

Annexure IV: Draft Master Repurchase Agreement

This agreement is to be used for repos and reverse repos in securities legally approved in India for the purpose of repos and reverse repos transactions

Dated the

Between:

----- (Party A)

and

----- (Party B)

1. Applicability

(a) From time to time the parties hereto may enter into transactions in which one party, acting through a Designated Office, ("Seller") agrees to sell to the other, acting through a Designated Office, ("Buyer") securities against payment of the purchase price by Buyer to Seller, with a simultaneous agreement by the Buyer to sell to Seller securities equivalent to such securities at a certain date against the payment of the purchase price by Seller to Buyer. The transaction will be referred to as "Repos" in the books of Seller and "Reverse Repos" in the books of the Buyer.

(b) Each such transaction shall be referred to herein as a "Transaction" and shall be governed by this Agreement, including any supplemental terms or conditions contained in Annex -- hereto, unless otherwise agreed in writing. If Transactions are to be effected under this Agreement by either party as an agent, this shall be specified in Annex --, and provisions of Annex -- shall apply to such Agency Transactions.

2. Definitions

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3. Initiation; Confirmation; Termination

(a) A Transaction may be entered into orally or in writing at the initiation of either Buyer or Seller.

(b) Upon agreeing to enter into a Transaction hereunder Buyer or Seller (or both), as shall have been agreed, shall promptly deliver to the other party written confirmation of such Transaction (a Confirmation").

The confirmation shall describe the Purchased Securities (including identifying numbers, where applicable), identify Buyer and Seller and set forth-

(i) the Purchase Date;

- (ii) the Purchase Price;
 - (iii) the Repurchase Date;
 - (iv) the Repo Rate applicable to the Transaction;
 - (v) in respect of each party the details of the bank account[s] to which payments to be made hereunder are to be credited;
 - (vi) whether the Transaction is an Agency Transaction and, if so, the identity of the party which is acting as agent and the name, code or identifier of the Principal; and
 - (vii) any additional terms or conditions of the Transaction;
- and may be in the form of Annex -- hereto or may be in any other form which the party agree.

The confirmation relating to a Transaction shall, together with this Agreement, constitute prima facie evidence of the terms agreed between Buyer and Seller for that Transaction, unless objection is made with respect to the Confirmation promptly after receipt thereof. In the event of any conflict between the terms of such Confirmation and this Agreement, the Confirmation shall prevail in respect of that Transaction and those terms only.

(c) On the Purchase Date for a transaction, Seller shall transfer the Purchased Securities to Buyer or its agent against the payment of the Purchase Price less Haircut by the Buyer.

(d) Termination of a Transaction will be effected on the date fixed for Termination.

(e) On the Repurchase date, Buyer shall transfer to Seller or its agent Equivalent Securities against the payment of the Repurchase Price by Seller (less any amount then payable and unpaid by Buyer to Seller pursuant to paragraph 5).

4. Margin Maintenance

(a) If at any time either party has a Net Exposure in respect of the other party it may by notice to the other party require the other party to make a Margin Transfer to it of an aggregate amount or value at least equal to that Net Exposure.

(b) A notice under sub-paragraph (a) above may be given orally or in writing.

(c) For the purpose of this Agreement a party has a Net Exposure in respect of the other party if the aggregate of all the first party's Transaction Exposures plus any amount payable to the first party under paragraph 5 but unpaid less the amount of any Net Margin provided to the first party exceeds the aggregate of all the other party's Transaction Exposures plus any amount payable to the other party under paragraph 5 but unpaid less the amount of any Net Margin provided to the other party; and the amount of the Net Exposure is the amount of the excess.

(d) To the extent that a party calling for a Margin Transfer has previously paid Cash margin which has not been repaid or delivered Margin Securities in respect of which Equivalent Margin Securities have not been delivered to it, that party shall be entitled to require that such Margin Transfer be satisfied first by the repayment of such Cash Margin or the delivery of Equivalent Margin Securities but, subject to this, the composition of a Margin Transfer shall be at the option of the party making such margin Transfer.

(e) A payment of Cash Margin shall give rise to a debt owing from the party receiving such payment to the party making such payment. Such debt shall bear interest at such rate, payable at such times, as may be specified in Annex - and shall be repayable subject to the terms of this Agreement.

(f) Where Seller or Buyer becomes obliged under sub-paragraph (a) above to make a Margin Transfer, it shall transfer Cash Margin or Margin Securities or Equivalent margin Securities within the minimum period specified in Annex - or, if no period is there specified, such minimum period as is customarily required for the settlement or delivery of money, Margin Securities or Equivalent Margin Securities of the relevant kind.

(g) The parties may agree that, with respect to any Transaction, the provisions of sub-paragraphs (a) to (f) above shall not apply but instead that margin may be provided separately in respect of that transaction in which case-

(i) that Transaction shall not be taken into account when calculating whether either party has a Net Exposure;

(ii) margin shall be provided in respect of that Transaction in such manner as the parties may agree; and

(iii) margin provided in respect of that Transaction shall not be taken into account for the purposes of sub-paragraphs (a) to (f) above.

5. Income payments

Unless otherwise agreed-

(i) where the term of a particular transaction extends over an income payment date in respect of any Securities subject to that Transaction, Buyer shall on the date such income is paid by the issuer transfer to or credit to the account of the Seller an amount equal to the amount paid by the issuer;

(ii) where Margin Securities are transferred from one party ("the first party") to the other party ("the second party") and an Income Payment Date in respect of such securities occurs before equivalent Margin Securities are transferred by the second party to the first party, the second party shall on the date such income is paid by the issuer transfer to or credit to the account of the first party an amount equal to the amount paid by the issuer; and for the avoidance of doubt references in this paragraph to the amount of any income paid by the issuer of any Securities shall be to an amount paid without any withholding or deduction for or on account of taxes and duties notwithstanding that a payment of such income made in certain circumstances may be subject to such a withholding or deduction.

6. Payment and Transfer

(a) Unless otherwise agreed, all money paid hereunder shall be immediately payable. All securities to be transferred hereunder shall be transferred through the book entry system of a

Depository set up under the Depositories Act, 1996 or (ii) through the SGL System of Reserve Bank of India or (iii) through any other securities clearing system approved by Reserve Bank of India.

(b) Unless otherwise agreed, all money payable by one party to the other in respect of any Transaction shall be paid free and clear of, and without withholding or deduction for, any taxes or duties of whatever nature imposed, levied, collected, withheld or assessed by any authority having power to tax, unless the withholding or deduction of such taxes or duties is required by law. In that event, unless otherwise agreed, the paying party shall pay such additional amounts as will result in the net amounts receivable by the other party (after taking into account of such withholding or deduction) being equal to such amounts as would have been received by it had no such taxes or duties been required to be withheld or deducted.

(c) Unless otherwise agreed in writing between the parties, under each Transaction transfer of Purchased Securities by Seller and payment of Purchase Price by the Buyer against the transfer of such Purchased Securities shall be made simultaneously and transfer of Equivalent Securities by Buyer and payment of Repurchase Price payable by the Seller against the transfer of such Equivalent Securities shall be made simultaneously.

(d) Subject to and without prejudice to the provisions of sub-paragraph 6©, either party may from time to time in accordance with the market practice and in recognition of the practical difficulties in arranging simultaneous delivery of Securities and money waive in relation to any Transaction its right under this Agreement to receive simultaneous transfer and/or payment provided that transfer and/or payment shall, notwithstanding such waiver, be made on the same day and provided also that no such waiver in respect of one Transaction shall affect or bind it in respect of any other Transaction.

(e) The parties shall execute and deliver all necessary documents and take all necessary steps to procure that all right, title, and interest in any Purchased Securities, any Equivalent Securities, any Margin Securities shall pass to the party to which transfer is being made upon transfer of the same in accordance with this Agreement, free from all liens, claims, charges and encumbrances.

(f) Notwithstanding the use of expressions such as “Repurchase Date”, “Repurchase Price”, “Margin”, “Net Margin”, “Margin Ratio” and “Substitution” all right, title and interest in and to Securities and money transferred or paid under this Agreement shall pass to the transferee upon transfer or payment, the obligation of the party receiving Purchased Securities or Margin Securities being an obligation to transfer Equivalent Securities or Equivalent Margin Securities.

(g) Time shall be the essence in this Agreement.

(h) Subject to paragraph 9, all amounts payable by each party to the other under any Transaction or otherwise under this Agreement on the same date shall be combined in a single calculation of a net sum payable by one party to the other and the obligation to pay that sum shall be the only obligation of either party in respect of those amounts.

(i) Subject to paragraph 9, all Securities of the same issue, denomination and series, transferable by each party to the other under any Transaction or hereunder on the same date shall be combined in a single calculation of a net quantity of Securities transferable by one party to the other and the obligation to transfer the net quantity of Securities shall be the only obligation of either party in respect of the Securities so transferable and receivable.

7. Substitution

(a) A Transaction may at any time between the Purchase Date and the Repurchase Date, if Seller so requests and Buyer so agrees, be varied by the transfer by Buyer to Seller of Securities equivalent to the Purchased Securities, or to such of the Purchased Securities as shall be agreed, in exchange for the transfer by Seller to Buyer of other Securities of such amount and description as shall be agreed ("New Purchased Securities") being Securities having a Market Value at the date of the variation at least equal to the Market Value of the equivalent Securities transferred to the Seller.

(b) Any variation under sub-paragraph (a) above shall be effected, subject to paragraph 6(d), by the simultaneous transfer of the equivalent Securities and new Purchased Securities concerned.

(c) A Transaction which is varied under sub-paragraph (a) above shall thereafter continue in effect as though the Purchased Securities under that Transaction consisted of or included the New Purchased Securities instead of the Securities in respect of which Equivalent Securities have been transferred to the Seller.

8. Representations

Each party represents and warrants to the other that-

(a) it is duly authorised to execute and deliver this Agreement, to enter into the Transactions contemplated hereunder and to perform its obligations hereunder and has taken all necessary action to authorise such execution, delivery and performance;

(b) it will engage in this Agreement and the Transactions contemplated hereunder (other than Agency transactions) as principal;

(c) the person signing this Agreement on its behalf is, and any person representing it in entering into a Transaction will be, duly authorised to do so on its behalf;

(d) it has obtained all authorisations of any governmental or regulatory body required in connection with this Agreement and the transactions contemplated hereunder and such authorisations are in full force and effect;

(e) the execution, delivery and performance of this Agreement and the Transactions contemplated hereunder will not violate any law, ordinance, charter, bye-law or rule applicable to it or any agreement by which it is bound or by which its assets are affected;

(f) it has satisfied itself and will continue to satisfy itself as to the tax implications of the Transactions contemplated hereunder;

(g) in connection with this Agreement and each Transaction:

- (i) unless there is written agreement with the other party to the contrary, it is not relying on any advice (whether written or oral) of the other party, other than the representations expressly set out in this Agreement;
- (ii) it has made and will make its own decisions regarding entering into of any Transaction based upon its own judgement and upon advice from such professional advisers as it has deemed it necessary to consult;
- (iii) it understands the terms, conditions and risks of each Transaction and is willing to assume (financially and otherwise) those risks;

(h) at the time of transfer to the other party of any Securities it will have the full and unqualified right to make such transfer and upon such transfer of Securities the other party will receive all right, title and interest in and to those Securities free from any lien, claim, charge or encumbrance.

On the date on which any Transaction is entered into pursuant hereto, and on each day on which Securities, Equivalent Securities, Margin Securities or Equivalent Margin Securities are to be transferred under any Transaction, Buyer and Seller shall each be deemed to repeat all the foregoing representations. For the avoidance of doubt and notwithstanding any arrangements with Seller or Buyer may have with any third party, each party will be liable as a principal for its obligations under this Agreement and each Transaction.

1. Events of Default

(a) If any of the following events (each as “Event of Default”) occurs in relation to either party (the “Defaulting Party”, the other party being the “non-Defaulting Party”), whether acting as Seller or Buyer-

(i) Buyer fails to pay the Purchase Price upon the applicable Purchase Date or Seller fails to pay the Repurchase Price upon the applicable Repurchase date, and the non-Defaulting Party serves a Default Notice on the Defaulting Party; or

(ii) Seller or Buyer fails to comply with paragraph 4 and the non-Defaulting party serves a Default Notice on the Defaulting party; or

(iii) Seller or Buyer fails to comply with paragraph 5 and the non-Defaulting party serves a Default Notice on the Defaulting party; or

(iv) An Act of insolvency occurs with respect to Seller or Buyer and (except in the case of an Act of Insolvency which is the presentation of a petition for winding-up or any analogous proceedings or the appointment of a liquidator or analogous officer of the Defaulting party in which case no such notice will be required) the non-Defaulting Party serves a Default Notice on the Defaulting party; or

(v) Any representation made by Seller or Buyer are incorrect or untrue in any material respect when made or repeated or deemed to have been made or repeated, and the non-Defaulting Party serves a Default Notice on the Defaulting party; or

(vi) Seller or Buyer admits to the other that it is unable to, or intends not to, perform any of its obligations hereunder and /or in respect of any of the Transaction and the non-Defaulting Party serves a Default Notice on the Defaulting party; or

(vii) Seller or Buyer is suspended or expelled from membership of or participation in any securities exchange or association or other self-regulatory organisation, or suspended from dealing in securities by any government agency, or any of the assets of either Seller or Buyer or the assets of the investors held by, or to the order of, Seller or Buyer are transferred or ordered to be transferred to a trustee by a regulatory authority pursuant to any securities regulating legislation and the non-Defaulting Party serves a Default Notice on the Defaulting party; or

(viii) Seller or Buyer fails to perform any other of its obligations hereunder and does not remedy such failure within 30 days after notice is given by the non-Defaulting party requiring it to do so and the non-Defaulting Party serves a Default Notice on the Defaulting party;
Then sub-paragraphs (b) to (d) below shall apply.

(b) The Repurchase date for each Transaction hereunder shall be deemed immediately to occur and, subject to the following provisions, all Cash Margin (including interest accrued) shall be immediately repayable and Equivalent Margin Securities shall be immediately deliverable (and so that, where this sub-paragraph applies, performance of the respective obligations of the parties with respect to the delivery of Securities, the payment of the Repurchase Prices for any equivalent Securities and the repayment of any Cash Margin shall be effected only in accordance with the provisions of sub-paragraph (c) below).

(c) (i) The Default Market Values of the Equivalent Securities to be transferred, the amount of any Cash Margin (including the amount of interest accrued) to be transferred and the Repurchase Prices to be paid by each party shall be established by the non-Defaulting Party for all Transactions as at the repurchase date; and

(ii) on the basis of the sums so established, an account shall be taken (as at the Repurchase Date) of what is due from each party to the other under this Agreement (on the basis that each party's claim against the other in respect of the transfer to it of Equivalent Securities or Equivalent Margin Securities under this Agreement equals the Default Market Value therefor) and the sum due from one party shall be set off against the sum due from the other and only the balance of the account shall be payable (by the party having the claim valued at the lower amount pursuant to the foregoing) and such balance shall be due and payable on the next following Business Day.

(d) The Defaulting Party shall be liable to the non-Defaulting Party for the amount of all reasonable legal and other professional expenses incurred by the non-Defaulting Party in connection with or as a consequence of an Event of Default, together with interest thereon at Or, in the case of an expense attributable to a particular Transaction, the Pricing Rate (Repo Rate) for the relevant Transaction if the Pricing Rate is greater than.....

(e) If Seller fails to deliver Purchased Securities to Buyer on the applicable Purchase Date Buyer may-

(i) if it has paid the Purchase Price to Seller, require Seller immediately repay the sum so paid;

(ii) if Buyer has a Transaction Exposure to Seller in respect of the relevant Transaction, require Seller from time to time to pay Cash Margin at least equal to such Transaction Exposure;

(iii) at any time while such failure continues, terminate the Transaction by giving written notice to Seller. On such termination the obligation of Seller and Buyer with respect of delivery of Purchased Securities and Equivalent Securities shall terminate and Seller shall pay to Buyer an amount equal to excess of the Repurchase Price at the date of termination over the Purchase Price.

(f) If Buyer fails to deliver Equivalent Securities to Seller on the applicable Repurchase Date Seller may-

(i) if it has paid the Repurchase Price to the Buyer, require Buyer immediately to repay the sum so paid;

(ii) if Seller has a Transaction Exposure to Buyer in respect of the relevant Transaction, require Buyer from time to time to pay Cash Margin at least equal to such Transaction Exposure;

(iii) at any time while such failure continues, by written notice to Buyer declare that that Transaction (but only that Transaction) shall be terminated immediately in accordance with sub-paragraph © above (disregarding for this purpose references in that sub-paragraph to transfer of Cash Margin and delivery of Equivalent Margin Securities).

(g) The provisions of this Agreement constitute a complete statement of the remedies available to each party in respect of any Event of Default.

(h) Neither party may claim any sum by way of consequential loss or damage in the event of a failure by the other party to perform any of its obligations under this Agreement.

(i) Each party shall immediately notify the other if an Event of Default, or an event which, upon the serving of a Default Notice, would be an Event of Default, occurs in relation to it.

10. Interest

To the extent permitted under applicable law, if any sum of money payable hereunder or under any Transaction is not paid when due, interest shall accrue on such unpaid sum as a separate debt at the greater of the Pricing Rate (Repo Rate) for the Transaction to which such sum relates (where such sum is referable to a Transaction) and on a 365 day basis for the actual number of days during the period from and including the date on which payment was due to, but excluding, the date of payment.

11. Single Agreement

Each party acknowledges that, and has entered into this Agreement and will enter into each Transaction hereunder in consideration of and in reliance upon the fact that, all Transaction hereunder constitute a single business and contractual relationship and are made in consideration of each other. Accordingly, each party agrees (i) to perform all of its obligations in respect of each Transaction hereunder, and that a default in the performance of any such obligations shall constitute a default by it in respect of all Transactions hereunder, and (ii) that payments, deliveries and other transfers made by either of them in respect of any Transaction shall be deemed to have been made in consideration of payments, deliveries and other transfers in respect of any other Transactions hereunder.

12. Notice and Other Communication

(a) Any notice or other communication to be given under this Agreement-

(i) shall be in writing;

(ii) may be given in any manner described in sub-paragraph (b) below;

(i) shall be sent to the party to whom it is given at the address set out in Annex --.

(ii) Any such notice or other communication shall be effective-

(i) if in writing and delivered in person or by courier, at the time when it is delivered;

(ii) if sent by telex, at the time when the recipient's answer back is received;

(iii) if sent by facsimile transmission, at the time when the transmission is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);

(iv) if sent by registered mail or equivalent, at the time when the mail is delivered or its delivery attempted;

except that any notice or communication which is received, or delivery of which is attempted, after close of business on the date of receipt or attempted delivery or on a day which is not a day on which commercial banks are open for business in the place where that notice of other communication is to be given shall be treated as given at the opening of business on the next following day which is such a day.

(b) Either party may by notice to the other change the address, telex or facsimile number details at which notices or other communications are to be given to it.

13. Entire Agreement; Severability

This Agreement shall supercede any existing agreements between the parties containing general terms and conditions for Transactions. Each provision and agreement herein shall be treated as separate from any other provision or agreement herein and shall be enforceable notwithstanding the unenforceability of any such other provision or agreement.

14. Non-assignability; Termination

Subject to paragraph (b) below, the rights and obligations of the parties under this Agreement and under any Transaction shall not be assigned, charged or otherwise dealt with by either party without the prior written consent of the other party. Subject to the foregoing, this Agreement and any Transactions shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.

(a) Sub-paragraph (a) above shall not preclude a party from assigning, charging, or otherwise dealing with all or any part of its interest in any sum payable to it under paragraph 9(c) or (d) above.

(b) Either party may terminate this Agreement by giving written notice to the other, except that this Agreement shall, notwithstanding such notice, remain applicable to any Transaction then outstanding.

(c) All remedies hereunder shall survive Termination in respect of the relevant Transaction and termination of this Agreement.

15. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of India. Buyer and Seller hereby irrevocably submit for all purposes of or in connection with this Agreement and each Transaction to the jurisdiction of the courts of India.

16. No waiver etc.

No express or implied waiver of any Event of Default by either party shall constitute a waiver of any other Event of Default and no exercise of any remedy hereunder by any party shall constitute a waiver of its rights to exercise any other remedy hereunder. No modification or waiver of any provision of this Agreement and no consent by any party to a departure herefrom shall be effective unless and until such modification, waiver or consent shall be in writing and duly executed by both of the parties hereto. Without limitation on any of the foregoing, the failure to give a notice pursuant to sub-paragraph 4(a) hereof will not constitute a waiver of any right to do so at a later date.

[Name of Party]

By.....

Designation.....

Date

[Name of Party]

By.....

Designation.....

Date