall ensure that it has sufficient authorised, un-issued share capital to issue shares pursuant to any commitment by the Borrower to issue shares to any person (including to the Lenders in terms hereof) or in accordance with the Financing Plan or for issue to any person pursuant to any commitment made by such person under any Transaction Document to subscribe to shares of the Borrower.

(j) CONSTITUTIONAL DOCUMENTS

The Borrower shall carry out such alterations to its constitutional documents and shall also pass necessary resolutions as may be deemed necessary in the opinion of the Lenders to safeguard the interests of the Lenders under the Facility Agreement and the other Transaction Documents.

(k) UNDERTAKING FOR MEETING SHORTFALL

The Borrower shall undertake and/or procure undertakings from such persons as may be specified by the Lenders and in the form required by the Lenders, whereby it/he/they shall take the responsibility for making arrangements satisfactory to the Lenders for meeting the

⁷ Applicable where the Borrower is a company

shortfall, if any, in the resources of the Borrower for completing the Project and/or for working capital. The Borrower shall join in such undertakings procured from such other persons as a confirming party. The funds brought in to meet the shortfall in the resources of the Borrower for completing the Project and/or working capital shall be in such form and manner and on such terms as may be required by the Lenders.

(l) OTHER DOCUMENTS

The Borrower shall execute and/or cause to be executed, such documents as may be required by the Lenders in connection with the Facility, in a form and manner satisfactory to the Lenders.

(m) CREDIT RATING

The Borrower shall :

- (i) obtain and maintain a credit rating from a credit rating agency recognized by RBI and acceptable to the Lenders; all costs and expenses in relation to the above shall be borne by the Borrower;
- (ii) cooperate with and furnish and execute all such documents, deeds and writings as may be required, by the aforesaid credit rating agency;
- (iii) comply with the requirements stipulated by the Lenders in respect of and to maintain the aforesaid credit rating.

Section 6.3 - NEGATIVE COVENANTS

The Borrower hereby covenants and agrees that until all the monies due and payable by the Borrower under the Facility Agreement are fully paid off to the satisfaction of the Lenders, without the approval of the Lenders, the Borrower shall not:

(a) NEW PROJECT AND PROJECT CHANGES

undertake any new project, or diversification, modernisation or substantial expansion of the Project, or alter the Financing Plan or the scope of the Project whether by way of any reduction or increase to its size, layout, specification or quality or otherwise.

(b) OTHER ACTIVITIES

engage in any business or activities other than those which the Borrower is currently engaged in, either alone or in partnership or joint venture with any other person, nor acquire any ownership interest in any other entity or person or enter into any profit-sharing or royalty agreement or other similar arrangement whereby the Borrower's income or profits are, or might be, shared with any other entity or person, or enter into any management contract or similar arrangement whereby its business or operations are managed by any other person.

(c) INDEBTEDNESS

contract, create, incur, assume or suffer to exist any Indebtedness in any manner whatsoever except as otherwise permitted under the Facility Agreement. This provision shall not apply to normal trade guarantees.

(d) PREMATURE REPAYMENT

prepay any Indebtedness incurred by the Borrower. If the Lenders permit the Borrower to prepay any such Indebtedness the Borrower shall if so required by the Lenders, make proportionate prepayment to the Lenders subject to such conditions (including payment of prepayment charges) as may be stipulated by the Lenders.

(e) **COMMISSION**

pay any commission to its promoters, directors, trustees, members, managers or other persons for furnishing guarantees, counter guarantees or indemnities or for undertaking any other liability in connection with any Indebtedness incurred by the Borrower or in connection with any other obligation undertaken for or by the Borrower.

(f) **SUBSIDIARIES**

create any subsidiary or permit any company/other entity to become its subsidiary.

(g) **MERGER, CONSOLIDATION ETC.**

undertake or permit any merger, de-merger, consolidation, reorganisation, scheme or arrangement or compromise with its creditors or shareholders or effect any scheme of amalgamation or reconstruction or change its constitution.

(h) **INVESTMENTS BY BORROWER**

make any investments whether by way of deposits, loans, or investments in share capital or otherwise (including investing in the share capital or lending to or placing deposits with any associates / affiliates / group concerns or companies), in any concern or provide any credit or give any guarantee, indemnity or similar assurance except as otherwise permitted under the Facility Agreement. This provision shall not apply to loans and advances granted to staff or contractors or suppliers in the ordinary course of business.

(i) **ENCUMBRANCE**

(a) create or permit to subsist any encumbrance (save and except for securing borrowings for working capital requirements in the ordinary course of business, upto the limit approved by the Lenders) or any type of preferential arrangement (including retention arrangements or escrow arrangements having the effect of granting security), in any form whatsoever on any of its assets including Intellectual Property and Intellectual Property Rights, or (b) (whether voluntarily or involuntarily) sell, transfer, grant lease or otherwise dispose of or deal with (or agree to do any of the foregoing at any future time), all or any of its assets including Intellectual Property and Intellectual Property Rights.

(j) **CONTRACT CHANGES**

carry out or permit any material amendment, termination or cancellation of any (i) Project Document including any agreements with its machinery suppliers, collaborators, technical consultants and suppliers of raw materials, or (ii) agreements, documents or arrangements entered into with, or executed in favour of, any other lenders or providers of funds.

⁸(k) **DIVIDEND**

declare or pay any dividend or authorise or make any distribution to its shareholders: (a) unless it has paid all the dues in respect of the Facility upto the date on which the dividend is proposed to be declared or paid, or has made satisfactory provisions therefor, and/or (b) if an Event of Default has occurred and is subsisting or would occur as a result of such declaration or payment of dividend or authorisation or making of distribution.

⁹(l) **SHARE CAPITAL**

(a) buy back, cancel, retire, reduce, redeem, re-purchase, purchase or otherwise acquire any

⁸ Applicable where Borrower is company

⁹ Applicable where Borrower is company

of its share capital now or hereafter outstanding, or set aside any funds for the foregoing purposes, or (b) issue any further share capital whether on a preferential basis or otherwise or change its capital structure in any manner whatsoever.

(m) **FINANCIAL YEAR**

change such of the financial year-end which has been intimated to the Lenders (or such other date as may be approved by the Lenders).

(n) **ACCOUNTING METHOD**

change the accounting method or policies currently followed by the Borrower.

(o) **MEMORANDUM AND ARTICLES OF ASSOCIATION/BYE LAWS/TRUST DEED**

amend or modify its Memorandum and Articles of Association/Bye Laws/Trust Deeds.

(p) **WILFUL DEFAULTER, ETC.**

induct a person in any capacity whatsoever, who is a director/partner/member/trustee of an entity identified as willful defaulter. In the event of such a person is found to be a director/partner/member/trustee of an entity identified as willful defaulter, the Borrower shall take expeditious and effective steps for removal of such person.

¹⁰(q) **UNDERTAKINGS FOR NON-DISPOSAL OF SHAREHOLDINGS**

recognise or register any transfer of shares in the Borrower's capital made or to be made by any person as may be specified by the Lenders. The Borrower shall procure and furnish undertakings from such persons, in a form and manner required by the Lenders, whereby such person shall agree, *inter alia*, not to dispose off their shareholdings in the Borrower to any person in any manner whatsoever. The Borrower shall join in such undertaking as a confirming party. The Borrower shall procure that such person providing the undertaking referred to above deposits with the Lenders, all original certificates pertaining to their shareholding in the Borrower.

Section 6.4 - APPOINTMENT OF TECHNICAL/MANAGEMENT CONSULTANT

The Lenders shall have the right to appoint, whenever it considers necessary, any person engaged in technical, management or any other consultancy business to inspect and examine the working of the Borrower and its assets including its premises, factories and facilities and to report to the Lenders. The Lenders shall have the right to appoint, whenever it considers necessary, any Chartered Accountants/Cost Accountants as auditors for carrying out any specific assignments or to examine the financial or cost accounting system and procedures adopted by the Borrower for its working or as concurrent or internal auditors, or for conducting a special audit of the Borrower. The costs, charges and expenses including professional fees and travelling and other expenses of such consultants or auditors shall be borne and payable by the Borrower.

Section 6.5 - MANAGEMENT

(i) **EXISTING MANAGEMENT**

Without the approval of the Lenders, the Borrower shall not appoint/re-appoint/remove any persons, by whatever name called, who exercise substantial powers of management of the affairs of the Borrower.

¹⁰ Applicable only in case of companies

(ii) **PAYMENT OF COMMISSION**

The persons referred to in Sub-clause (i) above shall not be paid any commission in any year unless all the dues of the Lenders in that year have been paid to the satisfaction of the Lenders.

(iii) **PAYMENT OF COMPENSATION**

The persons referred to in Sub-clause (i) above shall not be paid any compensation in the event of loss of their offices for any reason whatsoever unless all the dues of the Lenders in that year have been paid to the satisfaction of the Lenders.

(iv) **UNDERTAKINGS**

The Borrower shall procure and furnish suitable undertakings in a form acceptable to the Lenders for giving effect to (ii) and (iii) above from the persons mentioned in Sub-clause (i) above.

(v) **FUTURE ARRANGEMENT**

The Borrower shall, as and when required by the Lenders, appoint to the satisfaction of the Lenders, persons mentioned in Sub-clause (i) above and/or suitable technical, financial and executive staff of proper qualifications and experience for the key posts and change any of the foregoing persons as and when required by the Lenders. The terms of such appointments including any changes therein, shall be subject to the approval of the Lenders.

¹¹(vi) **CONSTITUTION OF THE COMMITTEES OF THE BOARD**

The Borrower shall constitute such committees of the Board with such composition and functions as may be required by the Lenders.

¹²Section 6.6 - **APPOINTMENT OF NOMINEE DIRECTOR**

(i) The Lenders shall have the right to appoint and remove from time to time, Director(s) on the Board of Directors of the Borrower (such directors are hereinafter referred to as "the Nominee Director(s)").

(ii) The Nominee Director(s) shall:

- a) not be required to hold qualification shares nor be liable to retire by rotation;
- b) be entitled to all the rights and privileges of other Directors including the sitting fees, and expenses as payable to other Directors but if any other fees, commission, monies or remuneration in any form is payable to the Directors, the fees, commission, monies and remuneration in relation to such Nominee Director(s) shall be paid by the Borrower directly to the Lenders;

Provided that if any such Nominee Director(s) is an employee of the Lenders, the sitting fees and expenses in relation to such Nominee Director(s) shall be paid by the Borrower directly to the Lenders;

Any expenditure incurred by the Lenders or the Nominee Director(s) in connection with his appointment of directorship shall be borne and payable by the Borrower.

- c) be appointed a member of committees of the Board, if so desired by the Lenders;
- d) be entitled to receive all notices, agenda, etc. and to attend all General Meetings and Board Meetings and Meetings of any committees of the Board of which he is a

¹¹ Applicable where Borrower is company

¹² Applicable where Borrower is company

member.

(iii) If, at any time, the Nominee Director(s) is not able to attend a meeting of the Board of Directors or any of its committees of which he is a member, the Lenders may depute an observer to attend the meeting. The expenses incurred by the Lenders in this connection shall be borne and payable by the Borrower.

(iv) The Nominee Director(s)/the observer shall furnish to the Lenders a report of the proceedings of all such meetings.

(v) The appointment/removal of the Nominee Director(s) shall be by a notice in writing by the Lenders addressed to the Borrower and shall (unless otherwise indicated by the Lenders) take effect forthwith upon such a notice being delivered to the Borrower.

(vi) The Nominee Director(s) shall not be responsible for the day to day management of the Borrower and shall not be held liable by any person for any inaction, mistake or non compliance relating to the management of the affairs of the Borrower, etc. by the Board of Directors / senior management, etc. of the Borrower.

ARTICLE VII RECORDS AND INSPECTION

Section 7 - RECORDS AND TECHNICAL, FINANCIAL AND LEGAL INSPECTIONS

(a) RECORDS

The Borrower shall keep and maintain in accordance with good business practice and applicable laws, all statutory books, books of accounts, bank statements and other records of the Borrower and in particular, maintain records showing expenditure incurred on the Project, utilisation of the disbursements under the Facility Agreement, progress of the Project and the operations and financial conditions of the Borrower and such records shall be open to examination by the Lenders and their authorised representatives.

(b) TECHNICAL, FINANCIAL AND LEGAL INSPECTIONS

The Borrower shall:

i) permit the Lenders and its authorised representatives to carry out technical, financial and legal inspections of the Project and its assets and to visit and examine any such assets including the Borrower's facilities, plants, installations, sites, works, buildings, properties or equipment, and examine records and documents relevant to the performance of the obligations of the Borrower under the Facility Agreement. Any such representative of the Lenders shall have free access at all reasonable times to the Borrower's assets and shall receive full co-operation and assistance from the Borrower and its employees.

ii) permit any whole-time officer of the Lenders or a qualified practising Auditor to examine the Borrower's books and papers and shall provide all facilities to enable any technically qualified person chosen by the Lenders to report on the business and operations of the Borrower at any time.

The cost of inspection, including travelling and all other expenses, shall be borne and payable by the Borrower to the Lenders in this behalf.

(c) **FACILITY IN FOREIGN CURRENCIES**

If the Facility is denominated in foreign currencies, the aforesaid rights shall also accrue to, and be exercisable by, the Foreign Lending Agency and/or their authorised representative.

**ARTICLE VIII
EVENTS OF DEFAULT AND REMEDIES**

Section 8.1 - **EVENTS OF DEFAULT**

(a) **DEFAULT IN PAYMENT OF PRINCIPAL SUMS OF THE FACILITY, ETC.**

Default has occurred in the repayment of principal sums of the Facility on the Due Dates (whether at stated maturity, by acceleration or otherwise) and/or in the payment of interest on the Facility and/or any other monies whatsoever stipulated in or payable under the Facility Agreement and/or the other Transaction Documents.

(b) **DEFAULT IN PERFORMANCE OF COVENANTS AND CONDITIONS**

Default (other than a payment default) has occurred in the performance of any covenant, condition or agreement on the part of the Borrower under the Facility Agreement under the other Transaction Documents and such default has continued for a period of 30 days after notice in writing thereof has been given to the Borrower by the Lenders (except where the Lenders is of the opinion that such default is incapable of remedy, in which event, no notice shall be required).

(c) **MISLEADING INFORMATION AND REPRESENTATIONS**

Any information given in the Credit Application, in the reports and other information furnished by or on behalf of the Borrower and/or other related person, in accordance with the reporting system is incorrect or misleading, or a representation, warranty or statement made or repeated or deemed to be made or repeated in or in connection with the Facility Agreement or any Transaction Document by the Borrower and/or any other person, is incorrect or misleading in any respect.

(d) **INADEQUATE SECURITY AND INSURANCE**

(i) If the Borrower's assets have not been kept insured by the Borrower or depreciate in value to such an extent that such depreciation in value could in the opinion of the Lenders, have a Material Adverse Effect.

(ii) Any insurance contracted or taken by the Borrower is not, or ceases to be, in full force and effect at any time when it is required to be in effect or any insurance is avoided, or any insurer or re-insurer avoids or suspends or becomes entitled to avoid or suspend, any insurance or any claim under it or otherwise reduce its liability under any insurance or any insurer of any insurance is not bound, or ceases to be bound, to meet its obligations in full or in part under any insurance.

(e) **PROCEEDINGS AGAINST OR DISSOLUTION OF BORROWER**

The Borrower, has voluntarily or involuntarily become the subject of proceedings under any bankruptcy or insolvency law, or is voluntarily or involuntarily dissolved, or if the Borrower has taken or suffered to be taken any action for its reorganisation, liquidation or dissolution or has died, or if a receiver or liquidator has been appointed or allowed to be appointed of all or any part of the assets of the Borrower or if an attachment or distraint has been levied on the Borrower's assets or any part thereof or certificate proceedings have been taken or commenced for recovery of any dues from the Borrower or if one or more judgements or

decrees have been rendered or entered against the Borrower and such judgements or decrees are not vacated, discharged or stayed for a period of 30 days, and such judgements or decrees involve in the aggregate, a liability which in the opinion of the Lenders, could have a Material Adverse Effect.

(f) CESSATION OR CHANGE IN BUSINESS

If the Borrower ceases or threatens to cease to carry on any of its businesses or gives notice of its intention to do so or if the Borrower abandons the Project or all or any part of the assets required or essential for its business or operations or if such assets are damaged or destroyed or in the opinion of the Lenders, there occurs any change from the date of the Facility Agreement in the general nature or scope of the business, operations, management or ownership of the Borrower, which, in the opinion of the Lenders, could have a Material Adverse Effect.

(g) SECURITY IN JEOPARDY

If, in the opinion of the Lenders, the security for the Facility is in jeopardy or ceases to have effect or if any Transaction Document including any security document executed or furnished by or on behalf of the Borrower becomes illegal, invalid, unenforceable or otherwise fails or ceases to be in effect or fails or ceases to provide the benefit of the liens, rights, powers, privileges or security interests purported or sought to be created thereby or if any such Transaction Document shall be assigned or otherwise transferred, amended or terminated, repudiated or revoked without the approval of the Lenders.

(h) EXPROPRIATION EVENTS

Any government (including any political or administrative sub-division thereof), governmental authority, agency, official or entity takes or threatens any action:

- (i) for the dissolution of the Borrower, or any action which deprives or threatens to deprive the Borrower: (a) from conducting any of its businesses or carrying out its operations in the manner it is being conducted or carried out, , or (b) of the use of any of its assets;
- (ii) to revoke or terminate or to refuse to provide or renew any authorisation or to impose onerous conditions on or on the grant or renewal of any authorisation; or
- (iii) with a view to regulate, administer, or limit, or assert any form of administrative control over the rates applied, prices charged or rates of return achievable, by the Borrower in connection with its business;

which, in each case, in the opinion of the Lenders, could have a Material Adverse Effect.

(i) CHANGE IN CONTROL

Any person acting singularly or with any other person (either directly or indirectly) acquires control of the Borrower or of any other person who controls the Borrower, without the approval of the Lenders.

(j) ILLEGALITY

- i) It is or becomes unlawful for the Borrower or any person (including the Lenders) to perform any of their respective obligations under the Facility Agreement or any Transaction Document.
- ii) The Facility Agreement or any Transaction Document or any provision thereof are required by any law to be amended, waived or repudiated; or
- iii) Any obligation under the Facility Agreement or any Transaction Document is not or ceases to be a valid and binding obligation of any person party to it or becomes void, illegal, unenforceable or is repudiated by such person (other than the Lenders).

iv) If any authorization required to enable the Borrower and/or any other party to the Project Documents and/or the Transaction Documents to perform any of its obligations under the Project Documents and/or the Transaction Documents, is withdrawn or modified or cancelled or not renewed.

(k) **CROSS DEFAULT**

i) The Borrower is unable or has admitted in writing its inability to pay any of its Indebtedness as they mature or when due.

ii) An event of default howsoever described (or any event which with the giving of notice, lapse of time, determination of materiality or fulfilment of any other applicable condition or any combination of the foregoing would constitute an event of default) occurs under any agreement or document relating to any Indebtedness of the Borrower or if any other lenders of the Borrower including financial institutions or banks with whom the Borrower has entered into agreements for financial assistance have refused to disburse, extend, or have cancelled or recalled its/their assistance or any part thereof.

iii) If the Borrower or any other party to any Project Document are in breach of, or do not comply with, any term or condition (whether, financial, performance or otherwise) of any Project Document and such breach or non-compliance is, in the opinion of the Lenders, likely to have a Material Adverse Effect.

iv) The related person is in breach of, or does not comply with, any term or condition (whether, financial, performance or otherwise) of any related Transaction Document including any security document or undertaking.

(l) **DETERIORATION IN CREDIT WORTHINESS**

The Borrower's and/or any security provider's credit worthiness, in the sole opinion of the Lenders, deteriorates, and/or if the Borrower's account is classified as a non-performing asset in the books of the Lenders, and/or if the credit rating of the Borrower and/or any security provider's credit rating is downgraded by credit rating agency for any reason whatsoever.

(m) **MATERIAL ADVERSE EFFECT**

One or more events, conditions or circumstances (including any change in law) shall occur or exist which in the opinion of the Lenders, could have a Material Adverse Effect.

Section 8.2 NOTIFICATION OF DEFAULT

The Borrower shall promptly notify the Lenders in writing upon becoming aware of any default and any event which constitutes (or, with the giving of notice, lapse of time, determination of materiality or satisfaction of other conditions, would be likely to constitute) an Event of Default and the steps, if any, being taken to remedy it.

Section 8.3 - CONSEQUENCES OF DEFAULT AND REMEDIES

A. On the happening of any of the Events of Default, the Lenders may, without prejudice to its other rights and remedies, by a notice in writing to the Borrower, declare: (a) the principal of and all accrued interest on and all other monies in respect of the Facility to be due and payable forthwith, and/or (b) the security created in terms of the Facility Agreement and the other Transaction Documents to be enforceable, and the Lenders or such other person in favour of whom such security or any part thereof is created, shall have, *inter alia*, the following rights (anything in the Facility Agreement and/or the Transaction Documents to the contrary notwithstanding) namely:

i) to enter upon and take possession of the secured assets; and/or

ii) to transfer the secured assets, by way of lease, leave and licence, sale or otherwise.

The Borrower's liability to the Lenders shall not be discharged until and unless the Borrower has paid or discharged all the obligations owed to the Lenders under the Facility Agreement and the other Transaction Documents. For the avoidance of doubt, notwithstanding that the Borrower may have paid all amounts due to any Lender under the Facility Agreement and the other Transaction Documents, the Borrower shall remain liable to such Lender if, as a result of any sharing arrangement between the Lenders that has been notified to and confirmed by the Borrower, such Lender is obliged to share the payments made by the Borrower and consequently the obligations owing to such Lender under the Facility Agreement and the other Transaction Documents are still owing.

B. In addition to the rights specified in Sub-clause (A) above and this Agreement, the Lenders shall also have the following rights:

¹³i) APPOINTMENT OF WHOLE-TIME DIRECTOR(S)

the Lenders shall have the right to appoint and remove from time to time, whole time Director(s) on the Board of Directors of the Borrower (such directors are hereinafter referred to as the "Whole time Nominee Director(s)").

The Whole time Nominee Director(s) shall:

- a) not be required to hold qualification shares nor be liable to retire by rotation.
- b) exercise such powers and duties as may be approved by the Lenders and have such rights as are usually exercised by or are available to a whole time director, in the management of the affairs of the Borrower.
- c) be entitled to receive such remuneration, fees, commission and monies as may be approved by the Lenders.
- d) be appointed a member of committees of the Board, if so desired by the Lenders.
- e) be entitled to receive all notices, agenda, etc. and to attend all General Meetings and Board Meetings and Meetings of any committees of the Board of which he is a member.

Any expenditure incurred by the Lenders or the Whole time Nominee Director(s) in connection with his appointment of directorship shall be borne and payable by the Borrower.

If, at any time, the Whole time Nominee Director(s) is not able to attend a meeting of the Board of Directors or any of its committees of which he is a member, the Lenders may depute an observer to attend the meeting. The expenses incurred by the Lenders in this connection shall be borne and payable by the Borrower.

The Whole time Nominee Director(s)/the observer shall furnish to the Lenders a report of the proceedings of all such meetings.

The appointment/removal of the Whole time Nominee Director(s) shall be by a notice in writing by the Lenders addressed to the Borrower and shall (unless otherwise indicated by the Lenders) take effect forthwith upon such a notice being delivered to the Borrower.

The Whole time Nominee Director(s) shall not be held personally liable by any person for any inaction, mistake or non compliance relating to the management of the affairs of the Borrower, etc. by the Board of Directors / senior management, etc. of the Borrower.

¹³ Applicable where Borrower is company

ii) **REVIEW OF MANAGEMENT**

The Lenders shall have a right to review the management set up or organisation of the Borrower and to require the Borrower to restructure it as may be considered necessary by the Lenders, including the formation of management committees with such powers and functions as may be considered suitable by the Lenders. The Borrower shall comply with all such requirements of the Lenders.

¹⁴iii) **CONVERSION RIGHT IN CASE OF DEFAULT**

(a)(1) If the Facility is denominated in Rupees, in the event the Borrower commits a default in payment or repayment of two consecutive instalments of principal amounts of the Facility or interest thereon or any combination thereof, then the Lenders shall have the right to convert (which right is hereinafter referred to as the "conversion right") at its option the whole or part of the outstanding amount of the Facility (whether then due and payable or not), into fully paid-up equity shares of the Borrower, at par from the date (which date is hereinafter referred to as the "date of conversion") and in the manner specified in a notice in writing to be given by the Lenders to the Borrower (which notice is hereinafter referred to as "the notice of conversion").

(a)(2) If the Facility is denominated in foreign currencies, in the event the Borrower commits a default in payment or repayment of any instalment of principal amounts of the Facility or interest thereon, then the Lenders shall have the right to convert (which right is hereinafter referred to as the "conversion right") at its option the Rupee equivalent of the whole or part of the outstanding amount of the Facility (whether then due and payable or not), into fully paid-up equity shares of the Borrower, at par from the date (which date is hereinafter referred to as the "date of conversion") and in the manner specified in a notice in writing to be given by the Lenders to the Borrower (which notice is hereinafter referred to as the "notice of conversion").

Provided however, and notwithstanding anything to the contrary contained in Sub-clauses (a)(1) and (a)(2) above, in the event the principal amount of the Facility is repayable in one instalment, the Lenders shall be entitled to exercise the conversion right if the Borrower defaults in repayment of such instalment of principal amounts of the Facility or in payment of any interest thereon.

(b) The conversion right reserved as aforesaid may be exercised by the Lenders on one or more occasions during the currency of the Facility on the happening of the event specified above.

(c) On receipt of notice of conversion, the Borrower shall allot and issue the requisite number of fully paid-up equity shares to the Lenders as from the date of conversion and the Lenders shall accept the same in satisfaction of the part of the Facility so converted. The part of the Facility so converted shall cease to carry interest as from the date of conversion and the Facility shall stand correspondingly reduced. Upon such conversion, the instalments of the Facility payable after the date of conversion as per the Facility Agreement shall stand reduced proportionately by the amounts of the Facility so converted. The equity shares so allotted and issued to the Lenders shall carry, from the date of conversion, the right to receive proportionately the dividends and other distributions declared or to be declared in respect of the equity capital of the Borrower. Save as aforesaid, the said shares shall rank *pari passu*

¹⁴ Applicable where Borrower is company

with the existing equity shares of the Borrower in all respects. The Borrower shall, at all times, maintain sufficient un-issued equity shares for the above purpose.

(d) In the event of the Lenders exercising the conversion right as aforesaid, the Borrower shall at its cost get the equity shares, issued to the Lenders as a result of the conversion, listed with such Stock Exchanges as may be prescribed by the Lenders as also comply with all statutory requirements and applicable laws in connection with the issue of the shares as stated above.

Section 8.4 - EXPENSES OF PRESERVATION OF ASSETS OF BORROWER AND OF COLLECTION

All expenses incurred by the Lenders after an Event of Default has occurred including in connection with:

- i) preservation of, or enforcement action against the Borrower's assets or the assets comprised within the security for the Facility (whether then or thereafter existing); and
- ii) collection of amounts due under the Facility Agreement and the other Transaction Documents,

shall be payable by the Borrower.

Section 8.5 – SUSPENSION AND TERMINATION

A. If any Event of Default has occurred or is continuing or if the Borrower has not availed of or drawn from the Facility by the date referred to in the Facility Agreement or such later date as may be permitted by the Lenders, then, in such event, the Lenders may, by notice in writing to the Borrower:

- i) suspend further access by the Borrower to the use of the Facility under the Facility Agreement. The right of the Borrower to avail of or make draws from the Facility shall continue to be suspended until the Lenders has notified the Borrower that the right to avail of or make draws from the Facility has been restored; or
- ii) terminate the right of the Borrower to avail of or make draws from the Facility. Upon such notice, the unutilised amount of the Facility shall stand cancelled.

Provided, however, in the event the Borrower's and/or any security provider's credit worthiness deteriorates, in the sole opinion of the Lenders, the Lenders shall be entitled to unconditionally cancel the Facility without any notice to the Borrower.

B. If the Facility is denominated in foreign currencies, in the event the Lenders is, for any reason, denied further access to their loan facility from the Foreign Lending Agency, the Lenders may by notice in writing to the Borrower, terminate the right of the Borrower to make withdrawals. Upon such notice, the undrawn amount of the Facility shall stand cancelled.

C. Notwithstanding any suspension or termination pursuant to Sub-clauses (A) or (B) above, all the provisions of the Facility Agreement for the benefit or protection of the Lenders and its interests shall continue to be in full force and effect as specifically provided in the Facility Agreement.

ARTICLE IX CANCELLATION

Section 9.1 - CANCELLATION

The Borrower shall not cancel the Facility or any part thereof without the approval of the Lenders. The Lenders shall be entitled to unconditionally, with notice to the Borrower, cancel the undrawn portion of the Facility at any time during the subsistence of the Facility Agreement, for any reason whatsoever.

Section 9.2 - BENEFIT OR PROTECTION

Notwithstanding any cancellation, all the provisions of the Facility Agreement for the benefit or protection of the Lenders and its interests shall continue to be in full force and effect as specifically provided in the Facility Agreement.

ARTICLE X WAIVER

Section 10 - WAIVER NOT TO IMPAIR THE RIGHTS OF THE LENDERS

No delay in exercising or omission to exercise any right, power or remedy accruing to the Lenders upon any default or otherwise under the Facility Agreement and/or the Transaction Documents shall impair any such right, power or remedy or shall be construed to be a waiver thereof or any acquiescence in such default, nor shall the action or inaction of the Lenders in respect of any default or any acquiescence by it in any default, affect or impair any right, power or remedy of the Lenders in respect of any other default. The rights of the Lenders under the Facility Agreement and the other Transaction Documents may be exercised as often as necessary, are cumulative and not exclusive of their rights under the general law and may be waived only in writing and specifically and at the Lenders' sole discretion.

ARTICLE XI MISCELLANEOUS

Section 11.1 – SERVICE OF NOTICE

(a) All notices or other communications under or in connection with the Facility Agreement and the other Transaction Documents shall be given by the Borrower in writing (unless otherwise specified / stipulated in the Facility Agreement / the other Transaction Documents) to the Lenders at the address specified in the Facility Agreement or such other address as may be specified by the Lenders. Such notice or other communication shall be made by letter or facsimile and shall be deemed to be effective:

- i) if sent by letter, when delivered personally or if dispatched by post, when recall of the letter is outside the control of the Borrower;
- ii) if sent by facsimile, if sent by facsimile, the date with the confirmation from the facsimile machine;
- iii) if sent by courier, the date of actual delivery to the Lenders;
- iv) if delivered by an express mail or courier service company, the second day after it is submitted to the express mail or courier service company

Provided, however, that no notice or communication to the Lenders shall be effective unless actually received by the Lenders.

The Borrower may inform in writing to the Lenders any change in its designated address. Such change shall take effect when the Lenders actually receive notice of such change. In the event of any failure by the Borrower to notify the Lenders in writing of any changes in the Borrower's contact address or details, service of a notice/correspondence to the Borrower's recognised address shall be deemed to be proper and sufficient service on the Borrower irrespective of whether or not such notice shall be returned "unserved" to the Lenders.

(b) All notices or other communications under or in connection with the Facility Agreement and the other Transaction Documents shall be given by the Lenders and the Lead Bank in writing (unless otherwise specified / stipulated otherwise in the Facility Agreement / the other Transaction Documents) to the Borrower at the recognized address of the Borrower. Such notice or other communication may be made by letter or facsimile or email or putting up on the website; any notice or communication so provided by the Lenders and/or the Lead Bank by letter or facsimile shall be deemed to be effective :

- i) if sent by letter, when delivered personally or if dispatched by post, when recall of the letter is outside the control of the sender;
- ii) if sent by facsimile, either the date with the confirmation from the facsimile machine or the date when the fax is sent;
- iii) if sent by courier, the date of delivery to the address of the Borrower;
- iv) if delivered by an express mail or courier service company, the second day after it is submitted to the express mail or courier service company.

The Borrower agrees and acknowledges that :

- i) transmission of information through fax is not a secure means of sending information and may be subject to tampering and unauthorised access, fraudulently or mistakenly written, altered or sent, not be received in whole or in part by the Lenders and/or the Lead Bank, may reach the Lenders and/or the Lead Bank in a jumbled state or in a manner or shape that it may be misunderstood or the fax machine may be unattended at the time of dispatch of the notice or communication by the Borrower;
- ii) if the Lenders and/or the Lead Bank receive a notice or communication through facsimile which purports to have been properly transmitted or authorized by the Borrower, or on behalf of the Borrower and the Borrower's current authentication procedure has been used, then the Lenders and/or the Lead Bank may rely on that notice or communication on an as is basis and shall not be obliged to make any further enquiries and verification and such notice or communication will be deemed effective as a valid notification or communication by the Borrower.

The Borrower also acknowledges and confirms that notice, if any, provided by the Lenders, as specified in this Section or in any other manner whatsoever, of any changes in rate(s) mentioned above or any notice from the Lenders for payment of amounts at the changed rate(s), shall be treated by the Borrower as sufficient and reasonable notice to the Borrower and the Lenders are not bound to issue any further notice of such changes to the Borrower.

Section 11.2 - **EVIDENCE OF DEBT**

(a) The Lenders shall maintain, in accordance with its usual practice, accounts evidencing the amounts from time to time lent by and/or owing to it under the Facility Agreement and the other Transaction Documents.

(b) In any legal action or proceedings arising out of or in connection with the Facility Agreement, the entries made in the accounts maintained pursuant to Sub-clause (a) above shall be prima-facie and conclusive evidence of the existence and amount of obligations of the Borrower as therein recorded.

Section 11.3 - **ACKNOWLEDGEMENT**

Upon receipt of statement(s) giving details of: (i) the outstanding amounts under the respective Facility, (ii) the securities, if any, created for securing the Facility, the Borrower shall forward its acknowledgement of the aforesaid indebtedness and the securities, if any, specified in the aforesaid statement(s), in the form prescribed by the Lenders. In the event the Lenders do not receive such acknowledgement from the Borrower within a period of ten days from the date of receipt of statement from the Lenders, the Borrower shall be deemed to have confirmed the correctness of the entries in such statement(s) and acknowledged the indebtedness for the balance mentioned in the aforesaid statement(s) and the securities therefor.

Acknowledgement as stated above by the Karta or any one of the partners or the authorized signatory (in case of body corporate) shall be deemed to be acknowledgement by all the members of the HUF or all the partners or the body corporate and shall be binding on the Borrower and third party security providers and vice versa.

In the event the security is created by a third party for the Facility and all other monies in respect thereof, the Borrower shall ensure that the aforesaid acknowledgement/s are provided to the Lenders in the form prescribed by the Lenders.

Section 11.4 – **GOVERNING LAW**

The Facility Agreement and the other Transaction Documents (unless otherwise specified in any Transaction Document) shall be governed by and construed in accordance with the laws of India.

Section 11.5 - **ASSIGNMENT**

The Borrower shall not assign or transfer all or any of its rights, benefits or obligations under the Facility Agreement and the other Transaction Documents without the approval of the Lenders.

The Lenders may, at any time, assign, securitise, novate, transfer or dispose of all or any part of their rights, benefits and obligations, including undisbursed amounts of the Facility, under the Facility Agreement and the other Transaction Documents to any person in any manner whatsoever without the consent of the Borrower. Notwithstanding any such assignment, transfer, etc. the Borrower shall, unless otherwise notified by the Lenders, continue to make all payments under the Facility Agreement to the Lenders and all such payments when made to the Lenders shall constitute a full discharge to the Borrower from all its liabilities in respect of such payments. For the purposes of this Section, with respect to each Lender, each disbursement shall constitute a separate and distinct debt, capable of separate or collective securitization, novation, assignment, transfer or disposal.

Without prejudice to the aforesaid provision, the Lenders may (at its sole discretion), without notice to the Borrower, share the credit risk of the whole or a part of the Facility with any other bank by way of participation. Notwithstanding such participation, all rights, title, interests, special status and other benefits and privileges enjoyed or conferred upon or held by the Lenders under the Facility Agreement and the other Transaction Documents shall remain valid, effective and enforceable by the Lenders on the same terms and conditions and the Borrower shall continue to discharge in full all its obligations under the Facility Agreement and the other Transaction Documents to the Lenders. The Borrower shall not have and shall not claim any privity of contract with such participating bank on account of any reason whatsoever.

Section 11.6 - **BENEFIT OF THE FACILITY AGREEMENT**

Subject to Section 11.6 hereof, the Facility Agreement shall be binding upon and enure to the benefit of each party hereto and its successors and assigns.

Section 11.7 – **ADDITIONAL CONDITION**

The Borrower hereby agrees and confirms that in case any other person providing any financial assistance to the Borrower for the Project imposes any conditions not included herein, or in case any of the terms offered by the Borrower to such person is more favourable to such person than the terms stipulated by, or offered to, the Lenders, the Borrower shall promptly inform the Lenders of such terms or conditions and such of those terms and conditions as may be considered necessary by the Lenders, in its discretion, shall apply to the Facility as if the Borrower had specifically agreed to such terms and conditions, which terms and conditions shall be deemed to have been expressly incorporated herein.

Section 11.8 – **SEVERABILITY**

Any provision of the Facility Agreement and/or any Transaction Document which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of prohibition or unenforceability but that shall not invalidate the remaining provisions of the Facility Agreement and/or such Transaction Document or affect such provision in any other jurisdiction.

Section 11.9 -- **DISCLOSURE**

The Borrower hereby agrees, confirms and undertakes that:

- (1) the Lenders shall, as they may deem appropriate and necessary, be entitled to disclose all or any:
 - i) information and data relating to the Borrower;
 - ii) information or data relating to the Facility or any other credit facility availed / to be availed by the Borrower from the Lenders;
 - iii) obligations assumed / to be assumed by the Borrower in relation to the Facility;
 - iv) default, if any, committed by the Borrower in discharge of the aforesaid obligations,

to any agency/credit bureau (including to Credit Information Bureau (India) Limited) (the “Agency”) authorised in this behalf by RBI.

- (2) The Agency so authorised may use, process the aforesaid information and data disclosed by the Lenders in the manner as deemed fit by them.

- (3) The Agency so authorised may furnish for consideration, the processed information and data or products thereof prepared by them, to banks / financial institutions and other credit grantors or registered users, as may be specified by RBI in this behalf.

(4) The information and data furnished by the Borrower to the Lenders from time to time shall be true and correct.

(5) In case of default by the Borrower in repayment of the Facility or payment of interest thereon and any other monies under the Facility Agreement and/or the other Transaction Documents, on the Due Dates, the Lenders and/or the RBI will have an unqualified right to disclose or publish the name and other details (including photographs) of the Borrower or its directors to any person (including public) as defaulters in such manner and in any form / through such medium (including electronic, media) as the Lenders and/or RBI and/or the Agency, in their absolute discretion may think fit.

(6) The Lenders shall also be entitled to disclose information etc. as stated above to any person as may be required / specified by applicable laws or under any statutory requirements.

Section 11.10 -- **AMENDMENT**

The Facility Agreement and the other Transaction Documents may be amended, modified or waived only with the consent of the Borrower and the Lenders, and in the event any such amendment, modification or waiver relates to the rights, duties or obligations of any other party thereto, with the consent of such other party. The Lead Bank may effect, on behalf of the Lenders, an amendment or waiver to the Facility Agreement and the other Transaction Documents to which the Lenders have agreed to in accordance with and subject to the terms of the Facility Agreement.

Section 11.11 – **ENGLISH TRANSLATIONS**

If any Transaction Document, approval, notice, certificate, instrument, communication or other document required to be delivered to any person pursuant to the Facility Agreement and/or the other Transaction Documents is not originally executed, delivered or given in English (regardless of whether such requirement arises before or after the date of the Facility Agreement), the Borrower, shall concurrently with the delivery of such Transaction Document, clearance, notice, certificate, instrument or other document, additionally and at its own expense, provide to such person : (i) in the case of any Transaction Document, any communication from the Government and any clearance, certified, official English translation prepared by (A) a translator identified as an approved translator for the high court of any State in India or (B) another translator reasonably acceptable to the Lead Bank, and (ii) in the case of any other document, an English translation thereof certified by an authorized official of the Borrower to be complete and accurate in all material respects

Section 11.10 – **PROVISIONS RELATING TO PARTNERSHIP FIRM, HUF, PROPRIETARY CONCERN**

In case the Borrower is an HUF:

i) The Lenders shall at all times be informed of any changes in the constitution of the HUF by furnishing necessary documents and writings. The Borrower agrees that no change whatsoever in the constitution of the HUF (named in the Schedule to the Facility Agreement) during the continuance/ validity of the Transaction Documents shall impair or discharge the liability of any one or all of the members/ coparceners of the HUF and shall be binding on the HUF, its estate, effects and successors.

ii)The Transaction Documents shall be enforceable against the Karta or any succeeding Karta of the HUF or against any and all the coparceners/ members of the HUF.

iii)The Karta, acting for HUF and in his personal capacity, and the other members/ coparceners of the joint HUF represent, warrant and confirm to the Lenders that :

(a) they are members/ coparceners of the HUF;

(b) the signatories of the Facility Agreement and the other Transaction Documents are the only coparceners/members of the HUF at present;

(c) the business carried on under the name and style given in the Schedule to the Facility Agreement is their joint family trade which is binding on the minor members, if any, being ancestral trade/ business;

(d) the Facility Agreement and the other Transaction Documents have been entered into for and on behalf of the HUF and the purpose for which the Facility is availed of and the transactions contemplated under the Facility Agreement and the other Transaction Documents are a part of the HUF business/ trade referred to above;

(e) the HUF business / trade mentioned above is being conducted and managed by the members / coparceners of the HUF and all of them have been jointly and individually empowered to perform the terms of the Transaction Documents, against security or otherwise, and execute all necessary instruments, deeds, documents and writings and do all such acts, things and deeds as are necessary or incidental to the performance of the terms of the Transaction Documents, and also execute, draw, endorse, negotiate and sell cheques, bills, pro-notes, bills of exchange and other negotiable instruments on behalf of the HUF.

(f) The Karta, acting for the HUF and in his personal capacity, and the other coparceners/ members of the HUF indemnify and keep the Lenders indemnified against all actions, claims, demands, proceedings, losses, damages, costs, charges and expenses whatsoever which the Lenders may at any time incur, suffer, pay or sustain as a consequence of or by reason of or arising out of the transactions contemplated in the Transaction Documents, and hold themselves personally liable, jointly and severally, in respect of all transactions entered into with the Lenders or obligations incurred under the Transaction Documents.

(g) All acts, deeds and things done and / or documents, confirmations, acknowledgements given / provided by any or some of the members / coparceners in connection with the Facility and the transactions contemplated under the Transaction Documents shall bind all the members/coparceners.

In case the Borrower is a proprietor:

The Borrower hereby represents, warrants, confirms and undertakes that:

(a) (s)he is the sole proprietor/ proprietress of the firm/concern named in the Schedule to the Facility Agreement;

(b) (s)he is solely responsible for the liabilities of the aforesaid firm/concern and will be liable personally for performance of all obligations under the Transaction Documents.

The proprietor of the proprietary firm/concern named in the Schedule to the Facility Agreement indemnifies and keeps the Lenders indemnified against all actions, claims, demands, proceedings, losses, damages, costs, charges and expenses whatsoever which the Lenders may at any time incur, suffer, pay or sustain as a consequence of or by reason of or arising out of the transactions contemplated in the Transaction Documents, and hold themselves personally liable, jointly and severally, in respect of all transactions entered into with the Lenders or obligations incurred under the Transaction Documents.

In case the Borrower is a partnership:

The Borrower agrees that no change whatsoever in the constitution of the partnership during the continuance/validity of the Facility Agreement and the other Transaction Documents shall

impair or discharge the liability of any one or all of the partners. In the event of death or retirement of any partner, the Lenders shall at their discretion deal with the surviving and/or continuing partner/s, without affecting its rights as against the retiring partner or the heirs and legal representatives of the deceased partner, as the Lenders shall think fit and proper, and the retiring partner and / or the heirs, executors, administrators, legal representatives of the deceased partner shall have no claim as against the Lenders in respect of such dealing.

The Borrower confirms that:

- (a) the partners named in the Facility Agreement are the only partners of the firm;
- (b) they shall advise the Lenders in writing of any changes which may take place in the partnership;
- (c) the partners will not dissolve / reconstitute the partnership firm without the approval of the Lenders;
- (d) all the partners are jointly and severally liable to the Lenders for performance of all obligations under the Facility Agreement and the other Transaction Documents.

The partners and in their personal capacity and as partners of the firm named in the Schedule to the Facility Agreement indemnify and keep the Lenders indemnified against all actions, claims, demands, proceedings, losses, damages, costs, charges and expenses whatsoever which the Lenders may at any time incur, suffer, pay or sustain as a consequence of or by reason of or arising out of the transactions contemplated in the Transaction Documents, and hold themselves personally liable, jointly and severally, in respect of all transactions entered into with the Lenders or obligations incurred under the Transaction Documents.

All acts, deeds and things done and / or documents, confirmations, acknowledgements given / provided by any or some of the partners in connection with the Facility and all transactions contemplated under the Transaction Documents shall bind all the partners.

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