Annexure 7 Format of the Agreement to be entered into with the Recovery Agent

Format of the Agreement to be entered into with the Recovery Agent

This agreement made at Place/s and date/s mentioned herein below.

Between Indian Bank, a Body Corporate incorporated under the Banking Companies (Acquisition & Transfer of Undertakings) Act 1970, having its Corporate Office at ……., (hereinafter referred to as "IB" , which expression shall wherever it occurs include its successors and assign) AND M/s _____(Name of the Recovery Agent) _____

At present carrying on the business at _____(Address of the Recovery Agent), a ____(constitution)_____ under the name and style of M/s _____Name of the Recovery Agent _____ (hereinafter referred to as " Recovery Agent (R A)" which expression shall wherever it occurs include its successors and permitted assigns) duly represented by their Principal Officer Mr_____ , S/o Mr_____

Whereas "IB" in the course of its business has from time to time granted Loans to various Borrowers either with or without security.

AND WHEREAS the Borrowers to secure their liability under the various loans executed various agreements / documents in favour of I B from time to time.

AND WHEREAS the Borrowers have defaulted in repaying the Loans as provided in the relevant agreements /documents.

AND WHEREAS, "IB" is desirous of appointing a ' Recovery Agent (RA)' for the purpose of carrying out and / or exercising powers under SARFAESI Act as an agent of the Authorised Officer and otherwise for the purpose of making realisation / recoveries from / out of the Loans/securities and / or making realisation/ recoveries of the amount due from the borrowers.

AND WHEREAS IB is desirous of appointing an agent to effect recovery in all kinds of loans, whether Secured or Unsecured using the available legal tools and whether or not suit/Recovery Application is pending.

AND WHEREAS pursuant to negotiations between "IB" and RA, it has been agreed to by and between "IB" and RA that RA shall be entrusted with the responsibility of such recovery and realisation upon the terms and conditions hereinafter appearing.

NOW THIS AGREEMENT WITHNESETH AS FOLLOWS:

ARTICLE I

Definitions

In this Agreement, unless the context otherwise requires, the following terms shall have the meanings set out herein below:

1. "Agreement" means this agreement together with all amendments entered into in writing in respect thereof from time to time.
2. "Benchmark Realisable value" means amount with respect to each asset pertaining to a Borrower entrusted to the RA, as will be indicated to the R A at the time of his engagement.
3. "Borrower" means the person(s) who have availed of the Financial Assistance, and any other person (s) who has / have created / given any security interest, and / or guarantee, to secure the repayment of any Financial Assistance.
4. "Loan" or "Loans" means the loans, guarantees, debenture, and any other funded and non-funded financial assistance availed of by the Borrower (s) from "IB", together with interest, compound interest and all other monies whatsoever stipulated in, or payable by the Borrower to "IB" in respect thereof ("Financial Assistance"), together with any security interest created to secure the repayment of such Financial Assistance.
5. "Legal Expenses" shall mean professional service charges, other expenses including court fees, valuation fees, et., paid / payable to advocates, lawyers, solicitor, legal consultants, in respect of cases and proceedings before appropriate judicial and quasi-judicial authorities for the purpose of recovery / realisation of the Loans, security interest and also includes for defending in any proceeding (s) in relation thereto against IB and / or Agent (as the constituted attorney of IB, appointed in accordance with this Agreement) and the fees/expenses paid/payable to RA.
6. "Recovery Agent" means acting as an Agent of "IB" for carrying out and / or exercising all powers under SARFAESI Act and / or otherwise for making realisation / recoveries from/ out of the loans including undertaking all legally permissible recovery strategy for the purpose of making realisation/ recoveries from / out of the loans/securities and / or realising / recovering amounts due to the Bank from the borrowers / Guarantors or any third party.
7. "Recovery" means with respect to each Loan, the aggregated amount of realisation/ recoveries made in respect of the said Loan by the RA.
8. "SARFAESI Act " 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.
9. "Secured Assets", "Security Interest" have the meaning assigned to the said terms under SARFAESI Act *mutatis mutandis* for the provisions of this agreement also.

ARTICLE II

1. "IB" hereby appoints Recovery Agent and Recovery Agent hereby accept the appointment as IB's Agent for the purpose of recovery / realisation of Loans by one or more of the methods mentioned in Clause 2 below.

2. Recovery Agent shall make recovery / realisation in respect of the Loans by one or more of the following methods, viz.
   a) By sale of the Secured Assets either as one lot or as strip sale
   b) By invoking the provisions of SARFAESI Act (it is however clarified that Recovery Agent will only act as an Agent of the Authorised Officer nominated by the Bank for exercising powers under SARFAESI Act, 2002.)

c) To render assistance to the Recovery Officer and assist in the Recovery process , be it through the Debts Recovery Tribunal or any other Court of Law, or Tribunal or other appropriate forum,
d) By such other means or action decided in consultation with / with the consent and under the overall supervision and direction of authorised representative of Bank in writing.

ARTICLE III

Commercial Terms: The fees payable for the recoveries will be as follows:

Table (a)

Recovery	Amount payable on the amount realized on sale of assets and also on recovery made for the upgradation/closure of accounts.
Recoveries up to Rs. 1.00 lakh	10 % (of recovery)
Above Rs.1.00 lakhs and up to Rs.25.00 lakhs	Rs.10,000/- plus 6 % over and Above Rs.1 lakh (of recovery)
Above Rs.25.00 lakhs and up to Rs.100.00 lakhs	Rs.154000/- plus 5 % over and Above Rs. 25.00 lakhs (of recovery)
Above Rs.100 lakhs	Rs.529000/- plus 3 % over and Above Rs. 100 lakhs (of recovery)

**The total fee payable per account is capped at Rs.15.00 lakhs

(b) Unsecured Loans: - For Salary loans, personal loans etc. where no security is available the fee payable is fixed at 10.00 % of the recovery. (Revised from 2.50%) The total fee payable under this category shall not exceed Rs.10.00 lakhs**.**

(C) Incentive for recovery over and above the benchmark price : When the recovery effected is more than 150% of the benchmark price, an incentive of 5% will be paid for the amount recovered over and above the 150% of benchmark price. This incentive is capped at

Rs.5.00 lakhs. (Same as existing policy) However this is payable only when our liability is more and entire proceeds will be adjusted to our loan account.

(d) Incentive for recovery of long pending NPAs:

To give more thrust to the recovery of long pending NPAs an additional fee of 2% is offered for recovery of NPAs aged more than FIVE years.

(e) When account is closed under OTS or proceedings stayed by DRT / Other Courts after assigning to Recovery Agent.

(i) Generally assignments should be given to Recovery Agents for doing all necessary activities so as to result in recovery / resolving the matter to its logical end.

(ii) In case, after the initiation of the recovery process by the Recovery Agent, the account is settled by OTS or the recovery proceedings are stayed by the conditional orders, the fees payable to the Recovery agent is fixed @ 8% of the amount offered by way of OTS / amount recovered by conditional orders subject to a maximum of Rs. 5.00 Lakhs.

In the category (a), out of Pocket expenses that may be incurred by Recovery Agent for taking physical possession including obtaining order from DM/CMM/CJM will be reimbursed by Bank on declaration basis.

1. For property value up to Rs.1.00 Crs: Rs.35,000/- (Negotiable)

2. For property value of Rs.1.00 Crs to Rs.5.00 Crs: Rs.50,000/- (Negotiable).

3.For property value of Rs.5.00 Crs and above Rs.1,25,000/- (Negotiable).

This amount will be paid only if concrete steps have been taken/substantial progress has been made by the Recovery Agent in the recovery process.

The detailed guidelines in this regard will be issued by way of SOP.

Seizure:

Fee structure for seizure of vehicles / tractors etc. is given below.

a. For seizure of tractors / vehicles, besides actual expenses, fee of Rs. 5,000/-
b. For scouting for bidders and arranging sale, a fee of Rs. 5,000/- can be paid if sale materializes and recovery is affected.

ARTICLE IV

Representations and Warranties

1. **R A and "IB" hereby represent that they are duly incorporated validly existing and in good standing under applicable laws;**
2. R A further represents that it has full corporate power and / or authority to enter into this Agreement (relevant only for R As who are companies and not for partnership firms); and
3. R A further represents and warrants that it shall discharge its duties and functions in accordance with all applicable laws, rules, regulations and directives. Further, that it shall not undertake any activity which is unlawful, illegal and shall take utmost care to ensure that no damage is caused to the assets and Bank is not exposed to any adverse publicity / claims from borrowers / guarantors / third parties for their not following the legally permissible means / procedures. In taking such measures, it shall be ensured by Recovery Agents that Principles of Natural Justice and the guidelines laid down in Indian Bank Model Code for Collection of Dues and Repossession of Securities (CDRS Code) is adhered to.
4. The R A shall take steps towards possession of assets of the borrower in a SARFAESI proceeding only in accordance with the provisions of SARFAESI Act.

ARTICLE V

Powers and Duties:

1. The relationship between IB and the R A shall be of principal and agent and all decisions taken by IB in respect of any settlement / compromise offer shall be final and binding on the R A.
2. The R A is required to perform in consultation with / with the consent and under the overall supervision and direction of Authorised Officer /representative of IB in writing and all decisions taken by the Authorised Officer / representative of IB shall be binding on the RA.
3. The R A is required to maintain confidentiality of customer information received by them from the Bank during the period of contract and also after termination/expiry of the term of the contract. This obligation of confidentiality shall continue to be binding and applicable without

any limit in point of time, except and until such information enters the public domain. The R A shall not disclose any confidential information or any materials derived there from the Bank to any other person or entity other than the persons who have a need to access and knowledge of the said information solely for the purpose of facilitating / expediting recovery, viz., in the nature of giving publicity for the intended sale, making discreet enquiries about the guarantor/mortgagors, procuring prospective bidders, etc. and/or only with the express written consent of the Bank. Upon termination / expiry of the term of the contract and upon written demand from the Bank the R A shall return copies of materials / extracts/ notes, etc. received form the Bank within 7 days of receipt of notice and comply with all the obligations thereto. If the R A commits breach of the said terms of the contract pertaining to confidentiality and adoption of CDRS code, as a consequence of which the Bank is put to irreparable harm/damage, the Bank is entitled to pursue all remedies provided at law or in equity, besides termination of contract forthwith without any further notice.

4. The R A may, where considered necessary, obtain within 7 days hereof loan files and other documents being maintained by IB (the particular branch) in respect of the Loans and prepare an index of documents / files so acquired and send a copy of such index for IB's (to the particular branch) records. The Recovery Agent shall take such measures as may be necessary for ensuring safe keeping of all the documents /files so acquired and shall take an insurance cover against fire, theft and other applicable policies from an insurance company acceptable to "IB".
5. The R A shall take such measures as may be necessary to identify potential buyers of the property / security, possession of which has been taken / will be taken under the SARFAESI Act or otherwise, to ensure quick recovery / realisation of the Assets.
6. All realisation /recoveries from the Borrowers shall be by way of Demand Draft / Pay order drawn in favour of such bank account as may be indicated by "IB" in writing and shall be forwarded to "IB" within 3 working days from the date of recovery and / or realisation or at such intervals as may be prescribed by "IB" in writing. The R A shall not accept any cash / or cheque in their favour from the borrowers / Guarantors. All amounts recovered / realised by Recovery Agent under this Agreement shall be remitted to "IB" without any deduction whatsoever. R A shall not have any lien / right of set off against "IB" in respect of the amounts realised / recovered under this Agreement.
7. The R A shall evaluate and obtain within a period of fifteen (15) days from the date of engagement, insurance for the secured assets and / or renew the insurance for the secured assets in the name of "IB", if not already insured / renewed. Bank's prior approval is required if obtaining insurance cover is not found necessary. Also, the R A shall take all such steps as may be necessary to ensure protection and preservation of such assets, including deployment of security personnel. The R A shall be responsible for the safe custody of the secured assets of which the R A takes possession.
8. The R A shall submit a monthly status report and such other information as may be prescribed by "IB" from time-to-time.
9. The R A undertakes and affirm that Bank as well as RBI official has a right to conduct audit periodically and during the course of inspection / audit conducted by authorised inspecting officials of the Bank and RBI, R A shall provide access to all our records / books / documents, to facilitate effective and meaningful inspection of our performance and at the same time ensure that there is no breach of confidentiality of customer information.
10. The R A undertakes and solemnly affirms that R A shall not resort to engaging sub-agents. R A agrees that they have no authority to engage sub-agents / sub-contractors and the same shall not be done without express prior consent / approval of the Bank.
11. The R A agrees that if there is any breach of the said terms of the contract on their part as a consequence of which the Bank is put to irreparable harm/damage, the Bank is entitled to seizure of the incriminating records / documents in R A's custody and

pursue all remedies provided at law or in equity, besides termination of contract forthwith without any further notice.

12. The R A undertakes to impart training to all our Partners / Employees in accordance with RBI directives and obtain certificate thereof. R A agree to produce the certificate to the Inspecting officials of the Bank, as and when called upon to do so.
13. For each asset entrusted to the RA, a Bench Mark realisable value will be decided by I B. If the amount realised by sale of assets through the recovery agent is equal to or more than the Bench Mark Realisable Value, then only the Recovery Agent is eligible for his fees.
14. Settlement involving deferred payment over a period of time shall be with the prior approval of the "IB". R A shall submit a settlement proposal indicating the settlement amount, schedule of payment and the sources from which payment would be made, for consideration of "IB".
15. The R A shall also be required to take actions / measures as stated in Schedule hereto in addition to the above mentioned duties.

ARTICLE VI

Miscellaneous

1. The R A shall indemnify and save harmless "IB", its successors and assigns, against any and all losses, damages, liabilities , suits, claims, counterclaims, actions, penalties, expenses, "IB" shall suffer as a result of :
   (a) any breach of Recovery Agent's warranties, representation, covenants, undertakings or agreement contained herein;
   (b) any failure on the part of the Recovery agent to observe or perform in any respect, any covenant or obligation or undertaking under this Agreement; or
   (c) Any claim made by the Borrower or any third party pursuant to which a court has passed an order and / or decree against IB on account of any action or omission of the R A in relation to the loans secured assets and / or the Borrower.

2. Both the parties shall not be liable for any failure to perform any of its obligations under this Agreement if the performance is prevented, hindered or delayed by a Force Majeur Event (defined below). Each party shall promptly inform the other of the existence of a Force Majeur Event and shall consult together to find a mutually acceptable solution. "Force Majeur Event" means any event due to any cause beyond the reasonable control of the Party, including, without limitation, fire flood, explosion, acts of God, civil commotion, strikes, riots, insurrection, war or Acts of Government.
3. This Agreement shall come into force from the instant date and can be terminated forthwith by either party for breach of any of the term of this agreement by issue of 15 days' notice to the other party. In the event of termination of the agreement, Recovery Agent will hand over possession of the movable / immovable assets, along with all the relative documents, etc. to the Authorised officer / representative of the Bank or any other person / agency identified by the Bank.
4. The Recovery Agent shall not be eligible for any fees / commission if they are not successful in realizing the dues within 6 months from the date of entrustment (except in the instances of Stays / Injunctions by Court of competent jurisdiction) and once the stays gets vacated, the 6 months will become operative. The Bank will terminate the services of the Recovery Agent for the particular assignment and any advance payment made to the Recovery Agent has to be refunded to IB fully.
5. "IB" and Recovery Agent hereby agree that they shall work together to resolve any disputes that may arise under this Agreement. 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. The place of arbitration shall be ……. / or (the place where the agreement will be executed) and the language of arbitration shall be English. The Parties shall jointly appoint a sole arbitrator.

6. This agreement has been executed in duplicate, duly stamped in accordance with law, each of which constitute one and the same instrument, the original to be retained by "IB" and the counterpart to be retained by the R A.
7. All communication and notices by the Recovery Agent to "IB" shall be in writing and may be addressed by facsimile, registered AD, courier to IB at the following address :

   IB.....

8. All communication and notices by "IB" to the R A shall be in writing and may be addressed by facsimile, registered AD, courier to the R A at the following address :

   _____Name and Address of the Recovery Agent_____

Schedule

Jobs / Functions to be entrusted to the Recovery Agent listed herein are in addition to already covered in the text. The following is the illustrative list and not exhaustive

Recovery Agent is required to perform the following jobs / functions on behalf of the Authorised Officer/ Bank in connection with enforcement of security interest under SARFAESI Act:

- Assist in taking possession of movable and immovable properties, as an agent of the Authorised Officer/Bank, in full compliance with the procedure laid down under the Rules :
- Assist the Authorised Officer/bank in preparing the Panchnama, inventory of the property, etc., as per procedure and forms prescribed;
- Arrange on behalf of the Authorised Officer/Bank, for storage, maintenance, preservation and locking up arrangement, as appropriate of the movable / fixed / immovable assets so taken over;
- Arrange on behalf of the Authorised Officer/Bank, for security , insurance, and / or any other action required to ensure safety of all the assets taken over;
- Assist the Authorised Officer/Bank in sending notices to debtors of the borrower – follow up collection;
- Assist the Authorised Officer/bank in arranging for valuation as per procedure laid down;
- Assist the Authorised Officer/Bank in arranging for sale of the assets as per any of the modes prescribed;
- Assist the Authorised Officer/Bank in making arrangement as regards in receipt of sale proceeds, issue of sale certificate and all other necessary formalities prescribed.
- Arrange for eviction of unauthorised occupants in the secured assets by taking up with appropriate authorities like CMM/DM etc.

Also listed below is the duties expected to be performed by the Recovery Agent:

- Follow up with the borrower / guarantor;
- Arranging for buyers of assets / properties pledged / hypothecated / mortgaged / or otherwise charged to the Bank;

- ❖ Collecting details of the personal properties of the borrowers / guarantors and exploring the feasibility of bringing them to sale;
- ❖ Arranging for marketing Bank's schema for compromise / one-time settlement with borrowers / guarantors if requested by IB;
- ❖ Restructuring / Rehabilitation including Mergers and Acquisition if requested by IB;
- ❖ Outright Sale;
- ❖ Such other means as the RA may decide in consultation with the IB, in writing, for unlocking funds in NPAs.

[The above is only an indicative list and if any other action is required to be taken by RA, those may be listed here.]

IN WITNESS WHEREOF the parties have signed these presents Agreement on the date, month and year as hereinafter appearing:

Signed and delivered by the within name
Authorised Officer / Representative,
Indian Bank by the hand of

Signed and delivered by the within name
Authorised Officer / Representative of the
Recovery Agent by the hand of
Witness: 1
Witness: 2