

[To be stamped for an adequate value as per the applicable stamp laws]

**BarodaINSTA SMART TRADE PORTAL AGREEMENT**

**This BARODAINSTA SMART TRADE PORTAL (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 and/or Banking Services (as provided in Schedule 1) 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 provided in Schedule 1) through BarodaINSTA will be able to request for availing the Sanctioned Facilities and/or Banking Services, (as provided in Schedule 1), subject to the terms of this Agreement ("**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:

**TERMS AND CONDITIONS:**

- 1. 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 and/or Banking Service.
- 2. Each Online Request uploaded to be processed shall be subject to the terms and conditions of the relevant Sanctioned Facility and/or Banking Services. The terms and conditions applicable to the Customer Account shall also be applicable to the provisions of the Online Facility and shall be read in conjunction with the terms of this Agreement.
- 3. Bank may revise the terms and conditions of use of BarodaINSTA from time to time at its sole discretion which shall automatically become applicable to the Customer's access and use of BarodaINSTA thereafter.
- 4. The Bank shall, at all times, have the sole right to decide the mode and manner of providing the Online Facility to the Customer. Bank reserves the right in its absolute and sole discretion to dishonor, cancel or reject any Online Request uploaded by the Customer without assigning any reason for such cancellation or rejection.
- 5. Customer (through its Authorized Persons) shall submit an application online through the means of an Online Request and upload scanned copies of relevant documents including KYC related documents as may be required. Online transactions requiring original documents wherever applicable (including export bills under collection, or such other documents as may be required by the Bank) will be processed only on submission of the same at the relevant branch, except where RBI/ Bank allow for direct dispatch by exporter. 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.

6. In the event the Customer submits any Online Request prior to cut off time i.e., 3:00 pm or any other time as may be mutually decided by the Parties, on a particular Business Day, the Bank shall endeavour to process such an Online Request on the same Business Day. Any request received after cut off time shall be taken for processing on the next working day. However, Bank will endeavour to complete the said transaction within the day without constituting any guarantee to complete the transaction.
7. Upon the uploading of 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. The Bank shall assume that each Online Request is correct, genuine and has been issued by an Authorized Person and shall not be held liable in the event it acts on such instructions. Any Online Request received by the Bank from the Authorized Person shall be deemed to be genuine, authentic and final.
8. 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.
9. Any change in the Authorized Person shall be intimated to Bank by written notice of 7 days before making changes. Revised Partnership Letter/Sole Proprietorship Letter/Limited Liability Partnership Letter/Board Resolution as per Bank of Baroda's format to be submitted in case of modifications or deletions in the authorization matrix.
10. 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 and/ or the Authorized Person on BarodaINSTA and for any error, loss or delay caused due to such transactions. Further, the Bank shall not be responsible for any unauthorised 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.
11. The Bank shall not be liable for any cyber-crimes including phishing, voice phishing, SMS phishing and compromise of the Customer's system security that may affect the Customer including delay or failure in processing instructions from the Customer. The Customer shall separately evaluate all such risks and the Bank shall not be held responsible for the losses arising out of such cyber-crimes.
12. 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 respective directors, officers, employees, agents and affiliates (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 ) 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 Authorized 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. It is clarified that the indemnity obligations of the Customer towards the Bank shall survive the termination of this Agreement.
13. Any instructions received from the Customer (or any other person authorized by the Customer) shall be conclusively presumed to be duly authorized by and legally binding on the Customer, and the Customer shall be fully responsible for the same. The Bank shall not be responsible to ensure the authenticity, validity or source of any instructions and shall not be liable if any instructions turn out to be unauthorized, erroneous or fraudulent.

14. The Bank may, under circumstances determined by it, in the Bank's absolute discretion, require the Customer's confirmation of any instructions/documents in such form as the Bank may specify before acting on the same; and the Customer shall submit such confirmation to the Bank immediately upon receipt of the Bank's request. Pursuant to receipt of instructions, the Bank shall have the right but not the obligation to act upon such instructions. **Bank shall not be held responsible for any delay in case customer is not able to submit the response well within cut off time.**
15. 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 responsible for any damages whatsoever. Further, 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. The Customer also irrevocably and unconditionally undertakes and agreed 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.
16. 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.
17. The Parties hereby make the Representations and Warranties (as provided in Schedule 1) as on the date hereof and such representations and warranties are deemed to be repeated on each day until the termination of this Agreement.
18. Bank of Baroda may terminate service by giving a notice of 30 (thirty) Business Days to Customer, except in cases where Bank has right to immediately stop the services which are: if Customer breaches any terms and condition or Customer, becomes insolvent or goes into liquidation, or if a Customer becomes a party to a merger, demerger or amalgamation or there are any significant change in the Customer's ownership and constitution. 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.
19. 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. Further, the Customer agrees that the same court or jurisdiction as agreed in the facility agreement/loan agreement pursuant to which Sanctioned Facilities and/or Banking Services 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 before such courts or tribunals and the Customer irrevocably submits to and accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of such abovementioned courts or tribunals.
20. The Schedules contained in this Agreement shall form part of this Agreement and shall have the same force and effect as if set out in the body of this Agreement.

## DECLARATION FROM CUSTOMER

1. I/We have read and understood the terms and condition applicable to BarodaINSTA SMART TRADE PORTAL SERVICE and accept the same. I/We are aware of the usage of Baroda INSTA SMART TRADE PORTAL SERVICE.
2. I/We agree to bear all charges/fee (including taxes, if any) as and when notified by the Bank and accepted by us from time to time, in connection with providing access to BarodaINSTA. The Bank is authorized to debit our designated Customer Account for recovery of charges/fee, if any.
3. I/We agree that all costs incurred at my/our end for completing the Online Request will be borne by me/us solely. I/We agree that the Bank shall not be liable for any connectivity/ signal/ data related issues leading to incomplete information/application being provided by me/us.
4. I / We understand and acknowledge that there are inherent risks involved in sending instructions to the Bank through electronic communication and hereby agree and confirm that all risks shall be fully borne by me / us and I / we assume full responsibility for the same, and I / we will not hold the Bank liable for any losses or damages including legal fees arising upon your performing or your non performing or any delay /default in performing any act , wholly or in part in accordance with the instructions so received which could be a result of any miscommunication, or technological error beyond the control of the Bank considering the mode in which the same was conveyed.
5. I/We agree that the Bank shall be entitled to keep records of my/our electronic instructions/communications/documents as the Bank may in its sole discretion deem fit, and the Bank's records shall be conclusive and binding on me / us. The Bank shall be entitled to dispose of or destroy any such records at any time and determined by the Bank at its sole discretion.
6. I/We hereby agree to and shall indemnify and keep indemnified the Bank its affiliates and associates and all of their respective directors, officers, employees, agents and affiliates (each an Indemnified Party) on demand from and against any and all actions, proceedings, litigation, suits, disputes, claims, demands, damages, penalties, judgments, costs, charges, losses, expenses and consequences of whatever nature (including legal fees on a full indemnity basis) and howsoever arising, which may be made, claimed or brought against or suffered or incurred by the Bank due to any action by me/ us or our Authorized Person or which arise from the Bank's reliance on the information, declarations, documents, images and undertakings etc. provided by me/us.
7. I/We hereby agree that Bank shall not be liable and shall not be responsible for any damages, fraud, error, forgery or omission whatsoever regarding the Customer's Account in respect of transactions carried out by the Customer or its Authorized Person or representative through the Online Request.
8. I/We agree and confirm that the Bank shall at its sole discretion reject the Online Request for any reason whatsoever including but not limited to reasons attributable to erroneous, incomplete, misleading information or non-compliance of KYC norms/non-submission of KYC documents to the Bank or upon any notices/directions received from any regulatory body.
9. I /We have read the System Administration Function (as provided in Schedule 2) and accept the same.
10. I /We shall be solely responsible for the accuracy of any Online Requestuploaded on Baroda INSTA.
11. I/We agree that the Bank shall be entitled to require any instruction/document in any form to be authenticated by use of any password, identification code or text as may be specified by the Bank from time to time and I/We shall agree and establish necessary internal standard procedures to ensure that only Authorized Person(s) have access to and are able to log on to Baroda INSTA and shall keep confidential and not divulge such access data (including the user ID and/or password) to any other Person.
12. I/WE shall hereby agree not to assign our rights, liabilities, and obligation under this Agreement to any other party without the prior consent of the Bank. I/WE hereby agree and undertake 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.
13. That I / we confirm that I / we have the capacity and authority to accept this document and that this document constitutes our valid, legal effective and enforceable obligation.

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

**THE BANK**

SIGNED AND DELIVERED BY BANK OF BARODA AS THE BANK

Signature : \_\_\_\_\_  
Name : \_\_\_\_\_  
Designation : \_\_\_\_\_

**THE CUSTOMER**

Signature : \_\_\_\_\_  
Name : \_\_\_\_\_  
Designation : \_\_\_\_\_

**Details of Authorized Person**

Name : \_\_\_\_\_  
ID : \_\_\_\_\_  
Contact Number : \_\_\_\_\_  
Address : \_\_\_\_\_

We hereby confirm that mandate from the competent authority has been obtained for appointing the authorized person.

(Necessary documents enclosed herewith)

**Signature of Customer** : \_\_\_\_\_      Date: \_\_\_\_/\_\_\_\_/\_\_\_\_  
Place : \_\_\_\_\_

## SCHEDULE 1

### Definitions

- **“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.
- **“Agreement”** means this BarodaINSTA Trade Finance Request Agreement as amended or modified from time to time.
- **“Authorized Person”** means any individual 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 CustomerAccount.
- **“BarodaINSTA”** shall mean BarodaINSTA Smart Trade Portal developed by Bank for Online Facility.
- **“Banking Services”** shall mean trade finance services availed by a Customer from the Bank in the ordinary course of its business.
- **“Business Day”** means a day (other than a Sunday or a public holiday) on which the relevant branch of the Bank is open for general business.
- **“Confidential Information”** shall mean all information, data and content presented in, and obtained pursuant to or through the means of BarodaINSTA (including the username, password, content uploaded by the Bank), but excluding any marketing or promotional materials provided by Bank on BarodaINSTA will be confidential information. The Customer agrees that it shall: (i) not disclose the Confidential Information to any third party at any time except on a need to know basis to its Authorized Persons and/or third parties authorized by the Bank in writing; and (ii) not use the Confidential Information for any reason other than as contemplated under this Agreement.
- **“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.
- **“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).
- **“Online Facility”** shall have the meaning ascribed to the term in Recital B.
- **“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.
- **“Person”** means and includes individuals, companies, corporates, associations, trusts, sole proprietorships, partnership firms and any other association of persons, whether registered or not.
- **“Representations and Warranties”** shall mean the following:
  - (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. 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.
  - (c) 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). 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.
  - (d) 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.

- (e) 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.
- (f) The Customer is a going concern and no bankruptcy, insolvency or winding up proceedings have been initiated or threatened against the Customer.
- **"Sanctioned Facilities"** means the trade finance facility(ies) that have been sanctioned by the Bank to 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 Bank from time to time.
- **"System Administrator"** shall have the meaning ascribed to the term in Schedule 2.
- **"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.
- Any other defined terms in this Agreement, unless repugnant to the context or meaning hereof, shall be as per the Foreign Exchange Dealer's Association of India (FEDAI), International Chamber of Commerce (ICC), Uniform customs and Practice for Documentary Credits (UCPDC), Foreign Exchange Management Act (FEMA) 1999 and Reserve Bank of India as well as Bank's Extant Guidelines. Further, in the event of any conflict in respect of definition of such terms, the RBI Guidelines will prevail.

#### Other Terms and Conditions

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. The Bank shall be authorized to debit the Customer Account for the recovery of the fees payable by the Customer to the Bank for availing the Online Facility through BarodaINSTA. The Parties further acknowledge that there are no fees or charges being levied on the Customer for using the BarodaINSTA SMART TRADE PORTAL as on the date of signing this Agreement.
2. 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 realization thereof.
3. 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 Authorized Persons and/or third parties authorized by the Bank in writing (b) not use the Confidential Information for any reason other than as contemplated 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. 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 confidentiality of such Confidential Information within the Bank's group/affiliates.
5. The Bank may adopt the mode of authentication of the Customer by means of verification of the User ID and or through verification of password or through any other mode of verification as may be stipulated at the discretion of the Bank from time to time. The Customer hereby agrees/consents for the mode of verification adopted by the Bank. The Customer agrees that the transactions carried out or put through by the aforesaid mode shall be valid, binding and enforceable against the Customer and shall not be entitled to raise any dispute questioning the transactions
6. Any Online Request uploaded by the Customer shall be subject to applicable law including but not limited to Foreign Exchange Management Act, 1999 and rules, regulation and guidelines that are issued thereunder by the RBI and Central Government, any customary rules and procedures followed by the Bank.

## **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 Authorized 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.