

Dated _____

ASSIGNMENT AGREEMENT

BETWEEN

as Assignor

AND

_____(Name of SC/RC Company)

(Also acting in its capacity as Trustee of the _____ Trust)
as Assignee

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ASSIGNMENT AGREEMENT

THIS ASSIGNMENT AGREEMENT (hereinafter referred to as this “**Agreement**”) made at _____ on this _____ day of _____:

BETWEEN

_____, a _____ and having its registered/corporate office at _____ (hereinafter referred to as the “**Assignor**”, which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its successors) of the **FIRST PART**;

AND

_____, a company incorporated under the Companies Act, 1956 and registered as a securitisation and asset reconstruction company pursuant to Section 3 of the SARFAESI (as hereinafter defined), having its registered _____ office _____ at _____

_____ as its own/ acting in its capacity as trustee of the _____ – _____ Trust for the benefit of the holders of Security Receipts issued by the trustee thereunder (hereinafter referred to as the “**Assignee**”, which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its successors and assigns) of the **SECOND PART**.

The Assignor and the Assignee are hereinafter individually referred to as a “**Party**” and collectively referred to as “**Parties**”.

WHEREAS:

- (A) The Assignee is a securitisation and asset reconstruction company, registered as such, pursuant to Section 3 of the SARFAESI, also acting in its capacity as trustee of the _____ Trust, declared pursuant to the trust deed dated _____ executed by the Assignee (such deed hereinafter referred to as the “Trust Deed”), for the benefit of the holders of the Security Receipts issued by the trustee thereunder.

- (B) The Assignor has, under certain Financing Documents entered into between the Assignor and the Borrowers named therein, extended from time to time, certain Financial Assistance to the respective Borrowers.

- (C) The Assignor is desirous of assigning to the Assignee, the Loans, disbursed under the aforesaid Financing Documents together with all its rights, title and interest in the Financing Documents and any underlying Security Interests, pledges and/or guarantees in respect of such Loans. Further, the Assignee on the basis of the Due Diligence Exercise is desirous of acquiring/purchasing the Loans together with all the rights, title and interest of the Assignor in the Financing Documents and any underlying Security Interests, pledges and/or guarantees in respect of such Loans, upon the terms and subject to the conditions hereinafter mentioned and as envisaged under Section 5(1) (b) of the SARFAESI.
- (D) The Parties are desirous of setting forth the terms and conditions, representations, warranties, covenants, and principles relating to the assignment of the Loans and all the rights, title and interest under the Financing Documents and to the underlying Security Interests, pledges and / or guarantees in respect of such Loans by the Assignor to the Assignee.

NOW THEREFORE, in consideration of mutual promises and undertakings herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

All words and expressions, not otherwise defined hereunder, shall, unless the context otherwise requires, have the same meaning given to them in the SARFAESI. In this Agreement, unless the context otherwise requires, the following expressions shall have the meanings set out below:

- (a) **Amounts Due** means all amounts due and payable by each of the Borrowers to the Assignor in respect of the Financial Assistance availed of, under the terms of its respective Financing Documents.
- (b) **Applicable Law** means any applicable statute, law, regulation, ordinance, rule, judgement, rule of law, order, decree, recovery certificate, clearance, approval, directive, guideline, policy, requirement, or other governmental restriction or any similar form of decision, or determination by, or any interpretation or administration of any of the foregoing by, any statutory or regulatory authority whether in effect in India as of the date of this Agreement or thereafter and in each case as amended from time to time.
- (c) **Borrower** means Person(s) to whom a Financial Assistance has been extended by the Assignor under any of the Financing Documents as listed in Schedule 1 and includes any Person who has created any Security Interest and/or pledge to secure, including but not limited to mortgage of immovable

properties as collateral securities and/or a guarantee in respect of, the repayment of any Financial Assistance granted by the Assignor to a Borrower.

(d) Business Day means a day which is not:

- (i) a public holiday under Section 25 of the Negotiable Instruments Act, 1881 (26 of 1881) as applicable at respective places; or
- (ii) a Sunday; or
- (iii) any other day when the clearing facility offered by the Reserve Bank of India is unavailable.

(e) Collection and Payout Account means a bank account titled “_____ Trust - Collection and Payout Account” opened and maintained by the Assignee at the bank notified by the Assignee to the Assignor for this purpose from time to time, in which all the Amounts recovered or received in respect of the Loans would be deposited.

(f) Consent means any consent, license, approval, registration, permit or other authorisation of any nature, if any required under Applicable Law to be granted by any Statutory Authority:

- (i) for the incorporation of the Assignor or the Assignee and fulfilling their respective obligations under this Agreement and the Transaction Documents;
- (ii) for the enforcement of this Agreement and any Transaction Documents and the making of any payments contemplated thereunder; and
- (iii) for all such other matters as may be necessary in connection with this Agreement and/or the Transaction Documents or the performance of any obligations under this Agreement and/or any Transaction Document.

(g) Cut-off Date¹ means _____, being the date with effect from which (including that day) all economic benefits pertaining to the Loans including all realisations and recoveries, if any made on and after said date shall be for the benefit of the Assignee and shall be passed on to the Assignee.

(h) Due Diligence Exercise means and include the inspection and verification carried out by the Assignee of the accounts, data room files and all other documents, letters, papers and writings including the Financing Documents, Loan and Transaction Documents made available by the Assignor in respect

¹ Cut-off date should, ideally be the date of opening of the data-room.

of and/or relating to the financial assets/Loans acquired herein by the Assignee to enable the Assignee to take a considered decision in respect of such acquisition.

- (i) **Financing Documents** means all the agreements, deeds and/or documents, executed in favour of the Assignor and / or entered into between the Assignor and any Borrower and/or any third parties, *inter alia* setting out the terms and conditions on which the Assignor has agreed to provide Financial Assistance to such Borrower, including any writings creating/evidencing a Security Interest, pledge and / or guarantee in favour of the Assignor and any undertakings by any Person, on the basis of which the Assignor disbursed or made available such Financial Assistance, a list of which agreements, deeds and/or documents is more particularly set out in **Schedule 1** annexed hereto. The description of the movable/ immovable properties over which Security Interests have been created in favour of the Assignors is also as set out in **Schedule 1** annexed hereto.
- (j) **Loans** means the aggregate of all Amounts Due and all other monies whatsoever stipulated in or payable, under the Financing Documents, by the Borrowers to the Assignor, including but not limited to past overdues, future payments, interest charges for delayed payments, indemnities and damages or other charges and/or all other monies, if any, to be received by the Assignor under the Financing Documents, including the proceeds of any enforcement of the Financing Documents or any Security Interests and/or pledge, created by any Borrower to secure the repayment of the Financial Assistance under the Financing Documents and/or any guarantee issued in relation thereto.

Provided that it is hereby clarified that Amounts Due and all other monies stipulated in or payable, under the Financing Documents shall not include any undisbursed commitment by the Assignor to any of the Borrowers under the Financing Documents.

Provided further that any amount actually paid by the Borrower prior to the Cut-off date to the Assignor and acknowledged/ accounted by the Assignor shall not be included as part of Loans.

- (k) **Person** means any individual, partnership, limited liability partnership, joint venture, firm, corporation, company, association, trust, HUF or other enterprise (whether incorporated or not) or Government (central, state or otherwise), sovereign, 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/her legal representatives, administrators, executors and heirs and in case of a trust shall include the trustee or the trustees for the time being.

- (l) **Purchase Consideration** means an amount of Rs. _____ (Rupees _____ only), being the aggregate purchase consideration for the Loans.
- (m) **SARFAESI** means the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, and includes any rules, regulations, directions or guidelines issued thereunder from time to time, as the same may be amended, substituted or re-enacted from time to time.
- (n) **Statutory Authority** means any regulatory authority, or the Government of India, or any regional or municipal authority thereof, or other central, state or local Government or any legislature, ministry, department, commission, board, authority, instrumentality, agency, political sub-division, corporation or commission under the direct or indirect control of the Government of India, or any State Government or any political sub-division of either of them, or the Reserve Bank of India as to matters of policy or otherwise, owned or controlled by the Government of India or any State Government or any of their sub-divisions.
- (o) **Transaction Documents** means and includes without limitation, 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 Assignor, the Assignee or any other Person in relation, or pertaining, to the transactions contemplated by or under this Agreement. When the term ‘Transaction Document’ is used with reference to the Assignor, the Assignee or any other Person, such term shall refer to a Transaction Document that the Assignor, the Assignee or such other Person, as the case may be, has furnished, or is party to.
- (p) **Trust Deed** has the meaning given to such term in Recital (A).

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) words of any gender are deemed to include the other gender;
- (b) words using the singular or plural number also include the plural or singular number, respectively;
- (c) the terms “hereof”, “herein”, “hereby”, “hereto” and any derivative or similar words refer to this entire Agreement;
- (d) the terms “Section” “sub-section” and “Schedule” refer to a section, sub-section or schedule of this Agreement;

- (e) headings, sub-headings and bold typeface are only for convenience and shall be ignored for the purposes of interpretation;
- (f) reference to any legislation or law or to any provision thereof shall include references to any such legislation or law as it may, after the date hereof, from time to time, be amended, supplemented or re-enacted, and any reference to a statutory provision shall include any subordinate legislation made from time to time under that provision;
- (g) any term or expression used, but not defined herein, shall have the same meaning assigned thereto under Applicable Law;
- (h) references to the word “include” or “including” shall be construed without limitation;
- (i) each of the representations and warranties contained in Sections 4.1 and 5 hereof shall be separate and independent and shall not be limited by reference to any other Section or by anything in this Agreement; and
- (j) the schedules annexed to this Agreement form an integral part of this Agreement and will be of full force and effect as though they were expressly set out in the body of the Agreement.

2. ASSIGNMENT OF LOANS

2.1 Assignment

- 2.1.1 The Parties hereto acknowledge that provisions of SARFAESI including but not limited to section 5(3) will be applicable thereto and the conditions precedent set forth in Clause 3 of this Agreement (*Conditions Precedent*) have been fulfilled or waived by the Assignee, as the case may be, and in consideration of the Assignee, paying the Purchase Consideration to the Assignor, and upon the terms and conditions set forth herein and in the relevant Transaction Documents, the Assignor as the true, legal and beneficial owner of the Loans, in the ordinary course of its business, hereby unconditionally and irrevocably sells, assigns, transfers and releases to and unto the Assignee all the Loans forever, pursuant to Section 5(1) (b) of the SARFAESI TO HOLD the same absolutely IN TRUST for the benefit of the holders of the Security Receipts issued by the Assignee pursuant to the _____ Trust, and the Trust Deed TO THE END AND INTENT THAT the Assignee shall hereafter be deemed to be the full and absolute legal owner, and the only person legally entitled to the Loans or any part thereof, free from any or all encumbrances, and to recover and receive all Amounts Due, including the right to file a suit or institute such other recovery proceedings and take such other action as may be required for the purpose of recovery of the

- Loans, in its own name and right and as an assignee, and not as a representative or agent of the Assignor and to exercise all other rights of the Assignor in relation thereto.
- 2.1.2 The Assignor hereby further assigns in favour of the Assignee, all its rights, title and interest in the Financing Documents, all agreements, deeds and documents related thereto and all collateral and underlying Security Interests and / or pledges created to secure, and/or guarantees issued in respect of, the repayment of the Loans, which the Assignor is entitled to. The Assignee shall have the right to enforce such Security Interests, pledges and / or guarantees and appropriate the amounts realized therefrom towards the repayment of the Loans and to exercise all other rights of the Assignor in relation to such Security Interests, pledges and / or guarantees. The Assignor shall transfer/deliver or cause to be transferred/delivered or hold for and on behalf of the Assignee, all such original documents, deeds and/or writings, including but not limited to the Financing Documents, and produce the same promptly upon any request by the Assignee.
- 2.1.3 The Assignor hereby agrees with the Assignee, that it shall execute all documents as may be necessary or required under Applicable Law for the purpose of perfecting the Assignee's right, title and interest in the Loans, the Financing Documents, and/or any underlying Security Interests, pledges and / or guarantees as the case may be, unto and to the use of the Assignee in the manner aforesaid, and do all acts, deeds and things as may be necessary in this regard, at the cost of the Assignee.
- 2.1.4 Upon execution of these presents, the Purchase Consideration shall be paid by the Assignee to the Assignor by way of electronic funds transfer or remittance of funds by any other means crediting the Account No. _____ of the Assignor.
- 2.1.5 The Assignor shall, upon receipt of the Purchase Consideration, issue a receipt to the Assignee, duly acknowledging the payment of the Purchase Consideration. The payment of the Purchase Consideration to the Assignors shall constitute full, final and complete discharge of the obligation of the Assignee with respect to payment of consideration for the Loans and the Assignment stated herein taking effect. The Assignor hereby admits and acknowledges the sufficiency of the Purchase Consideration.

2.2 Further Actions

- 2.2.1 Any payment by the Borrower or on behalf of the Borrower in discharge of the Loans, to the Assignee, into the Collection and Payout Account or into the hands of the duly authorised agent of the Assignee, shall constitute a discharge of the obligations of the Borrower to the Assignor and the Assignee, to make such payments.

2.2.2 In the event that either the Assignor or Assignee receives payment from a Borrower in connection with the Financial Assistance availed by such Borrower from the Assignor (including, but not limited to, the Loans), without specific reference to the Financial Assistance in respect to which such payments relate, then the Assignor or the Assignee, as the case may be, shall ascertain from such Borrower, the specific Financial Assistance in respect of which such payment has been made by such Borrower.

Each of the Party hereby agrees that in the event that it receives any amounts pertaining to the Financial Assistance held by the other Party, or any part thereof, after the cut-off date pending execution of this Agreement, it shall hold such amounts, or part thereof, as the case may be, free of any set off or counterclaim, in trust for the benefit of the other Party and shall forthwith, upon receipt thereof, hand such amounts over to the other Party or its duly authorised agent.

2.2.3 Each of the Party hereby agrees that all payments that are required to be made by it to the other Party under this Agreement shall be made in full without exercising any right of set-off.

2.2.4 Save and except as provided for under this Agreement, the Assignor shall not have, and hereby irrevocably waives any separate claim against the Borrower, in respect of the Loans.

2.2.5 The Assignor hereby undertakes that it shall, if so required by the Assignee and at the cost of Assignee, notify any or all the Borrowers, Guarantors, Advocates, other Lenders, Statutory Authorities, DRT/DRAT/High Court/BIFR/AIFR, Official Liquidator, High Court/DRT Receiver, Insurance Company, Security Agency and any other entity related to the Borrower of the assignment of the Loans the underlying Security Interests, pledges and / or guarantees and all its right, title and interest in the Financing Documents to the Assignee.

2.2.6 In the event of delay on the part of a Party in making payments to the other Party as contemplated in this Agreement (including by way of indemnity), such Party shall without prejudice to the rights of the other Party under this Agreement pay the defaulted amounts together with simple interest thereon at the rate of 12 % per annum computed from the date on which such amounts become due and payable till the date of actual payment.

2.3 Assets Assigned.

2.3.1 Nothing other than a “financial asset” as defined in the SARFAESI Act is acquired by the Assignee from the Assignor as per this Agreement.

2.3.2 The financial assets are assigned by the Assignor to the Assignee “as is where is”, “as is what is” and “without recourse” basis.

3. CONDITIONS PRECEDENT

Each Party shall have procured and handed over the following to the other Party, prior to the execution of this Agreement:

- (a) Copies of the appropriate authorisations of the Party, approving the execution of this Agreement and the transactions contemplated hereunder and other relevant documents to be delivered/consideration to be paid by such Party; and
- (b) Certificate from the Party certifying the names and signatures of the officers authorised on behalf of it to execute this Agreement and any other documents to be delivered by it hereunder.

4. ASSIGNOR'S REPRESENTATIONS AND WARRANTIES

4.1 To the best of the Assignor's belief and knowledge, the Assignor hereby represents and warrants to the Assignee that, as on the date of this Agreement and with reference to the facts and circumstances then existing: -

- (a) the Assignor is a bank/financial institution duly organised, validly existing and in good standing under Applicable Law and is duly qualified and licensed to do business in each jurisdiction in which the character of its properties or the nature of its activities requires such qualifications;
- (b) the Assignor has full corporate power and authority to enter into this Agreement, the Financing Documents and the other Transaction Documents and to take any action and execute any documents required by the terms hereof and thereof respectively and that this Agreement, the Financing Documents and the other Transaction Documents entered into/to be entered into, as the case may be, have been duly authorised by all necessary corporate approvals, have been or will be, as the case may be, duly and validly executed and delivered by the Assignor, and, assuming due authorisation, execution and delivery by the Assignee, is or will be the legal, valid and binding obligation of the Assignor, enforceable in accordance with the terms hereof and thereof respectively; and that the executants of this Agreement, the Financing Documents and the other Transaction Documents, on behalf of the Assignor, have been duly empowered and authorised to execute the same and to perform all its obligations in accordance with the terms herein and therein;
- (c) the Loans are Non-Performing Assets and have been duly and validly classified as such, in accordance with the guidelines issued by the Reserve Bank of India in this regard and all Applicable Law;

- (d) no Consent, approval, order, registration or qualification of, or with, any court or Statutory Authority having jurisdiction over the Assignor, the absence of which, would adversely affect the legal and valid execution, delivery and performance by the Assignor of this Agreement or the documents and instruments contemplated hereby or the taking by the Assignor of any actions contemplated herein, is required;
- (e) to the best of the knowledge of the Assignor, the Borrower is not entitled to claim a right of set off in respect of its Loans;
- (f) no right of set off has been exercised by the Borrower in respect of its Loans, except as disclosed by the Assignor, in **Schedule 2 (A)**;
- (g) the ledger extracts setting out the details of the Loans, including the Amounts Due under the respective Financing Documents, which have been handed over to the Assignee by the Assignor and receipt of the same acknowledged by the Assignee, are true and correct in all respects and have been prepared in accordance with Applicable Law;
- (h) all information set forth herein, or in the Financing Documents and the other Transaction Documents, pertaining to the Borrower is, to the best of the knowledge and belief of the Assignor, and pertaining to the Assignor is, true and correct in all respects, and all names, addresses, amounts, dates, signatures and other statements and facts contained in the Financing Documents and pertaining to the Borrowers are, to the best of the knowledge and belief of the Assignor, and pertaining to the Assignor are, genuine, true and correct in all respects;
- (i) the Assignor has not rescheduled, amended, or granted any relief to the Borrower, regarding any of the payment terms of any of the Financing Documents, other than:
 - (i) those that have been regularised by such Borrower subsequent to the grant of such relief; and
 - (ii) those that have been disclosed in **Schedule 2 (B)**;
- (j) each of the Loans has been provided by the Assignor in the ordinary course of its business and the Assignor confirms that cases classified as fraud do not form part of the Loans;
- (k) none of the rights, title and interest of the Assignor in the Financing Documents, the Loans and/or any underlying Security Interest, pledge or guarantee has been sold, assigned or pledged to any Person and the Assignor has, good and

marketable title to each of the Financing Documents, the Loans, and the underlying Security Interests, pledges and / or guarantees, free and clear of any encumbrance and the Assignor is the sole legal and full beneficial owner thereof and has full and absolute right to irrevocably and unconditionally sell, transfer and assign the Financing Documents, the Loans and the underlying Security Interests, pledges and / or guarantees to the Assignee;

- (l) the Assignor, in respect of the securities mentioned in schedule 1, has not released any Security Interest, pledge or guarantee in respect of the Loans before the date of this Agreement, except as disclosed by the Assignor, in **Schedule 2 (C)**;
- (m) to the best of the knowledge of the Assignor, no proceedings for winding up, bankruptcy or liquidation or restraint or attachment of any properties of the Borrower, or any action for the appointment of a receiver, liquidator, assignee (or similar official) for any part of its property, or any proceedings hampering the right of the Assignor to enforce the Financing Documents or the underlying Security Interests, pledges and / or guarantees, including any proceedings before the Board of Industrial and Financial Reconstruction/ Appellate Authority for Industrial and Financial Reconstruction, have been filed by any Person, other than as disclosed by the Assignor to the Assignee, in **Schedule 2 (D)**. The Assignor further represents that where any winding up, bankruptcy or liquidation proceedings have been initiated against any Borrower of which the Assignor has knowledge, and if:
 - (i) the Assignor has opted to enforce its Security Interest, pledge and / or guarantee in relation to any Loan outside the winding up, the Assignor has taken all necessary actions for the preservation of such Security Interest and / or the underlying assets and for the recovery of the Loan, including appointment of a receiver, issuing of all necessary notices; or
 - (ii) the Assignor has opted to relinquish its Security Interest, pledge and / or guarantee in relation to any Loan and prove for the claims in the winding up / liquidation proceedings, it has filed the claim for the same and taken all other necessary actions for the purpose of proving its claim in relation to the Loans and recovering all monies in relation thereto;
- (n) the terms and conditions contained in the Financing Documents correctly reflect the entire agreement between parties thereto and there are no other oral or written agreements or representations in connection therewith and each Borrower has, to the best of the knowledge, information and belief of the Assignor, entered into its Financing Documents of its own free will;
- (o) to the best of the knowledge, information and belief of the Assignor, each of the Financing Document (including all documents creating any underlying Security

Interests, pledges and / or guarantees) has been duly authorised, executed and delivered by the respective Borrower, complies with all Applicable Law and represents the legal, valid and binding irrevocable obligation of such Borrower, enforceable under all Applicable Laws against such Borrower in accordance with its terms (except to the extent that enforcement of remedies may be limited by applicable bankruptcy, insolvency or similar laws) and the executant of the Financing Documents on behalf of such Borrower, has been duly empowered and authorized to execute such Financing Documents and all other documents and to perform all the obligations of such Borrower, in accordance with the terms set out herein;

- (p) no suits have been filed, or other proceedings initiated by the Assignor against the Borrower before any court, tribunal, Statutory Authority or regulatory body other than those disclosed by the Assignor to the Assignee, in **Schedule 2 (E)**;
- (q) no suits have been filed, or other proceedings initiated by the Borrower against the Assignor in respect of the Financing Documents before any court, tribunal, Statutory Authority or regulatory body other than those disclosed by the Assignor to the Assignee, in **Schedule 2 (F)**;
- (r) there are no agreements, deeds and/or documents other than those set out in **Schedule 1** that would affect the ability of the Assignee to realise the Amounts Due in terms of the respective Financing Documents;
- (s) the Financing Documents, in original, and all other related deeds and documents (including but not limited to any title deeds deposited by the Borrower in respect of the Loans disbursed under the relevant Financing Documents) have been furnished to the Assignee, and delivered, transferred to the Assignee or any agent of the Assignee or are being held to the order of the Assignee, as agreed by the Parties; and
- (t) the Assignor has discharged all the costs including legal fees & expenses payable to advocates/ counsels appointed/ retained by the Assignor upto and including the Cut-off Date and on the date of this Assignment, if the Assignee so requests the Assignor will obtain and provide no objection of such advocates/ counsels to the Assignee in relinquishing such briefs.

4.2 If any of the above representations is found to be incorrect, a consequence of which materially and adversely affects the interest of the Assignee in the realisation Loan, such misrepresentation shall be rectified by the Assignor forthwith and in no event later than thirty (30) days from the date of receipt of notice by the Assignor from the Assignee, to the satisfaction of the Assignee, after a notice in respect of the breach is given to the Assignor by the Assignee.

4.3 All costs, charges and expenses, subject to the maximum limit of Purchase

Consideration, incurred in connection with any rectification in accordance with Section 4.2 above, shall be borne by the Assignor.

- 4.4 To the best of the knowledge and belief of the Assignor, the representations and warranties of the Assignor contained in this Agreement are true and correct as at the date hereof. The Assignor represents and confirms that the Assignor has disclosed all relevant information of which it has knowledge in relation to the loans acquired by the Assignee and the Assignee is given inspection of the accounts and all other documents, letters, papers and writings including the Financing Documents, Loan and Transaction Documents referred to herein to enable the Assignee to examine, conduct a proper Due Diligence Exercise.
- 4.5 The Assignor shall not be responsible for breach of representations and warranties contained herein arising out of a fact which is already brought to the notice of the Assignee.

5. ASSIGNEE'S REPRESENTATIONS AND WARRANTIES

The Assignee hereby represents and warrants to the Assignor that, as on the date of this Agreement and with reference to the facts and circumstances then existing:

- (a) the Assignee is a limited liability company, duly organised, validly existing and in good standing under the laws of India, has obtained a certificate of registration as a securitisation and asset reconstruction company from the Reserve Bank of India, pursuant to Section 3 of the SARFAESI and is duly qualified and licensed to do business in each jurisdiction in which the character of its properties or the nature of its activities requires such qualifications;
- (b) the Assignee has full corporate power, authority and legal right to enter into this Agreement and the Transaction Documents and to take any action and execute any documents required by the terms thereof and that this Agreement and the Transaction Documents have been duly authorised by all necessary corporate proceedings, have been duly and validly executed and delivered by the Assignee, and are the legal, valid and binding obligation of the Assignee, enforceable in accordance with the terms thereof; and that the executant of this Agreement and the Transaction Documents, on behalf of the Assignee, has been duly empowered and authorised to execute the same and to perform all its obligations in accordance with the terms herein and therein;
- (c) no Consent, approval, order, registration or qualification of, or with, any court or Statutory Authority having jurisdiction over the Assignee, the absence of which, would adversely affect the legal and valid execution, delivery and performance by the Assignee of this Agreement or the documents and

instruments contemplated hereby or the taking by the Assignee of any actions contemplated herein, is required;

- (d) neither the execution and delivery of this Agreement and the other Transaction Documents by the Assignee, nor the consummation of the transactions contemplated hereby or thereby, nor the fulfilment of, or compliance with, the terms and conditions of this Agreement and the other Transaction Documents, conflict with or result in a breach of or a default under any of the terms, conditions or provisions of any legal restriction (including, without limitation, any judgement, order, injunction, decree or ruling of any court or Statutory Authority, or any Applicable Law) or any covenant or agreement or instrument to which the Assignee is now a party, or by which the Assignee or any of the Assignee's property is bound, nor does such execution, delivery, consummation or compliance violate or result in the violation of the Assignee's Certificate of Incorporation, Memorandum of Association or Articles of Association;
- (e) the Assignee agrees that, on execution of this Agreement and upon receipt of the consideration by the Assignor, all rights of the Assignor in respect of the Transaction Documents and the Loans ceases and the entire credit risks associated with the Financing Documents shall stand transferred to the Assignee from the effective date of this Agreement;
- (f) the Assignee has created the Trust mentioned in recital (A) following all the rules, regulations, guidelines and the laws in force and the said Trust is validly existing and is managed by the Assignee as specified under the SARFAESI Act; and
- (g) the Assignee confirms that it has been given inspection of the accounts and all other documents, letters, papers and writings including the Financing Documents, Loan and Transaction Documents referred to herein to enable the Assignee to examine, conduct a Due Diligence Exercise and the Assignee has accordingly examined and conducted Due Diligence Exercise and Loans/ Financial Assets are being purchased based on a considered decision by it without recourse to the Assignor.

6. ASSIGNOR'S COVENANTS

6.1 The Assignor hereby agrees and undertakes irrevocably and unconditionally that as on the date of this Agreement with reference to the facts and circumstances then existing:-

- (a) It shall execute, at the cost of the Assignee, such further documents, deeds and writings and to do such further acts, deeds or things as may be necessary or required (as per the Applicable Law) to carry out and complete the transactions contemplated herein, and in the Transaction Documents,

including any actions that may need to be taken on account of any change in Applicable Law and filing of all requisite forms in this behalf; however, such costs shall relate only to the original documents and shall not include the expenses to be incurred by the employees of the Assignor Bank in relation to the transaction;

- (b) it shall, at the cost of the Assignee, reasonably co-operate with the Assignee in any legal proceedings that may be necessary or incidental to the enforcement of the Loans or the underlying Security Interests, pledges and / or guarantees and will co-operate in any recovery proceedings with the Assignee through courts or otherwise;
 - (c) it shall make available to the Assignee, on request, all evidence (if any available, under the control and possession of the Assignor) required by the Assignee in any proceedings and render all assistance as the Assignee may reasonably require, *provided that* the Assignee shall reimburse the Assignor, at actuals, all costs incurred by it in this regard;
 - (d) it shall, upon the receipt of any payments from any Borrower with respect to the Loans assigned, as specifically indicated by such Borrower, by way of a negotiable instrument, forthwith, endorse such negotiable instrument in favour of the Assignee and hand the same over to the Assignee; and
 - (e) it shall, as soon as it is aware, inform the Assignee of any breach of any of the representations or warranties contained in this Agreement.
- 6.2 The Assignee shall have the sole right of collecting any monies pertaining to the Loans, including the Amounts Due, enforcing the underlying Security Interests, pledges and / or guarantees and enforcing payment of all the Loans, in whatever manner it may consider necessary and prudent, in its absolute discretion.

7. INDEMNITIES

- 7.1 The Assignor shall, within thirty (30) days from the receipt of notice thereof from Assignee, indemnify and save harmless the Assignee, its successors and assigns, against any and all losses, damages, liabilities, suits, claims, counterclaims, actions, penalties, expenses (including any stamp duty, attorney's fees and court costs and any expenses incurred by the Assignee for the enforcement of this Section), which the Assignee shall suffer as a result of:
- (a) any breach of the Assignor's warranties, representations, covenants, undertakings or agreement contained herein;
 - (b) any failure on the part of the Assignor to observe or perform, in any respect, any covenant or obligation or undertaking (other than payment

delay and/or default) under this Agreement or the Transaction Documents executed by it; or

- (c) any claim made by the Borrower (for the purposes of this Section, referred to as a “**Claim**”) pursuant to which a court has passed an order and/or decree against the Assignee on account of any action or omission of the Assignor prior to the Cut-off Date in relation to the relevant Loans and/or such Borrower, including in relation to any undisbursed commitment of the Assignor under the Financing Documents.

Provided that the liability of the Assignor under (a) and (b) above shall not exceed the Purchase Consideration.

Provided further the Assignee shall notify the Assignor of any Claims, within thirty (30) days of such Claim being made against the Assignee, providing full details (together with copies of all documents if any served on the Assignee). Upon such notification, the Assignor shall have the right, at its own cost, to assume the defense of such Claim and the Assignee will, at the cost of the Assignor, defend and/or take such action as the Assignor reasonably requires for this purpose.

Provided also that the Assignor shall not be liable to indemnify the Assignee for breach of any warranties, representations, covenants, undertakings or agreement herein contained in respect of any matter which was disclosed by the Assignor as specifically furnished in **Schedule 2 (A) to (F)**.

8. EXCLUSION OF LIABILITY

To the extent permitted by Applicable Law, the Assignee does not by virtue of entering into or carrying out the terms of this Agreement or purchasing the Loans assume any of the financial or pecuniary obligations of the Assignor under any of the Financing Documents. Any such obligations, duties, warranties, indemnities and liabilities of the Assignor, if any under the Financing Documents shall be the sole responsibility of the Assignor.

9. EFFECTIVE DATE OF AGREEMENT

This Agreement shall be effective from the day, month and year first hereinabove written.

10. MISCELLANEOUS

10.1 Notices

Any notice or other communication given pursuant to this Agreement must be in writing and (a) delivered personally, or (b) sent by facsimile transmission, or (c) sent by registered mail, postage prepaid, as follows:

To: Assignor
Address: _____
Attention: _____
Fax: _____

To: Assignee
_____,
Also as Trustee for the _____ Trust

Attention: _____
Fax: _____

All the notices and other communications required or permitted under this Agreement that are addressed as provided in this Section 10.1 (*Notices*) will (a) if delivered personally or by courier, be deemed given upon delivery; (b) if delivered by fax transmission, be deemed given when electronically confirmed; and (c) if sent by registered mail, be deemed given three (3) days after the same has been sent. Any Party may from time to time change its address for the purpose of notices to that Party by giving a similar notice specifying a new address.

10.2 Entire Agreement

This Agreement supersedes all discussions and agreements (whether oral or written, including all correspondence) prior to the date of this Agreement among the Parties with respect to the subject matter of this Agreement.

10.3 Waiver

Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof. No failure or delay on the part of either Party in exercising any power, right or remedy under this Agreement shall be

construed as a waiver thereof, nor shall any single or partial exercise of any such power, right or remedy preclude any other or further exercise thereof or the exercise of any other power, right or remedy. Such waiver must be in writing and must be executed by an authorised officer of such Party. A waiver on one occasion will not be deemed to be a waiver of the same or either under breach or non-fulfilment on a future occasion. All remedies and benefits, either under this Agreement, or by law or otherwise afforded, will be cumulative and not alternative and without prejudice to the other remedy or benefit, as the case may be.

10.4 Amendment

This Agreement may only be modified or amended in writing, duly executed by or on behalf of each of the Parties.

10.5 Severability

If any provision of this Agreement is held to be illegal, invalid, or unenforceable under Applicable Law, and if the rights or obligations under this Agreement of the Parties will not be materially and adversely affected thereby (a) such provision will be fully severable; (b) this Agreement will be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof; and (c) the remaining provisions of the Agreement will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance here from.

10.6 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of India.

10.7 Arbitration

10.7.1 The Assignor and Assignee hereby agree that they shall work together to resolve any disputes that may arise under this Agreement.

10.7.2 In the event that disputes do arise under this Agreement, which the Parties are unable to settle amicably, the dispute shall be settled by arbitration pursuant to the Arbitration and Conciliation Act, 1996.

10.7.3 The place of arbitration shall be _____ and the language of the arbitration shall be English.

10.7.4 The Parties shall jointly appoint a sole arbitrator. If the Parties do not agree on a sole arbitrator within thirty (30) days of the date of service of notice of arbitration by the Party initiating arbitration, an arbitral tribunal of three arbitrators

shall be formed as mentioned herein. The Parties shall each appoint one arbitrator. The two arbitrators so appointed shall appoint a third arbitrator who shall be the chairman of the arbitral tribunal. If they are unable to agree on the appointment of the third arbitrator, the third arbitrator shall be appointed in accordance with the Arbitration and Conciliation Act, 1996.

10.8 Supremacy

In case there is any inconsistency between these presents and the other Transaction Documents, this Agreement shall prevail.

10.9 Payment

For the purpose of this Agreement, any payment shall be deemed to have been received by the Assignee the day on which the Collection and Payout Account is credited.

10.10 Mode of Payment

All monies, which the Assignee is entitled to receive under or in accordance with this Agreement, shall be paid by cheque, draft, or pay order drawn on a scheduled bank or by way of electronic funds transfer or mail transfer for crediting the Collection and Payout Account.

10.11 Future Third-party Receipts.

10.11.1. The Parties agree that the payments other than Loans, if any received after the Cut-off Date from any third parties or court, authority, liquidator, receiver, etc., in respect of the Loans or related to the Loans (Future Third-party Receipts) shall be entitled to the Party as stated in **Schedule 1**.

10.11.2. If there is no specific mention of the party entitled for a Future Third-party Receipt as above in **Schedule 1**, such payments shall be entitled to the Assignee provided there was a debit accounting entry pertains to the amount in question, in the account statement of the Loan assigned herein.

10.12 Performance

If by the terms of this Agreement, any act would be required to be performed on or within a period ending on a day, which is not a Business Day, then it shall be performed, on or by the immediately succeeding Business Day. Time is of the essence of the contract.

10.13 ¹Acts to be performed by the Assignor upon intimation

Upon request of the Assignee, the Assignor shall do all such acts, deeds and things as may be required to further perfect the Assignee's right title and interest to the Loans and for such other matters as stated therein.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement on the day, month and year first hereinabove appearing

Signed _____ and _____ delivered by _____, the within named ASSIGNOR by its authorised representative

By: _____

Name:

Title:

Signed _____ and _____ delivered by _____, the within named ASSIGNEE, acting in its capacity as trustee of _____ Trust by its authorised representative

By: _____

Name:

Title:

¹ In respect of the Assignment Agreement wherein the Assignor, at its option is agreeable to execute the power of attorney in favor of Assignee, clause 10.13 may be replaced as under:

“10.13. Power of Attorney

The Assignor hereby agrees to execute, simultaneously with the execution of this Agreement, an irrevocable Power of Attorney in favour of the Assignee or any other Person nominated by the Assignee, substantially in the form set out in Schedule 3 annexed hereto, to act for and on its behalf as its constituted attorney, and on its behalf to do all such acts, deeds and things as may be required and to execute and deliver such deeds, documents and writings as may be required to further perfect the Assignee's right title and interest to the Loans and for such other matters as stated therein.”

SCHEDULE 1¹

(See clauses 1.1 (i) & 10.11)

Being the details of the Financing Documents

1	Sl. No	1	2
2	Name/ Details of the Borrower		
3	Details of the guarantor/ co-borrower		
4	A/c No as per Assignor's records		
5	Outstanding amount (Principal outstanding + interest) as on cut-off date		
6	Nature of credit facility		
7	Details of Documents		
8	Details of pending litigations		
9	Nature of Security.		
10	Details of Secured assets.		
11	Details of Security Documents		
12	Details of third party litigations as per the knowledge of the Assignor		
13	Details Future Third-party Receipts ²		
14	Party entitled for Future Third-party Receipts ³		
15	CERSAI Details		
16	Remarks, if any. ⁴		

¹ Additional details, if any need to be added in respect of each account may also be incorporated to the Schedule. Separate sheets for each account, if required may be used.

² Please see Clause 10.11

³ Please see Clause 10.11

⁴ Please also see Clause 4.1 (d).

SCHEDULE 2

(See clauses 4.1 (g), (j),(m),(n) (q)& (r))

(A) Details of Loans/Borrowers wherein set-off has been exercised (See Section 4.1 (g) of the Agreement)

- (i)
- (ii)
- (iii)

(B) Details of Loans/ Borrowers wherein any reschedule or any other relief are granted (See Section 4.1 (j)(ii) of the Agreement).

- (i)
- (ii)
- (iii)

(C) Details of Loans/ Borrowers wherein any Security Interest, pledge, guarantee, etc., are already released. (See Section 4.1 (m) of the Agreement).

- (i)
- (ii)
- (iii)

(D) Details of Loans/ Borrowers wherein any proceedings for winding up, bankruptcy or liquidation or restraint or attachment of any properties of any Borrower, or any action for the appointment of a receiver, liquidator, assignee (or similar official) for any part of its property, or any proceedings hampering the right of the Assignor to enforce the Financing Documents or the underlying Security Interests, pledges and / or guarantees, including any proceedings before the Board of Industrial and Financial Reconstruction/ Appellate Authority for Industrial and Financial Reconstruction are pending (See Section 4.1 (n) of the Agreement).

- (i)
- (ii)
- (iii)

(E) Details of Loans/ Borrowers wherein any suits have been filed, or other proceedings initiated by the Assignor against the Borrower before any court, tribunal, Statutory Authority or regulatory body (See Section 4.1 (q) of the Agreement).

- (i)
- (ii)
- (iii)

(F) Details of Loans/ Borrowers wherein any suits have been filed, or other proceedings initiated by the Borrower against the Assignor, in respect of the Financing Documents before any court, tribunal, Statutory Authority or regulatory body (See Section 4.1 (r) of the Agreement).

- (i)
- (ii)
- (iii)

SCHEDULE 3 (OPTIONAL)¹

¹ In respect Assignment Deeds wherein the Assignor has agreed to execute a Power of Attorney (PoA) in favour of the Assignee as mentioned in the footnote to clause 10.13, the draft PoA shall be as under:

“POWER OF ATTORNEY

TO ALL TO WHOM THESE PRESENTS SHALL COME, We,
_____, a banking company within the meaning of the Banking
Regulation Act, 1949 and having its registered office at
_____ (the “Assignor”) **SEND GREETINGS:**

WHEREAS

1. The Assignor has, under certain Financing Documents entered into between the Assignor and the Borrowers named therein, extended from time to time, certain Financial Assistance to such Borrowers.
2. The Assignor has, under an Assignment Agreement dated _____ (hereinafter referred to as the “**Assignment Agreement**”) entered into between itself and _____, acting in its capacity as trustee of the _____ – _____ Trust, for the benefit of the holders of Security Receipts issued by the trustee thereunder (hereinafter referred to as the “**Assignee**”), assigned the Loans to the Assignee in accordance with the terms contained therein.
3. By Section 10.13 of the Assignment Agreement, the Assignor has undertaken and agreed to irrevocably appoint the Assignee or any Person nominated by the Assignee in this regard as its constituted attorney, for and on its behalf and to do all such acts, deeds and things as may be required and to execute and deliver such deeds, documents and writings as may be required to perfect the Assignee’s right, title and interest in the Loans, the Financing Documents and the underlying Security Interests, pledges and / or guarantees and also to collect, enforce, realise and give receipts and discharges for receipt of the Loans.

All words and expressions not otherwise defined herein shall have the meaning given to it under the Assignment Agreement.

NOW KNOW YE THAT WE, _____, the Assignor do hereby, as donor/ grantor of this irrevocable Power of Attorney, now and hereby name, constitute and appoint the Assignee, being, _____, a company incorporated under the Companies Act, 1956 and having its registered office at _____, (and its successors or assigns) (the “**Attorney**”), to be our true and lawful constituted attorney so that it may, for and in our name do and / or perform all or any of the following acts, deeds, matters and things in relation the Loans, the underlying Security Interests, pledges and / or guarantees the Financing Documents and all the Transaction Documents executed by the

Assignor:

1. To do all such acts, deeds and things as may be required and to make, execute, sign, seal and deliver and cause to be registered in favour of the Attorney, all such deeds, documents, and writings with all such covenants, conditions, declaration, agreements and stipulation as may, in the absolute discretion of the Attorney (which discretion shall be final and binding on the Assignor) be deemed necessary as may be required to:
 - a) perfect the full legal right, title and interest of the Attorney in the Loans, the Financing Documents and the underlying Security Interests, pledges and / or guarantees; and
 - b) collect, enforce, realize and give receipts and discharges for receipt of the Loans.
2. To ask for, demand, recover, realize, enforce and obtain any payment of any of the Loans, including all dues, demands, actionable claims or charges in action arising in favour of the Assignor from any of the Borrowers under the provisions of the Financing Documents or otherwise howsoever and to give full and effectual discharges and release to such Borrower.
3. To make, deliver, complete, execute and/or otherwise deal with, negotiate, endorse or deliver any negotiable instruments or any other deeds, documents or instruments relating to the Loans entitling the holders thereof to the Amounts Due or any other right or remedy therein stated.
4. To initiate and continue any legal proceeding and / or action whether by way of suit, petition, application, including for enforcement of any underlying Security Interests, pledges and / or guarantees in any court of law, tribunal and / or any other authority against any Borrower or any Person and / or to prefer and continue any appeal, revision, application, petition and / or any other proceedings at any higher court or tribunal against any order, award and / or decree or procurement by any court, authority or tribunal or any other authority and to withdraw any legal proceeding as aforesaid and to settle the same whether in or out of court as the Attorney may consider appropriate.
5. To engage any lawyer, counsel or any other professional experts in any court of law or before any arbitrator or authority for and on behalf, of the Assignor.
6. To pay to any Statutory Authority any taxes, dues, duties and demands with respect to any payment to be received from any Borrower and to do or take all such other acts, deeds and things as the Attorney may consider appropriate in order to protect the interest of the Assignor and of the Attorney.
7. To appoint or remove any agent or agents with all or any of the powers aforesaid in order to enable such agent to exercise all or any of the powers given by the Assignor to the Attorney herein and withdraw any such powers from any of them.

-
8. To present and lodge in the office of the Sub-Registrar of Assurances, anywhere in India and to admit execution of the Assignment Agreement and/or any Transaction Documents executed in favour of the Attorney and to do all acts and things necessary for effectively registering the said Assignment Agreement and/or Transaction Documents.
 9. The exercise by the Attorney or their nominees of any power shall be conclusive evidence of its right to exercise such power, provided that the same is not inconsistent with the provisions hereof. The Assignor hereby ratifies all actions that the Attorney or its nominee shall lawfully do or cause to be done by virtue hereof; and
 10. The Attorney shall be entitled from time to time to appoint and remove at pleasure or substitute any agent or attorney in lieu and substitution or addition in respect of all or any of the matters aforesaid upon such terms not inconsistent herewith as the Attorney shall think fit.

The Assignor hereby declares that this Power of Attorney has been given by it in consideration of the Assignee paying to the Assignor the Purchase Consideration in terms of Assignment Agreement.

This Power of Attorney being a power coupled with an interest is irrevocable and the Assignor hereby undertakes not to make any attempt whatsoever to revoke, cancel or modify this Power of Attorney.

The Assignor hereby acknowledges and accepts that the Power of Attorney is being granted to the Attorney, and in the event that the Attorney delegates such power to any other Person including its authorised representative/s, the powers conferred herein on the Attorney shall, without any further act, deed or instrument on the part of the Assignor or the Attorney, be available and exercisable by such Person and/or authorised representative.

IN WITNESS WHEREOF, the Assignor has caused its Common Seal to be hereunto affixed at _____ this _____.

BEFORE A NOTARY PUBLIC

SIGNED AND SEAL”