

DATED _____, 2018

**BarodaINSTA
(BARODA INTEGRATED SOLUTION FOR
TRADE FINANCE ACCESS)
AGREEMENT**

BETWEEN

BANK OF BARODA

AND

THE CUSTOMER

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BarodaINSTA TRADE FINANCE REQUEST AGREEMENT

This **BarodaINSTA (BARODA INTEGRATED SOLUTION FOR TRADE FINANCE ACCESS) AGREEMENT** is made on _____ at _____ between:

1. [•]

(hereinafter referred to as the **Customer**, which expression shall include its transferees, successors-in-interest, executors and permitted assigns);

AND

2. **BANK OF BARODA**, a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, having its head office at Baroda Bhavan, R C Dutt Road, Alkapuri, Baroda 390007, Gujarat and acting through its office located at _____

(hereinafter referred to as the **Bank** which expression shall, unless repugnant to the context or meaning thereof, shall include its successors and assigns).

(The Customer and the Bank, wherever the context so admits, are hereinafter individually referred to as the **Party** and collectively as the **Parties**.)

WHEREAS

- (A) The Bank has, at the request of the Customer, agreed to make available Sanctioned Facilities (*as defined hereinafter*) to the Customer on the terms and conditions specified in the definitive loan agreements/documents signed between the Customer and the Bank.
- (B) Further at the request of the Customer, the Bank has agreed to make available an online facility wherein the Customer through the means of Online Requests (*as defined hereinafter*) through BarodaINSTA will be able to request for availing the Sanctioned Facilities and/or Banking Services (*as defined hereinafter*), subject to the terms of this Agreement (*as defined hereinafter*) (**Online Facility**).
- (C) The Parties are now desirous of executing this Agreement to record the terms and conditions pursuant to which the Online Facility shall be made available to the Customer.

NOW, THEREFORE, the Parties hereby agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

Agreement means this BarodaINSTA Trade Finance Request agreement as amended or modified from time to time.

Applicable Law means any applicable national, foreign, provincial, local or other law, regulations, administrative orders, ordinance, constitution, decree, principles of common law, governmental policies, statute or treaty, and shall include notifications, regulations, policies, directions, directives and orders of any Governmental Agency, statutory authority,

board, court, tribunal or recognized stock exchange including any law for the protection of the environment.

Authorized Person means any Person who is authorized to issue instructions and / or undertake any other activity on behalf of the Customer in relation to availing a Sanctioned Facility or for availing Banking Services pursuant to an Online Request or otherwise or for operating the Customer Account.

BarodaINSTA shall mean the front end portal developed by the Bank for providing the Online Facility.

Base Branch shall mean the branch with the Customer Account is maintained.

Banking Services shall mean trade finance services availed by a Customer from the Bank in the ordinary course of its business.

Beneficiary means a person as identified by the Customer, from time to time, who is legally or contractually entitled to receive payment from the Customer, and in whose favour payment will be made by the Bank and/or in whose favour the Bank shall extend documentary letters of credit and/or issue/extend guarantees, upon receipt of appropriate instructions from the Customer in the manner as set out in this Agreement.

Business Day means a day (other than a Sunday or a public holiday) on which the Base Branch and/or Dealing Branch is open for general business.

Confidential Information shall have the meaning ascribed to the term in Clause 4.1.

Customer Account shall mean any of the accounts of the Customer opened with the Bank for availing the Sanctioned Facilities and/or the Banking Services.

Customer Contributions shall have the meaning ascribed to the term in Clause 9.14.2.

Cut-off Time shall mean 3 p.m. IST on each Business Day.

Dealing Branch shall mean the relevant branch of the Bank (also identified as a 'B' category branch by the Bank) through which the Customer conducts its foreign exchange and trade finance transactions or such other bank branch which is designated by the Bank to process a Customer's foreign exchange and trade finance transactions from time to time.

Force Majeure means the happening of events such as war, civil commotion, labour strikes, lock-outs, shut-downs, fire, flood, earthquake, landslide, epidemics, regulatory and statutory restrictions, any other acts of god or other similar events or causes beyond the control of the Bank.

Governmental Agency means any government or any governmental agency, semi-governmental or judicial entity or authority (including, without limitation, any stock exchange or any self-regulatory organisation established under any law or regulation).

Interactive Services shall have the meaning ascribed to the term in Clause 9.14.1

Indemnified Party shall have the meaning ascribed to the term in Clause 6.1

Online Request means the online request uploaded or processed through BarodaINSTA to avail any of the Sanctioned Facilities and/or Banking Services provided to the Customer.

Online Facility shall have the meaning ascribed to the term in Recital B.

Person means and includes individuals, companies, corporates, associations, trusts, sole proprietorships, partnership firms and any other association of persons, whether registered or not.

Sanctioned Facilities means the trade finance facility(ies) that have been sanctioned by the Bank to the Customer in connection with which the Customer has signed definitive facility/loan agreements with the Bank, (subject to modifications and withdrawal of such facilities from time to time) and additional facilities which may be sanctioned by the Bank from time to time.

System Administrator shall have the meaning ascribed to the term in Schedule 2.

Tax means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

Terms of Use shall have the meaning ascribed to the term in Clause 2.5.

Third Party means and includes any representative, agent, bank, courier, vendor or any other Person appointed by the Bank to provide or facilitate the provision of an Online Facility to the Customer under this Agreement.

Users includes the Systems Administrator(s) and any of the Customer's employees, agents, representatives, who may be appointed from time to time by the Systems Administrator to initiate Online Requests on behalf of the Customer.

1.2 Construction

1.2.1 Unless a contrary indication appears, any reference in this Agreement to:

- (a) an amendment includes a supplement, novation, extension (whether of maturity or otherwise), restatement, re-enactment or replacement (however fundamental and whether or not more onerous) and amended will be construed accordingly;
- (b) a person includes any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing;
- (c) a regulation includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- (d) a provision of law is a reference to that provision as amended or re-enacted;
- (e) a time of day is a reference to India time;

1.2.2 unless the context otherwise requires, the singular includes the plural and vice versa;

- (a) the words hereof, herein and hereunder and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

- (b) Section, Clause and Schedule headings in this Agreement are for ease of reference only and shall not in any manner affect the interpretations of the provisions contained in such Section, Clause or Schedule;
- (c) Words and expressions used but not specifically defined shall have the meaning ascribed to them by the Bank or the Reserve Bank of India (**RBI**) from time to time; and

2. THE BarodaINSTA TRADE FINANCE REQUEST FACILITY

By signing this Agreement and availing the Online Facility, the Customer hereby agrees to be bound by (i) the terms and conditions of this Agreement at all times; (ii) the terms and conditions set out in the definitive loan agreements/documents signed between the Bank and the Customer for availing the Sanctioned Facilities and/or the Banking Services; and (iii) any other terms and conditions which may be applicable to any particular Sanctioned Facility or Banking Service.

2.1 Providing the BarodaINSTA Trade Finance Online Request for Customers

- 2.1.1 The Customer may avail the Online Facility for availing one or all of the Sanctioned Facilities or Banking Service, as per the process as described in Schedule 1 of this Agreement. An Online Request may be uploaded and processed through BarodaINSTA as indicated in this Agreement.
- 2.1.2 The Customer shall, after signing this Agreement intimate the Bank of the nature of the Online Requests that the Customer proposes to make on BarodaINSTA (provided all such Online Requests are for availing the Sanctioned Facilities or Banking Service). The Customer may, subject to the terms of this Agreement, choose to add, remove and/or exchange the services, options availed by it by providing the Bank with due intimation of the same, provided the same is in connection with the Sanctioned Facilities or Banking Service.
- 2.1.3 Each Online Request uploaded to be processed shall be subject to the terms and conditions of the relevant Sanctioned Facility or Banking Services. The terms and conditions applicable to the Customer Account shall also be applicable to the provision of the Online Facility and shall be read in conjunction with the terms of this Agreement.
- 2.1.4 The Bank may revise the terms and conditions of use of BarodaINSTA from time to time at its sole discretion, upon any such revision all changes shall automatically become applicable and shall apply to the Customer's access to and use of BarodaINSTA thereafter.
- 2.1.5 The Bank shall, at all times, have the sole right to decide the mode and manner of providing the Online Facility to the Customer. The Bank hereby reserves the right in its absolute and sole discretion to dishonour, cancel or reject any Online Request uploaded by the Customer without assigning any reason for such cancellation or rejection.
- 2.1.6 Any Online Request uploaded by the Customer pursuant to this Agreement shall be subject to Applicable Law including but not limited to the Foreign Exchange Management Act, 1999 and all rules, regulations and guidelines that are issued thereunder by the RBI and the Central Government, any customary rules and procedures followed by the Bank (including but not limited to the Uniform Rules for Demand Guarantees, Uniform Customs and Practice for Documentary Credits and any such other guidelines).

2.2 Providing the BarodaINSTA Trade Finance Online Facility for transactions

- (a) Pursuant to this Agreement, the Customer will have the facility to submit requests for availing trade finance transactions online through BarodaINSTA which will then be processed by the Bank's internal processing system.
- (b) The Customer (through its Authorised Persons) shall submit an application online through the means of an Online Request and by uploading the scanned copies of the relevant documents and simultaneously, submit the originals at the Base Branch or the Dealing Branch, as the case may be, for initiating and conducting trade finance transaction for a particular Sanctioned Facility or Banking Service.
- (c) In the event the Customer submits any Online Request, prior to the Cut-off Time on a particular Business Day, the Bank shall endeavour to process such an Online Request on the same Business Day, provided if any original documents are to be submitted in connection with a particular Online Request the same shall also be submitted to the Base Branch or the Dealing Branch prior to the Cut-off Time on the same Business Day. For any Online Request that is submitted after the Cut-off Time on a particular Business Day the Bank shall endeavour to process the same on the immediately next Business Day, provided that if any original documents are to be submitted in connection with such an Online Request the same shall be submitted to the Base Branch or the Dealing Branch prior to the Cut-off Time on the immediately next Business Day.
- (d) In order to process any Online Request the Customer shall also submit the relevant original documents, wherever required, to the Base Branch or the Dealing Branch.
- (e) The Online Request so submitted will be scrutinised by the Bank and in case of any deviation in the application or the underlying documents, the Bank shall notify the Customer for clarifications and requisite information / documents, if any. The Customer shall rectify the error and upload and / or submit / re-submit the documents as per the instructions of the Bank.
- (f) Upon successful completion of the application and upon verification of the documents submitted by the Customer to the satisfaction of the Bank, the Bank shall process the transaction.

2.3 Online Request

- (a) For the purposes of availing the Online Facility, the Customer shall upload Online Requests in the manner as set out in this Agreement and in such manner as the Bank may prescribe from time to time.
- (b) Upon the uploading an Online Request, the Bank shall be fully entitled (but not obliged) to process such an Online Request in accordance with Applicable Law and procedures followed or adhered to by the Bank.
- (c) The Bank shall assume that each Online Request is correct, genuine and has been issued by an Authorised Person and shall not be held liable in the event it acts on such instructions. Any Online Request received by the Bank from the Authorised Person shall be deemed to be genuine, authentic and final.
- (d) In the event, the Customer wishes to retract/withdraw an Online Request and/or stop the processing of any Online Request, the Bank shall on a reasonable effort basis, stop such a transaction from being processed. However, the Bank shall not

be liable for the processing of any transaction being completed after the cancellation or stop instruction has been received by the Bank from the Customer.

2.4 Online Request limited to the credit limit/availability of the Customer

The Bank is under no obligation to comply with any payment instruction or to make any fund transfer or issue any documentary letter of credit on behalf of the Customer that would exceed the available credit limit/trade finance limit/available balance in the account of a Customer designated for such payment instruction pursuant to the relevant Sanctioned Facilities or Banking Services. Any Online Facility provided by the Bank pursuant to this Agreement shall be subject to Applicable Law including but not limited to the Foreign Exchange Management Act, 1999 and all rules, regulations and guidelines that are issued thereunder by the RBI and the Central Government.

2.5 Terms of Use

The mechanism and operating procedure for the processing of Online Request and the manner in which the Customer operates BarodaINSTA shall be as per the terms and conditions prescribed by the Bank from time to time (**Terms of Use**).

3. CHARGE AND FEES

3.1 The Customer agrees to pay all charges and fees (including a one-time maintenance fee and any default fee) as may be levied by the Bank with a prior intimation of 30 (thirty) days to the Customer in connection with providing access to BarodaINSTA and for providing the Online Facility. The Customer shall also be liable to pay the applicable Taxes (including the goods and services tax) for the provision of Online Request in addition to the fees.

3.2 In addition to the above set out fees and expenses payable by the Customer in connection with BarodaINSTA, the Customer shall also be liable to pay such charges and fees that may be applicable on a Sanctioned Facility or Banking Service in accordance with the definitive documents signed between the Bank and the Customer.

3.3 The Bank shall be authorized to debit the Customer Account at any point for the recovery of the fees payable by the Customer to the Bank for availing the Online Facility through BarodaINSTA.

3.4 In the event the Customer fails to pay the fees and charges for any Online Request processed by the Bank, the Customer shall be liable to pay the default fee, as may be specified by the Bank from time to time, on the fees and/ or charges so outstanding till the actual realisation thereof.

4. CONFIDENTIALITY

4.1 Each Party agrees that all information, data and content presented in, and obtained pursuant to or through the means of BarodaINSTA (including the username, password, including content uploaded by the Bank), but excluding any marketing or promotional materials provided by Bank on BarodaINSTA will be confidential information (hereinafter referred as **Confidential Information**).

4.2 The Customer agrees that it shall:

- (a) not disclose the Confidential Information to any third party at any time except on a need to know basis to its Authorised Persons and/or third parties authorized by the Bank in writing;

- (b) not use the Confidential Information for any reason other than as contemplated by under Agreement; and
- (c) extend the same degree of care and protection to protect Confidential Information as would be implemented by the Customer to protect the Customer's own confidential information of a similar nature, but no less than a reasonable degree of care.

4.3 The Bank may need to share, store or transmit Confidential Information about the Customer or any of the Customer Accounts, within the Bank's group/affiliates or with any agent or Third Party used by the Bank for the purpose of providing the Online Facility or for the maintenance of the Bank's overall relationship with the Customer. Any such sharing of Confidential Information, storage or transmission of such information will be done on a confidential basis and the Bank will endeavor to maintain strict confidentiality of such Confidential Information within the Bank's group/affiliates unless: (a) otherwise required by any Applicable Law, or on the request of a Governmental Agency or regulatory authority; (b) where disclosure is required for the purposes of preventing crime; (c) in connection with any proceedings arising out of or in connection with this Agreement; (d) required to do so by an order of a court of competent jurisdiction; (e) such disclosure to its auditors, consultants, accountants, legal advisers, other agents, advisors and representatives; (f) such Confidential Information is already available in the public domain; (g) such information is obtained by an independent third party source; or (h) the Bank deems such disclosure necessary to provide the Online Request.

5. RIGHT OF SET-OFF AND LIEN

Notwithstanding anything to the contrary contained in this Agreement or any other document, the Customer hereby grants to the Bank, a right of lien and right of set-off against the Customer Account and each of the Customer's accounts, assets and security which are now or at any time hereafter may be in the Bank's possession or control, or in the possession or control of any Third Party acting on the Bank's behalf including the right to combine and consolidate all of the Customer's accounts held with the Bank and set-off or transfer any sums standing to the credit of any one or more of such accounts in or towards satisfaction of any outstanding dues payable by the Customer in relation to the availed Online Request to the Bank.

6. INDEMNITY

6.1 The Customer hereby agrees to, and shall indemnify and keep indemnified and hold harmless, at its own expense, the Bank, its affiliates and associates and all of their directors, officers, employees, agents and affiliates and their respective directors, officers and employees (each an **Indemnified Party**) on demand from and against any and all actions, proceedings, litigation, suits, disputes, claims, demands, damages, outgoings, costs and expenses whatsoever (including legal and professional fees and expenses incurred or to be incurred or likely to be suffered by an Indemnified Party in defence or otherwise towards protection of its interests) which may be made, claimed or brought against or suffered or incurred by the Bank due to any action, commission or omission either by the Customer or by a Third Party (provided the same is not cause due to any gross negligence, wilful default or fraud by the Bank, its authorised representatives, employees or agents in processing the Online Request) and shall specifically be entitled to be indemnified upon occurrence of any of the following:

- (a) any act of omission by the Customer or any Authorised Person or any User or employees or representatives resulting in a violation by the Customer of any term or conditions, under this Agreement;

- (b) any claim by any Beneficiary or other third party concerning the amount, delivery, delayed delivery, fraudulent encashment or any other matters related to the Online Request under this Agreement provided by the Bank, its employees and representatives hereunder;
- (c) any expenses that the Bank may have to incur on account of it or any of its employees, representatives and officers being required in any manner to get involved in any proceedings or actions under Applicable Law including pursuant to the provisions of the Negotiable Instruments Act, 1881 and the Payment and Settlement Systems Act, 2007;
- (d) any involvement of the Customer in any suspicious transactions or fraud;
- (e) any error, default, fraud, forgery, omission, acts, negligence of the Customer's employees, servants, correspondents, sub-agents, or any other agents in any way related to this Agreement; or

6.2 It is clarified that the indemnity obligations of the Customer towards the Bank shall survive the termination of this Agreement.

7. LIMITATION OF LIABILITY

7.1 The Bank, its employees, directors and Third Party agents and / or representatives shall not be liable for any inaccuracy, error or delay in, or omission of (a) any data, information or message (including by way of fax, email or otherwise) provided by or on behalf of the Customer; or (b) any loss or damage arising from or occasioned by any such inaccuracy, error, delay or omission, non-performance or interruption in any such data, information or message (including by way of fax, email or otherwise). The Bank, its employees, agents and representatives shall not be responsible for the actions and activities of any Third Party agents and / or representatives appointed by the Bank. The Bank shall also not be liable for any loss, damage or delay that is suffered due to the actions of such Third Party agent and / or representatives.

7.2 The Customer hereby agrees and acknowledges that the Bank, its employees, directors and Third Party agents (including any payment system provider) and/or representatives appointed by the Bank (except in the case of gross negligence, wilful default or fraud by the Bank, its agents, employees or representatives) shall not be liable and shall not be held responsible for any damages whatsoever, whether such damages are direct, indirect, incidental or consequential and irrespective of whether any claim is based on loss of revenue, interruption of business, information provided or disclosed by the Bank regarding the Customer's Accounts, any transaction carried out by the Customer through an Online Request if applicable, or any loss of any character or nature whatsoever, and whether sustained by the Customer or by any other Person. The Customer also irrevocably and unconditionally undertakes and agrees to comply with the regulations, guidelines and compliances that may be issued by the Third Party system providers from time to time as if they are incorporated *mutatis mutandis* in this Agreement without any further act or deed.

7.3 The Bank shall give effect to only those Online Request that have been received from the Authorised Person through recognised channels/medium through authenticated login. The Bank shall not be held responsible or liable for having acted in accordance with any such information or instruction received from Authorised Persons and the Bank shall have no obligation to verify the authenticity of any information provided by such Authorised Persons, to the extent such information matches the registered details of a Customer.

- 7.4 The Bank shall not be responsible for any losses, delays, non-responses or damages that may be suffered by the Customer in relation to any payment and/or collections made by the Bank on behalf of the Customer caused due to any error, default, technical malfunction, loss in transit, fraud or otherwise, including due to the failure of operational systems or any requirement of Applicable Law other than any delay attributable directly to the Bank on account of gross negligence or fraud.
- 7.5 The Bank shall use its best efforts to protect the BarodaINSTA platform from viruses, malware or harmful content, however the Bank shall not be held liable for any harm, loss or damage that may be caused to any Customer. The Bank shall not be responsible for any unauthorized access to or alteration of, transmissions of data or any material sent or received or any transaction entered into through BarodaINSTA in the process of uploading/processing an Online Request.
- 7.6 The transactions undertaken by the Customer through BarodaINSTA shall be the sole responsibility of the Customer. The Bank shall not be responsible for any illegal and / or fraudulent transaction undertaken by the Customer on BarodaINSTA and for any error, loss or delay caused due to such transactions.

8. REPRESENTATIONS AND WARRANTIES

Each Party makes the following representations and warranties as on the date hereof and such representations and warranties are deemed to be repeated on each day until the termination of this Agreement:

- (a) The Bank represents and warrants that:
- (i) it has the requisite power and authority to deliver, execute and perform the transactions contemplated under this Agreement;
 - (ii) the obligations assumed herein constitute legal, valid and binding obligations on the Bank; and
 - (iii) the terms and conditions of this Agreement are not in violation of any provisions of Applicable Law.
- (b) The Customer is duly incorporated/registered and validly existing under the Applicable Law and has the capacity to enter into and execute this Agreement in accordance with its constitutional documents and the Applicable Law.
- (c) In respect of a Customer which is an individual or a partnership firm, he/she and each of its partners is of sound mind and has the capacity to enter into and perform its obligations under this Agreement and is not otherwise disqualified under the provisions of the Indian Contract Act, 1872 and any other Applicable Law.
- (d) This Agreement when executed by the Customer constitutes legal, valid and binding obligations of that Customer, enforceable in accordance with its constitutional documents or partnership deed (as may be relevant).
- (e) The execution, delivery, entry into and performance by the Customer of, and the transactions contemplated by this Agreement do not and will not:
- (i) conflict with any Applicable Law, statute or regulation or any judgment or decree to which the Customer is subject; and / or

- (ii) result in any breach of any of the terms of or constitute default of any covenants, conditions and stipulations under any existing agreement to which the Customer is a Party.
- (f) All clearances, permissions or authorizations required or desirable:
 - (i) to enable the Customer to lawfully enter into, exercise its rights and comply with its obligations and consummate the transactions contemplated under this Agreement;
 - (ii) to ensure the legality, validity, binding effect and enforceability of this Agreement; and
 - (iii) to make this Agreement admissible as evidence,have been obtained and are in full force and effect.
- (g) The Customer acknowledges that it / he / she has read, understood and accepted the terms and conditions of this Agreement.
- (h) There is no litigation, proceedings or disputes pending or threatened against or affecting the Customer, which could affect the Customer's ability and power to enter into and perform its obligations under this Agreement.
- (i) The Customer is a going concern and no bankruptcy, insolvency or winding up proceedings have been initiated or threatened against the Customer.

9. COVENANTS BY THE CUSTOMER

The Customer hereby agrees and covenants that:

- 9.1** The Customer is solely responsible for the accuracy any Online Request uploaded by it on BarodaINSTA in line with what is specified by the Bank from time to time.
- 9.2** The Customer shall provide a prior written notice of 7 (seven) days to the Bank before making any change in the Authorised Persons or their details. Any such changes informed by the Customer to the Bank shall be effective after the expiry of 7 (seven) Business Days from the Bank receiving notice / intimation of such changes from the Customer.
- 9.3** The Customer shall immediately notify the Bank of any unauthorised use of access information in connection with BarodaINSTA or any other suspected breach of security. The Customer agrees that it shall be liable for any misuse that can be attributed to the Customer having wilfully, or through negligence given an unauthorized person access to information that enabled such person to access BarodaINSTA as one of the Customer's Authorized Person.
- 9.4** The Customer shall establish necessary internal standard procedures to ensure that only Authorised Persons have access to and are able to log on to BarodaINSTA and shall keep confidential and not divulge such access data (including the user ID and/or password) to any other person. The Customer agrees to comply with and ensure that each Authorised Person complies with the terms of this Agreement and any other instructions or recommendations that the Bank may issue to the Customer regarding security in relation to use of Online Requests and BarodaINSTA and shall be solely responsible for the set-up, maintenance and review of its security arrangements concerning access to and use of

BarodaINSTA, its telecommunication, computer or other electronic equipment or system and information stored therein.

- 9.5** The Customer undertakes to ensure that it shall not: (i) use, copy, modify, translate, merge or create derivative works of BarodaINSTA except as expressly provided in the Terms of Use; (ii) disable or circumvent any licensing control feature on BarodaINSTA; (iii) reverse-engineer, disassemble BarodaINSTA or permit any such actions, as applicable; (iv) sell, distribute, lend, sublicense, rent or lease all or any portion of its access rights BarodaINSTA; (v) use BarodaINSTA to develop or enhance any product that competes, directly or indirectly, in the Bank's sole determination, with the products and services offered by the Bank; (vi) use BarodaINSTA in any way that would infringe any Intellectual Property Rights of third parties; or (vii) use BarodaINSTA in a manner that would violate any Applicable Law.
- 9.6** The Customer agrees and undertakes to comply with all reasonable requests for assistance from the Bank in connection with trying to recover any losses or for identifying actual or potential breaches of security.
- 9.7** All transactions effected by or through the e-channels for giving details and / or instructions to the Bank or otherwise communicating with the Bank in connection with an Online Request or through other means of telecommunication as received by the Bank shall constitute legally binding and enforceable transactions.
- 9.8** The Customer shall execute and deliver such additional documents and perform actions as may be necessary or reasonably requested by the Bank to carry out or evidence the transactions carried out or contemplated under the Online Request.
- 9.9** The Customer shall notify the Bank as soon as possible if it becomes aware of any theft, fraud, illegal activity, loss, damage or other misuse in relation to the Online Request or in relation to any associated documentation, communication or payment instrument
- 9.10** The Customer agrees that it shall be responsible for all the actions of its Authorized Persons and any mandate of the Customer which may be given to or accepted by the Bank with respect to any Online Request availed by the Customer.
- 9.11** The Customer agrees that the Bank may be required to disclose, share or make available to any Governmental Agency, corporate bodies, banks, financial institution or any other Person, any information in relation to the Customer where such disclosure is necessary under the due process of Applicable Law or where the interest of the Bank requires such disclosure.
- 9.12** The Customer will ensure to prevent the spread of viruses by checking all the hardware and software used for transmission of data to the Bank. The Customer shall also run an anti-virus check / virus check programme on the computer(s) which is / are used for transmission of data to the Bank.
- 9.13** The Customer agrees and confirms that all transactions executed by the Bank pursuant to an Online Request will be executed strictly as per sanctioned terms and conditions and in accordance with Bank's existing guidelines for issuing Letters of Credit, executing documentary credit and Guarantee transactions and in line with regulatory guidelines, including but not limited to the rules and regulations framed by RBI, the Foreign Exchange Management Act, 1999, The Uniform Customs and Practice for Documentary Credits (UCP) and such other rules, regulations and policies, as applicable.

9.14 Interactive Services

- 9.14.1 The Customer undertakes and confirms that BarodaINSTA may contain message boards, chat rooms, personal web pages, profiles, forums, bulletin boards and other interactive features (collectively, **Interactive Services**) that allow the Customer and their Authorised Persons and Users to post, submit, publish, display or transmit to other customers (hereinafter, "**post**") content or materials on or through the BarodaINSTA.
- 9.14.2 The Customer agrees and undertakes to ensure that any contribution made by the Customer or any Authorised Persons or Users of the Customer (**Customer Contributions**) shall comply with the Terms of Use. The Customer Contributions will be considered non-confidential and non-proprietary. The Customer hereby grants to the Bank, and all of its subsidiaries, affiliates, successors, and assigns, a worldwide, perpetual, royalty-free, fully paid, sub-licensable, non-exclusive, and transferable right and license to use, reproduce, modify, perform, display, distribute, publish, prepare derivative works of, adapt and otherwise disclose to third parties any such material. Such rights and licenses to use the Customer Contributions shall survive the termination of this Agreement. However, the Bank is not responsible, or liable to any third party, for the content or accuracy of any Customer Contribution posted by any Authorized Person on BarodaINSTA.
- 9.14.3 The Customer understands and agrees that the Bank shall be entitled at any time to (i) monitor the Interactive Services; (ii) remove or refuse to post any content or material as per the Bank's sole discretion; (iii) take any action with respect to any content or material that the Bank may deem necessary or appropriate in its sole discretion, if the Bank believes that such content or material violates the Terms of Use, infringes any Intellectual Property Right or other right of any person or entity, threatens the personal safety of any Authorized Persons of the portal or the public or could create liability for the Bank; (iv) take appropriate legal action, including, referral to law enforcement, for any illegal or unauthorized use of BarodaINSTA; (v) terminate or suspend access to all or part of the BarodaINSTA for any violation of the Agreement.

10. TERM AND TERMINATION

- 10.1** Either Party may terminate this Agreement by giving a written notice of 30 (thirty) Business Days to the other Party. For avoidance of doubt, any notice of termination sent by the Customer should be received at least on the last Business Day of the preceding month for such a notice to be deemed effective in the following month.
- 10.2** The Bank shall have the immediate right to terminate this Agreement with immediate effect, if at any time during the term of this Agreement:
- (a) there is a breach of any of the terms or conditions of this Agreement by the Customer;
 - (b) the Customer becomes insolvent or goes into liquidation, whether voluntary or compulsory, or is unable to pay its debts as they become due or proposes or makes a general assignment or arrangement or composition with or for the benefit of its creditors or a receiver is appointed to take possession of all or substantially all of its assets or a petition for insolvency, winding up or bankruptcy is filed against the Customer; and
 - (c) the Customer becomes a party to a merger, demerge or amalgamation or there are other significant changes in the Customer's ownership and constitution.

10.3 Notwithstanding the above, any rights, obligations and liabilities arising under this Agreement before termination shall be binding on the Parties and shall continue after the termination of the Agreement. All the other terms and conditions shall be continuing and binding on the Customer until the obligations and liabilities hereunder are discharged in full and confirmed in writing by the Bank.

11. FORCE MAJEURE

11.1 The Bank's obligations will be limited to the occurrence of any Force Majeure event and the Bank will not be responsible for non-performance or delay in processing any transaction in connection with an Online Request that is caused due to any Force Majeure event. Force Majeure events include, but are not limited to fires, casualty, breakdown in equipment, communication line or systems failure, power failure, lockout, strike, unavoidable accident, act of God, terrorism or threat of terrorism, riot, war or other enactment, issuance or operation of any adverse governmental law, ruling, regulation, investigation, order or decree, or emergency that prevents the Bank from operating normally.

11.2 The Bank shall not be deemed to be in default so long as any such cause or the effect thereof persists (provided that this shall not prevent the accrual of interest on any outstanding amount which would have been payable but for this provision) and during a reasonable period thereafter within any such obligations capable of being fulfilled. The Bank shall not be liable for any action or claim, from any party, arising out of its inability to perform the obligations for the reasons stated herein.

12. GOVERNING LAW AND JURISDICTION

12.1 Governing Law

This Agreement and any non-contractual obligations arising out of or in connection with such agreements are governed by, and shall be construed in accordance with the laws of India.

12.2 Jurisdiction

12.2.1 The Customer agrees that the same court or jurisdiction as agreed in the facility agreement/loan agreement pursuant to which Sanctioned Facilities are made available shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement and that accordingly any suit, action or proceedings (together referred to as "**Dispute**") arising out of or in connection with this Agreement may be brought in such courts or the tribunals and the Customer irrevocably submits to and accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of those courts or tribunals.

12.2.2 For the purpose of this clause 12.2, the Customer waives any objection to the same courts or tribunals as agreed in the facility agreement/loan agreement pursuant to which Sanctioned Facilities are made available on the grounds that they are an inconvenient or inappropriate forum to settle any Dispute.

12.2.3 To the extent allowed by law, the Bank may, in respect of any Dispute or Disputes, take (i) proceedings in any other court with jurisdiction; and (ii) concurrent proceedings in any number of jurisdictions.

12.2.4 To the extent that the Customer may in any jurisdiction claim for itself or its assets immunity from suit, execution, attachment (whether in aid of execution, before judgement

or otherwise) or other legal process and to the extent that in any such jurisdiction there may be attributed to itself or its assets such immunity (whether or not claimed), the Customer hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity.

13. NOTICE

13.1 Communication in writing

Any communication made under this Agreement must be made in writing, in English and, unless otherwise approved in writing by the Bank, including by uploading such communication on BarodaINSTA, email, facsimile transmission, hand delivery or registered post to such address (of the relevant Party) as set out in this Agreement.

13.2 Delivery

Any notice or communication given to a Party by email, hand-delivery, facsimile or post shall be deemed to have been duly received by that Party: (i) if by email, when the email is sent, unless a message indicating failed delivery has been received; (ii) if hand-delivered, when delivered; (iii) if sent by facsimile transmission, upon receipt by the sender, of confirmation of proper transmission; and (iv) if sent by recorded delivery, special delivery or registered post, at 10 a.m. on the second Business Day immediately following the date of posting.

14. MISCELLANEOUS

14.1 Appointment of Agents / Third Parties

The Bank shall be entitled to appoint any Third Parties as may be deemed necessary by the Bank to provide assistance in relation to the Online Request Facility. The Bank may appoint such Third Parties freely without the Customer's knowledge or consent.

14.2 Amendments and Modifications

14.2.1 The Bank may modify, amend or supplement the terms and conditions of the Online Facility provided under this Agreement without any prior notice to the Customer due to any change in the Bank's internal policies, change in Applicable Law or any order, ruling or judgment by a competent authority.

14.2.2 The amended terms and conditions will become effective from the date of notice of the same on BarodaINSTA.

14.3 Principal to Principal Relationship

This Agreement creates a principal to principal relationship between the Bank and the Customer and it does not constitute any employer – employee, principal – agent or any such relationships between the Parties.

14.4 Waiver

No failure to exercise, nor any delay in exercising, on the part of the Bank, any right or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

14.5 Assignment

No Party may assign any of its right, liabilities and / or obligations under this Agreement without the prior written consent of the other Party. Provided that nothing contained herein shall restrict the Bank from delegating any of its responsibilities and powers to a Third Party.

14.6 Entire Agreement

This Agreement, and other forms / letters / communications issued from time to time in connection with this Agreement shall form the entire agreement between the Parties in relation to the Online Request and shall supersede all other previous agreements executed between the Parties.

14.7 Severability

If, at any time, any provision of the Agreement is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

14.8 Further Assurances

The Parties hereby agree to execute and deliver all documents and instruments and to take or cause to be taken such other actions that are reasonably necessary or appropriate to consummate the transactions contemplated under this Agreement.

14.9 Intellectual Property

- 14.9.1 The Parties shall continue to be the owner of their respective trademarks, copyrights and all other proprietary rights and neither shall use any trademark, logo or copyright of the other Party without permission in writing of the Party who owns such proprietary rights. The Customer shall at no time use or associate the name or marks of the Bank with its own name or refer to the Bank in any advertising or publicity releases or during any of its promotional or marketing activities without the prior written consent of the Bank. The Customer agrees and confirm that the Bank has full copyright and intellectual property rights to all software and user guides provided by the Bank on BarodaINSTA. The Customer further agrees to ensure that such software and user guides will not be passed on or transferred to anyone else, or sold, copied or in any other manner used for purposes not approved by the Bank.

SCHEDULE 1

Definitions

Advising Bank means the bank that will inform the Beneficiary of the credit, send the original credit to the Beneficiary, and provide the Beneficiary with any amendments to the letter of credit.

Applicant means the party who has requested the Letter of Credit to be issued.

Bank Guarantee means the facility by way of bank guarantee granted by the Bank to the Customer.

Export Letter of Credit means a Letter of Credit received on behalf of a seller from a purchaser in connection with the export of goods.

Foreign Guarantee means when a guarantee issued for a Beneficiary located outside India.

Foreign Letter of Credit means a Letter of Credit where either the applicant or the Beneficiary is located outside India and is arising out of export or import of goods/services out of/into the country of issue.

Inland Guarantee means a bank guarantee where both the applicant and the Beneficiary are located in India and arising out of export or import of goods/services within India.

Issuing Bank means the bank that issues the credit, usually following a request from the Applicant.

Import Letter of Credit means a Letter of Credit extended on behalf of a purchaser to a seller in connection with the import of goods.

Inland Letter of Credit means a Letter of Credit where both the applicant and the Beneficiary are located in India.

Inward Documentary Collection is handling of inward documents (Foreign/ Inland) received from a remitting bank and/ or seller for presentation to a buyer/ importer to accept the payment at sight or acceptance of usance bill of exchange for payment in a future date.

Letter of Credit means a written commitment from a bank on behalf of one party guaranteeing the payment to be made to a third party, provided the terms and conditions as set out in the letter of credit have been met.

Outward Documentary Collection means a process under which a seller/exporter instructs its bank to forward documents related to the sale of goods to a buyer's bank with a request to present these documents to the buyer for payment, indicating when and on what conditions these documents can be released to the buyer.

Outward Remittance means a transfer of money in foreign exchange by a resident in India to a beneficiary situated outside India for a purpose as approved under the Foreign Exchange Management Act, 1999 and the rules and regulations framed thereunder.

Packing Credit Finance means pre shipment credit provided by the Bank for financing expenses of the Customer (or on behalf of the customer in favour of some other person), for the export of goods / services.

Post Shipment/Bill Financing means a credit facility extended by Bank to an exporter/Seller after the shipment of goods has taken place till the realization of the Foreign/Inland Bill proceeds, which included two types of post shipment finance, namely, (i) Foreign/Inland bills purchased/discouted and (ii) Foreign/Inland bills negotiated under a Letter of Credit.

Sight means a payment to be made immediately to the beneficiary/Seller/exporter upon presentation of correct documents.

The Collecting Bank is the Buyer's/Importer's **bank**. It will collect cash payment or a time draft from a buyer in exchange of Documents of Title to Goods such as Bill of Lading and/or other documents which enable the buyer to take delivery of the Goods. The Collecting Bank then forwards the payment to the remitting Bank for eventual remittance to the seller/Exporter.

The remitting bank is the seller/exporter's **bank**. It will send the documents to the buyer's **bank** with instructions for collection of payment. Upon receipt of payment from the buyer's **bank**, the **remitting bank** will credit the net proceeds to the seller/exporter's account.

Usance means a credit that is not paid immediately, but after an indicated period that is acceptable to both, the buyer and seller.

PART A

LETTER OF CREDIT (LC)

The Bank may offer Online Request Facility for issuance of Letter of Credit (including Inland Letters of Credit and Foreign Letters of Credit) and to be made (in both physical and electronic forms) on behalf of the Customer.

Issuance

The Customer shall raise a request for the issuance of a Letter of Credit by uploading an Online Request *(as detailed out in Clause 2.2 above of this agreement)*.

Amendment

In case the Customer wishes to amend or modify a Letter of Credit, the Customer shall raise a request for a Letter of Credit amendment through BarodaINSTA by filling up an amendment application and uploading the scanned copies of the requisite documents as per the Bank's existing guidelines.

The amendment application so submitted will be scrutinised by the Bank and in case of any discrepancy in the application or in the underlying documents, the Bank shall notify the Customer for clarification and requisite information, documents, if any. The Customer shall rectify the error and upload and / or submit or re-submit the documents as per the instructions of the Bank.

Upon successful completion of application and upon verification of the documents submitted by the Customer, the Bank may process the transaction.

Payment

Upon receipt of documents presented under a Letter of Credit from the Advising Bank, the Bank will scrutinise the documents as per the Letter of Credit terms and Bank's extant guidelines. In case of any discrepancy, the Bank shall inform the Beneficiary/Advising Bank and Customer simultaneously, through BarodaINSTA.

Documents in compliance with Letter of credit terms or acceptance of discrepant documents by the applicant, the documents shall be lodged. Pursuant to which the Customer shall receive a notification of the payment terms (Sight or Usance) on BarodaINSTA.

In case of Sight documents, the Bank will make the payment within the specified period and in case of Usance documents, the Bank will make the payment upon Customer's acceptance and confirmation to make the payment on the date of maturity or such other date as the Customer notifies.

The Bank shall send the original bill of exchange to the Customer for acceptance and, in case of any discrepancy, the Bank shall inform the Advising Bank to rectify the discrepancy and thereafter notify the Customer through BarodaINSTA. Upon acceptance from the Customer and upon receipt of an Online Request to make the payment, the Bank shall process the payment and release the original documents.

In case there is discrepancy in the original bill of exchange and in the absence of any customer instructions to the contrary, the Bank shall process the payment on the date of maturity and a notice of the same shall be sent to the Customer on BarodaINSTA as well as in hard copy.

Upon authorisation, the Customer may check the status of the ongoing transaction on BarodaINSTA.

PART B

BANK GUARANTEE (BG)

The Bank may offer facilities for the issuance of Bank Guarantee (including Inland Guarantees or Foreign Guarantees) to be made (in both physical and electronic forms) on behalf of the Customer.

Issuance

The Customer shall raise a request for issuance of a Bank Guarantee by uploading an Online Request (*as detailed out in Clause 2.2 above*). The Bank may provide the Customer with both Inland Bank Guarantee and Foreign Bank Guarantee. Customer may request for (i) a bid bond guarantee; (ii) a performance guarantee and/or (iii) a financial guarantee, depending upon the nature of the transaction.

The Customer (through its authorised signatory) shall submit an application online by uploading the scanned copy of the relevant documents and simultaneously, submit the originals at the relevant Dealing or Base Branch for initiating the transaction. The application so submitted will be scrutinised by the Bank and in case any deviation in the application or the underlying documents, the Bank shall notify the Customer for clarification and requisite information / documents, if any. The Customer shall rectify the error and upload and / or submit / re-submit the documents as per the instructions of the Bank. Upon successful completion of application and upon verification of the documents submitted by the Customer, the Bank shall process the transaction.

PART C

DOCUMENTARY COLLECTION

Inward Documentary Collection

Upon receipt of documents from the beneficiary Bank, the Bank will scrutinise the documents as per the Bank's extant guidelines and documents shall be lodged into system. Pursuant to which the Customer will receive a notification of such documentary collections on BarodaINSTA with a list of documents received and payment terms (Sight /Usance).

Sight

The Customer may accept the documentary collections received and give payment authorisation to the Bank. The Bank shall make the payment on behalf of the Customer and release the original Document to the customer. In case, draft/bill of exchange is included in Sight document, Bank will send original draft/ bill of exchange to Customer for acceptance.

Usance

If the documents received under the tenor of "Document against Acceptance" or "Usance", then customer, being the drawee will provide acceptance to pay on maturity date through BarodaINSTA. Simultaneously the Dealing or Base Branch will make available original draft/bill of exchange of Inland/import collection document for acceptance to the Customer. Upon acceptance of documents and the receipt of customer instructions to pay on maturity date, the Bank will release original Inland/import documents to Customer. If a document is not accepted by the Customer, the Bank will notify the Remitting Bank for the same requesting further instructions and same will be notified to the Customer through BarodaINSTA.

Outward Documentary Collection

The Customer shall submit an Online Request for Outward Documentary Collection along with relevant documents and payment instructions.

The Bank shall after due verification of the documents, shall lodge an export/inland bill. Simultaneously, the Customer will have to submit the original documents with the Bank along with payment instructions (Sight/Usance). In case of any discrepancy in the original documents and the documents uploaded on BarodaINSTA, the Bank shall contact the Customer and the Customer shall rectify the error at the earliest. Upon due verification and authorisation, the Bank shall send the collection documents to the Collecting Bank along with the payment instructions (Sight/Usance). The Bank shall notify the Customer upon inward payment receipt from the Collecting Bank and completion of transaction.

PART D

PACKING CREDIT

Packing Credit Finance

A Customer may raise a Packing Credit Finance request through BarodaINSTA along with the underlying export order (**Export Order**) and/or Export Letter of Credit (**Export LC**). Packing Credit Finance may be provided in Indian Rupees as well foreign currency.

The Bank will check eligibility, sanctioned terms and conditions and other requisites to process the Packing Credit Finance request and if all guidelines are complied with, then lodge the Export Order, Export LC and authorize the Packing Credit Finance transaction. Any Packing Credit Finance provided shall be adjusted and settled in the same currency as it has been issued or provided.

In case of any deviation in Packing Credit Finance request received, the Customer will be notified through BarodaINSTA and upon receipt of clarification, the Bank will authorize the Packing Credit Finance request and subsequently, the Customer and the Bank will be notified through BarodaINSTA.

Liquidation of Packing Credit Finance will be done from post shipment finance on submission of export documents by the exporter or on receipt of advance against exports.

PART E

POST SHIPMENT/BILL FINANCING

A Customer may raise the request for purchase/discount of export /inland documents through BarodaINSTA along with underlying export/Inland documents and/or Export/Inland Letter of Credit in Indian Rupees or foreign currency.

The Bank will check the eligibility, the sanctioned terms and conditions and other requisites to process the purchase/discounting of export/Inland documents and if all the guidelines are complied with, then proceed with the finance of export/Inland collection and authorize the transaction.

In case of any deviation in Bill purchase/discount of export/Inland bill, the Customer will be notified through BarodaINSTA and upon receipt of clarification, Bank will purchase the documents and subsequently the Customer will be advised through BarodaINSTA.

The settlement of the bill finance will be done through the realization of export/Inland Bill proceeds on the relevant due date. If the export/Inland Bills proceeds are not received on the due date. On the request of Customer, Bank will extend the due date of the purchased/discounted bill. In case of Export proceed are not received on due date/extended due date, Bank will crystallise the forex liability in to INR as per Bank's guidelines.

PART F

OUTWARD REMITTANCES

A customer may raise a request for Outward Remittance for the purpose of import of goods and services and non-trade remittances as per FEMA guidelines through BarodaINSTA along with the requisite documents as per the Bank's extant guidelines. The Bank will authenticate the documents and if all the guidelines are complied with, then lodge the Outward Remittance and authorise the transaction.

SCHEDULE 2

SYSTEM ADMINISTRATION FUNCTION

1. The Bank may offer to a Customer the facility whereby a Customer acting through its authorised officials/representatives as the system administrator (**System Administrator**) may have the ability to appoint various Users, who shall be authorised to initiate the process of generating and uploading an Online Request which may be approved by an Authorised Person and uploaded on BarodaINSTA.
2. The System Administrator shall have the ability to operate and maintain the list of the Users, including the ability to add or remove existing Users and manage the settings in relation to the accounts of other Users including *inter alia* (i) creating, deleting and resetting the user identifications and passwords for the accounts of the Users.
3. The customer hereby agrees and acknowledges that the Bank shall be entitled to assign transaction creation and authorisation rights to the new and existing users of the Customer.
4. The Customer hereby agrees and acknowledges that the Bank, its employees, directors and Third Party agents shall not be (i) responsible to keep a record of the Users maintained by the System Administrator or (ii) held liable or responsible for any actions taken by the Users while processing any Online Request on behalf of the Customer.
5. The Customer shall ensure that all Users use BarodaINSTA and the Online Request in accordance with all terms of this Agreement and agree to be bound by this Agreement.

SIGNATURE PAGE

Each Party has caused these presents to be executed by their duly authorised official on the day, month and year first hereinabove written.

The Bank

SIGNED AND DELIVERED by **BANK OF BARODA**
as the **Bank**.

Name:

Designation:

The Customer

SIGNED AND DELIVERED by [●]

Name:

Designation: