

**DRAFT
HYPOTHECATION CUM LOAN AGREEMENT**

THIS AGREEMENT made this _____ day of _____ between _____ [hereinafter referred to as the "Borrower"] which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include his/her/its/their respective heirs, executors, administrators, nominees, attorneys, and legal representatives, successors in interest as the case may be of the **ONE PART**

AND

_____ (hereinafter referred to as the Lender which expression shall unless it be repugnant to the context or meaning thereof shall mean and include his/its successors and assigns of the **OTHER PART**.)

WHEREAS

- (a) The Lender is inter-alia engaged in the business of extending financial assistance for the purchase/refinance of motor vehicles, machinery and other assets (hereinafter referred to as **THE ASSETS**)
- (b) The Borrower(s) has requested the Lender for financial assistance for the purchase/refinance of vehicle/machinery/asset more fully described in **Schedule 1** of this Agreement, against the security of the said vehicle/machinery/asset, which is free from any encumbrance.
- (c) The Borrower (s) in consideration of having availed the loan facility, has agreed to abide by the terms and conditions stipulated by the Lender and more fully set out hereunder and in particular not to deal with Schedule mentioned / collateral asset, by way of sale, alienation, hypothecation, pledge or in any other manner whatsoever except as herein authorised by the Lender in writing, until the entire due amount under this Agreement is paid to the Lender.
- (d) The Lender, relying upon the above representations made by the Borrower(s) has agreed to provide the loan sought for to the Borrower(s), upon the terms and conditions stipulated herein.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS :

**ARTICLE 1
DEFINITIONS**

- 1.1. In this Agreement unless the context otherwise requires:
- (a) The terms "First Schedule" and "second schedule" mean the First and the Second Schedule to this Agreement;
 - (b) The term "Loan means the Loan referred to in Article 2.1 of this Agreement and the Second Schedule.
 - (c) The term "repayment" means the repayment of the principal amount of Loan, interest thereon, commitment and/or any other charges, premium, fees or other dues payable in terms of this

Agreement to the Lender, and means in particular, amortization provided for in Article 2.9 of this Agreement.

- (d) The term “prepayment” means premature repayment as per the terms & conditions laid down by the Lender in that behalf and in force at the time of repayment.
 - (e) The term “Asset” or “the said Asset” means the Vehicle or Machinery for the purchase/in respect of which the loan has been granted by the Lender to the Borrower(s) and which is hypothecated by the Borrower in favour of the Lender by way of security, more fully described in Schedule 1 of this agreement.
 - (f) The expression “rates and interest” means that rate of interest referred to in Article 2.2 of this Agreement.
 - (g) The expression “installment” means the amount of monthly payment specified in the second schedule, necessary to amortize the Loan with interest, over the period of the loan.
 - (h) The term “Post Dated Cheques” or “PDCs” means cheques drawn by the Borrower in favour of the Lender towards the amounts due.
- 1.2 The terms and expressions not defined herein shall, have the same interpretation and meaning as defined under the General Clauses Act, 1897.
- 1.3 All terms used in singular shall unless the context requires otherwise, include plural and a reference to one gender shall include all genders.

ARTICLE 2 LOAN, INTEREST, Etc.

2.1 Amount and term of Loan

The Borrower has agreed to borrow from the Lender and the Lender has agreed to grant the Loan to the Borrower for the purpose of purchase/in respect of the Asset, of a sum, as stated in the First and Second Schedules, on the terms and conditions herein set forth.

2.2 Interest

The rate of interest is as stated in the Second Schedule of this Agreement.

2.3 Details of Disbursement

In the case of purchase of new Assets, the loan amount may, at the option of the Lender, be disbursed by the Lender directly to the Dealer/Manufacturer and such disbursement shall be deemed to be disbursement to the Borrower. In case of loan against used Assets, the Lender shall determine the manner of the disbursement; i.e. either to the owner/seller of the Asset or to the Dealer or to the Borrower or to the person so authorized by the Borrower and such disbursement made to one or more persons as aforesaid shall be deemed to be the disbursement to the Borrower as contemplated under this Agreement.

2.4 Terms of Disbursement

Notwithstanding anything to the contrary contained herein, the Lender may, by notice to the Borrower, suspend or cancel further disbursements of the Loan if the Loan granted shall not have been fully drawn and shall not have been cancelled by the Lender. The Borrower, in such an event, shall be liable to refund to the Lender the amount already disbursed by the Lender, together with interest.

2.5 Processing Charges

The Borrower shall be liable to pay to the Lender a non-refundable, non-adjustable processing charges as may be levied by the Lender at the time of and together with the application for Loan.

2.6 Repayment of Loan

- (a) The repayment of the instalments shall be made by the Borrower. The details such as number, due dates and amount in respect of the installments are described in the Second Schedule. The repayment schedule is without prejudice to the right of the Lender to be paid on demand as contemplated under this agreement, the entire Loan amount along with other dues. Further, the computation/fixation of the Instalment will be without prejudice to the right of the Lender to re-compute the amount of instalments and interest thereon, including in case it is discovered at any stage that the instalments have been computed wrongly.
- (b) The Borrower agrees that time is the essence of the contract.
- (c) The payment of instalments shall commence and continue irrespective of delay/non-delivery of the asset to the Borrower by the Dealers/Manufacturer/Seller and notwithstanding any difficulties that the Borrower may be facing or any disputes, or grievances which the Borrower may have with or against the Dealers/manufacturer/ any person or in respect of the delivery of the asset or in respect of the asset itself.
- (d) No notice, reminder, or intimation will be given to the Borrower regarding his obligation to pay the instalment regularly on the due dates or presentation of any PDCs or insurance premium amount. It shall entirely be the responsibility of the Borrower to ensure prompt and regular repayment of the same.
- (e) Without prejudice to any other rights and remedies which the Lender may have under this Agreement and/or under the prevalent law, in the event of any delay by the Borrower in any payment to the Lender under this Agreement, the Lender shall be entitled to charge an additional interest at the rate of Rs. _____ per month for every Rs. 100 of the amount in arrears, whether of Loan, interest or any other charges payable herein. The aforementioned additional charges would not affect the obligation of strict compliance with repayment schedule, it being an essential condition for the grant of Loan.
- (f) Any dispute being raised about the amount due or interest computation will not entitle the Borrower(s) to withhold payment of any Instalment.

2.7 Mode of payment of the Instalment

- (a) Subject to the terms and conditions stipulated hereunder, the repayment shall be by way of cheques, or Post Dated Cheques or by ECS or in cash or by Demand Draft or any other accepted modes of transfer of funds permitted under the Indian Banking System to the Lender as per the second Schedule. The Borrower acknowledges that strict compliance by him with the repayment schedule is an essential condition for the grant of the Loan.
- (b) If one or more of the PDCs delivered by the Borrower are lost, destroyed or misplaced while in the custody of the lender, the borrower shall upon receipt of such intimation from the lender, replace the same with fresh cheques/DDs or pay cash.
- (c) It is agreed and understood by the Borrower that non-presentation of the cheques by the Lender due to any reason whatsoever will not affect the liability of the Borrower to repay the Loan. The Lender shall not in any way be responsible for delay, omission or neglect in encashment, damage or loss of any cheques (already given or to be given by the Borrower to the Lender in terms hereof) for any reason whatsoever.
- (d) Without prejudice to any other rights or remedies the Lender may have under this Agreement and/or under the prevalent law, the Borrower shall be liable to pay all charges as stated in the Schedule – 1A of the sanction letter which forms part of this Agreement.. The quantum of The levy of charge upon dishonouring of the cheque is without prejudice to the rights of the Lender under the Negotiable Instruments Act, as in force for the time being, and without prejudice to the other rights, which the Lender has under this Agreement or under law of equity. The Lender reserves his right to vary the charges stipulated in Schedule 1A from time to time with due intimation to the Borrower.

2.8 **Lender's right to alter, modify or restructure the instalments and transfer the account**

- (a) The Lender shall be entitled to, if the Lender deems fit in the circumstances, alter or re-schedule the instalments in such manner and to such extent as the Lender may, in his sole discretion, decide with due notice to the Borrower and upon getting his consent in writing, the repayment shall be made by the Borrower as per the said alteration and/or re-scheduling from the date on which the instalments are altered/ modified / restructured, notwithstanding anything stated in the second schedule.
- (b) On a request being made by the Borrower to the Lender for transfer of his account to any other party either existing or new, it is purely discretionary on the part of the Lender to consent or reject the said request. The Lender further agrees to communicate his decision on such request to the Borrower within 21 days from the date of receipt of such request.

ARTICLE 3 **SECURITY**

- 3.1 In consideration of the Lender having granted or agreed to grant to the Borrower the Loan facility, subject to the terms and conditions mentioned herein, the Borrower hereby hypothecates /agrees to hypothecate and create in favour of the Lender, an exclusive first charge of the Asset together with all accessories, in additions to or in the said asset whether present or future and improvements, renewals and replacements made or to be made on the Asset as detailed under the first Schedule, against which the Loan facility is being availed. In this regard the Borrower has also executed the irrevocable power of attorney in favour of the Lender. The Borrower also agrees and undertakes to

execute such further documents and complete such formalities as may be required by the Lender to perfect the charge of the Lender on the Asset.

- 3.2 The Hypothecation shall be deemed to take effect immediately upon signing of this Agreement or delivery of the Asset (s) whichever is earlier.
- 3.3. The charge created by the Borrower in Article 3.1 hereof shall stand as security for the due repayment by the Borrower of the Loan granted by the Lender to the Borrower and of all fees and interest, costs and expenses incurred or to be incurred by the Lender hereunder and all other monies payable by the Borrower to the Lender pursuant to the terms hereof.
- 3.4 The charge created by the Borrower herein shall continue unless and until the Lender issues a certificate discharging the security created herein and shall not affect , impair or discharge the liability of the Borrower by insolvency , arrangements with Creditors, mental disability or physical disability winding up (voluntary or otherwise) or by any merger or amalgamation, reconstruction , takeover of the management, dissolution or nationalization (as the case may be)of the Borrower.
- 3.5 If the Asset has not been delivered to or in the case of vehicle which has not been registered in the name of the Borrower at the time of execution of the Agreement, the particulars of the vehicle that are not available at such time and shall be intimated in writing by the Borrower to the Lender within one week of such delivery and/or registration and such particulars shall be read as a part and parcel of the Schedule hereunder as if they had been incorporated therein at the time of execution of this Agreement. The Borrower agrees not to take the plea that, since on the date of execution of this Agreement, the details of the Asset or any part thereof were not available, the charge is inoperative defective or invalid or in any way unenforceable.
- 3.6 The Borrower hereby confirms that the Borrower is aware of all the details of the Asset(s).
- 3.7 The Borrower has also executed a demand promissory note by way of security for the amount of Loan and interest thereon.
- 3.8 The Lender may require the Borrower to furnish such additional securities including guarantee(s) from third party, as the Lender may deem fit, in his sole discretion. In such an event the Borrower shall provide such additional security and in this regard execute such Agreements, undertakings, documents, power of attorney/s that may be required by the Lender. The Borrower shall not revoke or terminate any such contracts, agreements, undertakings, documents, etc., till all the amounts due and payable by the Borrower to the Lender under this Agreement have been paid in full and certified so by the Lender.

ARTICLE 4 APPROPRIATION OF PAYMENTS

- 4.0 The Lender shall have a right to appropriate any payments due and payable under this Loan Agreement and made by the Borrower towards dues as a whole or in part at the rate the Lender deems fit, towards the following:-
- (i) Repayment of Instalments
 - (ii) Costs, charges, expenses, insurance premium , statutory dues and other monies;
 - (iii) Interest on costs, charges, expenses and other monies;

- (iv) Service charges
- (v) Interest including additional interest, if any, payable in terms of the Loan Agreement
- (vi) Premium on prepayment
- (vii) Repayment of dues under any other contract/s viz. Tyre Finance, Fleet Card facility, Insurance Finance etc., Irrespective of the capacity either as borrower or guarantor under the said contract/s.

**ARTICLE 5
PRE-DISBURSEMENT CONDITION**

- 5.0 Prior to disbursement of the Loan by the Lender, the Borrower shall furnish to the Lender the documents in proof of the payment made by him to the dealers/manufacturers/any person by way of his own contribution towards the cost of the Asset, and also the proforma/original invoice.

**ARTICLE 6
CONDITIONS FOR DISBURSEMENT**

- 6.0 The obligation of the Lender to make any disbursements under the Loan Agreement shall be subject to the following conditions :-
- (a) The Borrower shall create security, furnish the guarantee/s and execute the promissory note and all the other necessary documents to the satisfaction of the Lender as stipulated in Article 3 above in favour of the Lender;
 - (b) All authorizations, Resolutions as required under the existing laws have been duly complied with.
 - (c) Non-existence of any event of default by the Borrower;
 - (d) No extraordinary or other circumstances should have occurred which shall make it improbable for the Borrower to fulfill its obligation under this Agreement .

**ARTICLE 7
REPRESENTATION OF THE BORROWER**

- 7.1 The Borrower represents that:-

The Borrower has adequate legal capacity to enter into and execute this Agreement. The Borrower is not restricted in any manner or prevented in any manner under any law, statute, judgement, decree, contract or otherwise from executing and undertaking the obligations in the manner provided in this Agreement and upon execution, this Agreement shall be a valid legally binding commitment of the Borrower enforceable against him in terms of this Agreement. The Borrower (in case of being a company) is duly organized and existing under the laws of India with power to enter into this Agreement to which he is or he shall be a party.

- 7.2 No encumbrance of any nature or any lien exists over the Asset hypothecated herein.

- 7.3 He has obtained and done all that is necessary to give full force and effect to all authorizations, approvals, consents, licenses and permissions required in relation to this Agreement, collateral documents and the hypothecated Asset and the Borrower has paid all taxes and statutory dues payable by him and has not received any demand, claim or notice from any person.
- 7.4 The Borrower shall ensure at all times during the subsistence / existence of the Agreement that the person who drives the vehicles(s) holds a valid driving licence entitling him to drive the vehicle(s).
- 7.5 There are no suits, actions or claims pending or are likely to be filled or taken (whether civil or criminal or otherwise) against the Borrower of any nature whatsoever.

**ARTICLE 8
COVENANTS / UNDERTAKINGS OF THE BORROWER**

- 8.0 The Borrower shall
- (a) promptly notify any event or circumstances, which might operate as a cause of delay in the completion of this Agreement.
 - (b) duly and punctually comply with all laws and Rules etc. and make payments of all charges levied or leviable in respect of the Asset. He shall be solely responsible for use, operations and maintenance of the Asset and any liability arising therefrom.
 - (c) promptly inform the Lender of any loss or damage to the Asset which he may suffer due to any force majeure or act of God, such as earthquake, flood, tempest, theft or typhoon, etc., or otherwise.
 - (d) Reimburse or pay to the lender such amount as may have been paid or payable by the lender to the Central or State Government on account of any tax and levies on the loan by the Central or State Government. The reimbursement or payment shall be made by the Borrower as and when called upon to do so by the Lender.
 - (e) not sell, lease, transfer, create charge, hypothecate or create encumbrance of any nature whatsoever, or surrender or otherwise part with possession of the Asset, in any manner whatsoever without the consent in writing of the Lender. Any direct or indirect transfer of the Asset would be deemed to be a criminal breach of trust and a case of cheating, entitling the Lender to file / pursue FIR / or a criminal complaint against the Borrower. The said hypothecated Assets are in the custody of the Borrower in his capacity as a Bailee.
 - (f) maintain the Asset in good order and condition and will make all necessary repairs, additions and improvements thereto during the pendency of the Loan.
 - (g) maintain sufficient balance in the account of the drawee bank for payment of PDCs issued by him and honour the same on presentation.
 - (h) shall continue to pay all public demands such as Income Tax and all other taxes and revenues payable to the government of India or to the government of any State or to the local authority, and he hereby confirms that, at present, there are no arrears of such taxes and revenues due and outstanding.

- (i) in case of Asset being a new vehicle, get the Asset registered with the appropriate authority under the Motor Vehicles Act, 1988 and shall get the charge of hypothecation on the vehicle(s), created or to be created, duly endorsed and recorded in the certificate of registration in favour of the Lender. In the event of the Asset being a used vehicle, the Borrower shall ensure that requisite endorsement is made on the RC book of the Vehicle(s) indicating hypothecation of such Asset(s) in favour of the Lender, prior to disbursement of loan.
- (j) submit a copy of the registration certificate relevant to the Asset being a vehicle for which the Loan has been taken after taking delivery of such vehicle(s).
- (k) That the borrower/s shall submit the original invoice/bills of the asset financed within one week from the date of purchase of asset.
- (l) not apply for any duplicate Registration book for the Asset, being a vehicle, otherwise than by obtaining prior consent thereof from the Lender for endorsing his charge on the vehicle(s).
- (m) inform the Lender, in writing, of any damage to or theft of the Asset, lodging of any claim with the insurance company in respect of the Asset, or of loss, destruction or misplacement of the Registration Book of the Asset or the insurance policy relating to the Asset, immediately upon such damage or lodgment of claim. In such an event, the Lender may, without prejudice to his other rights under this Agreement, in law or equity, require the Borrower to take such steps as may be necessary to protect the interests of the Lender.
- (n) pay all rates, assessments, taxes and other outgoings which may be assessed, imposed, or payable for the hypothecated Asset, by the Government, Municipal Corporation, Regional Transport Authority or any other Authority and, produce receipt for such payment. In the event, such amounts are paid by the Lender, the borrower shall reimburse all such amounts together with interest to the Lender.
- (o) not suffer or allow to suffer any attachment or distress to the hypothecated Asset or any parts thereof or allow anything that may prejudice or endanger the security herein without the express consent in writing of the Lender.
- (p) undertake to do such acts, deeds, assurances, matters and things as may be required by the Lender for further assuring and confirming the security created herein and the rights, powers and remedies hereby conferred and execute such document(s) at his own cost as may be required in this regard.
- (q) indemnify and agree to keep the Lender indemnified and hold harmless from and against all costs, expenses, claims and actions (including third party liability in case of accidents, damage or otherwise) and make good all payments including legal costs, fees and costs to take possession, insurance and selling of the Asset. He shall also be liable for expenses incurred by the Lender along with interest thereon while pursuing any remedy under the Negotiable Instruments Act, Criminal Procedure Code or at any other forum.
- (r) ensure that he is fully acquainted with the Rules of the Lender, as informed from time to time.

**ARTICLE 9
REVISION IN THE PRICE OF THE ASSET**

9.1 If the price of the Asset is revised upwards after the date of signing of the Agreement, then and in that event the Borrower shall be liable to pay the additional amount required for acquiring the asset(s) at such revised price and the Lender shall not be liable to pay any additional amount by way of Loan or otherwise for such revision in price of the asset(s). In such a case, the Lender shall be at liberty to cancel this loan transaction and also collect refund of the amount paid to the Dealer / Manufacturer as booking price or otherwise from the dealer / manufacturer, without prejudice to any other provisions of this Agreement.

**ARTICLE 10
DELIVERY**

- 10.1** The Borrower shall be solely responsible for taking delivery of the Asset and documents relating to such Asset from the manufacturer or the dealer or any other person and for verifying fitness, quality condition etc., of the same. The Borrower shall intimate the Lender immediately upon taking delivery of the Asset.
- 10.2** It is agreed and understood by the Borrower that the Lender shall not be liable for any delay in delivery from the manufacturer or the dealer or any other person, any demurrage, cost or the quality / condition / fitness of the Assets. The Borrower absolves the Lender from any liability in respect of the above and the Borrower shall not withhold the payment of the stipulated Instalments on the pretext that the Asset has not been delivered or for any reason whatsoever.

**ARTICLE 11
USE**

The Borrower undertakes not to use the Asset either by himself or through his servants or agents for any purpose not permitted by the terms and conditions of the Insurance Policy nor do or permit to be done any act or thing which might render the Insurance invalid, and in particular, not to use the Asset / vehicle for transport of goods, articles, etc., in contravention of any of the provisions of the Acts of Central and State Legislatures relating to Forest, Excise, Customs, Sales-tax, Prohibition, Opium, Railway Property, Unlawful Possession, Gold Control, etc., and not to engage it in any unlawful or illegal activity and the Borrower shall be responsible for any damage or loss sustained by the Lender in respect of the Asset, as a result of such wrongful or unlawful use. The Borrower undertakes to use the Asset only for the use indicated by the Borrower to the Lender and as stated in this Agreement, at his own costs and expenses.

**ARTICLE 12
INSURANCE AND MAINTENANCE**

12.1 In order to safeguard the security for the Loan and to ensure that the Lender's lien is marked on the insurance, the Borrower shall, immediately after signing this Agreement, keep the Asset insured against any loss or damage by accident or fire or other perils under a Comprehensive Policy including the risks against strikes, riots, Civil Commotions, floods and such wider liability to which the asset is normally exposed and unlimited third party liability risks with an Insurance Company approved by the Lender and shall punctually pay all premia and other sums required for keeping the said insurance effective throughout the period of this Agreement and deliver any insurance policy, cover note or receipt to the Lender. Each Insurance policy shall be In the name of the Borrower with the necessary

endorsement in favour of the Lender as 'loss payee' and additional endorsement in favour of the Lender bankers if so required by the Lender.

- 12.2** The Borrower shall not use the Asset for any purpose not permitted by the terms and conditions of the insurance policy and shall not do or permit to be done any act or thing, which might render the insurance invalid.
- 12.3** Notwithstanding the obligation of the Borrower to insure the Assets, the Lender may at his sole discretion pay the insurance premium on behalf of the Borrower, by being a facilitator and recover the same from the Borrower. However, any non-payment on the part of the Lender due to any reason will not affect the liability of the Borrower to pay the necessary insurance premium to the insurance company and to keep the Asset insured.
- 12.4** The first claim on any insurance proceeds shall be that of the Lender. The Borrower hereby irrevocably authorizes the Lender to claim insurance proceeds to safeguard the interest of the Lender and appropriate the proceeds thereof against the dues of the Lender. The Borrower will comply with all directions of the Lender with respect to insurance policy and its renewal as stipulated from time to time.
- 12.5** The Borrower shall at his cost and without undue delay, carry out repairs to the Asset occasioned by any accident or for any other reason and shall produce bills in respect of Insurance claim to the Insurance Company for settlement. If there are no over dues against the Borrower, the Lender shall pass on to him such benefits as the Lender receives from the Insurance Company in respect of claim.

ARTICLE 13 EVENTS OF DEFAULT

The following events shall constitute "Events of defaults":-

- 13.1** The Borrower failing to repay the Loan or any fee, charges, in the manner herein contained and any one of the instalments or any other amount due hereunder (remains unpaid after the date on which it is due; or
- 13.2** The Borrower (in case of being an individual) dies or takes any step(s) with a view to his being made insolvent in any jurisdiction or with a view to the appointment of a receiver, trustee or similar officer of any of his assets; or
- 13.3** If the Borrower (in case of being a corporate body or a partnership firm) takes any action or other steps are taken or legal proceedings are initiated by any third party against the Borrower for winding up, dissolution or reorganization or for the appointment of a receiver, trustee or similar officer on its assets, particularly on the hypothecated asset(s) or
- 13.4** If the Borrower sells, encumbers or transfers or seeks to sell, transfer, create encumbrance on the hypothecated Asset in any manner whatsoever without the express consent in writing of the Lender; or
- 13.5** The Borrower fails to pay any insurance premium for the hypothecated Asset or the bank charges for dishonoured PDCS/ECS in accordance with the terms and conditions hereof; or

- 13.6 the hypothecated Asset being confiscated, attached, taken into custody by any authority or is subjected to any execution proceedings; or
- 13.7 The Borrower failing to pay any tax, impost, duty or other imposition or to comply with any other formalities required to be completed in respect of the hypothecated Asset under law from time to time; or
- 13.8 The hypothecated Asset being stolen is untraceable for any reason whatsoever; or
- 13.9 The Assets is distrained, endangered or damaged in any manner or rendered unfit for use or bodily injury is caused to the third party by accident with the Asset; or
- 13.10 Any of the PDCs/ECS delivered or to be delivered by the Borrower to the Lender in terms and conditions hereof is not honoured for any reason whatsoever on presentation; or
- 13.11 Any instruction being given by the Borrower for stop payment of any PDCs/ECS given as per Article 2.10, for any reason whatsoever; or
- 13.12 The Borrower failing to supply a copy of the registration certificate of the Asset being the vehicle with hypothecation endorsement in favour of the lender; or
- 13.13 Any circumstance arises which gives reasonable grounds in the opinion of the Lender that it is likely to prejudice or endanger the hypothecated Asset or the interest of the Lender therein or under this Agreement; or
- 13.14 The Borrower failing to file the particulars of the Asset as provided in the Agreement; or
- 13.15 The Borrower committing breach of any of the terms, covenants, undertakings and conditions herein contained or any information given or representations made by the Borrower to the Lender under this Agreement or any other document submitted by the Borrower being found to be inaccurate or misleading; or
- 13.16 There exists any other circumstances, which in the sole opinion of the Lender, jeopardizes the Lender's interest.
- 13.17 The Borrower being declared insolvent bankrupt or [in case of company any winding up or liquidation proceedings being filed against the Borrower]; or
- 13.18 Any default being committed by the Borrower in discharging his liabilities under any other Agreement entered into between the Lender and the Borrower; in any capacity.

ARTICLE 14 LENDER'S RIGHT

- 14.1(A)** Upon occurrence of any/all of the aforesaid events of default, the Borrower shall be liable to pay the following to the Lender within 10 days from the date of receipt of notice from the Lender.
- (a) Arrears of instalments;
 - (b)** Instalments for the remaining period of the agreement;

- (c) Additional interest at the rate specified in this Agreement on the principal outstanding and on the other amounts due;
- (d) all other sums and charges of whatsoever nature, including, but not limited to interest on account of default in payment of insurance premia, and on account of other taxes.

14.1(B) However, in extraordinary circumstances where there is a likelihood of the Borrower alienating or secreting or keeping the Asset beyond the reach of the Lender or the Borrower using the Asset for unlawful purposes or the Borrower subjecting the Asset to abnormal wear and tear and /or alienating such other Assets of the Borrower which provide additional cover to the Lender for recovery of the amount due under the agreement, the Lender shall be entitled to take such steps including seizure of the Asset without any notice to the Borrower.

14.2 In the event of failure of the Borrower in complying with the demand, the Borrower shall be bound to surrender the asset to the Lender at the cost of the Borrower at such location, as the Lender may designate, in the same condition in which it was when the loan was granted, ordinary wear and tear excepted, failing which, the Lender shall be entitled to seize the Asset wherever it is, without any further notice. The Borrower shall not prevent or obstruct the Lender from taking possession of the Asset. For this purpose, the Lender's authorised representatives, employees and agents will have unrestricted right of entry and shall be entitled to enter upon the premises, or garage, or godown, where the Asset shall be lying or kept, and to seize the Asset. In the event of the Borrower not cooperating, the Lender, if necessary, has the right to break open any such place where the Asset is believed to be kept and to seize the Asset. The Lender will be well within his rights to use tow-van or any carrier to carry away the Asset. The Borrower shall be liable to pay any towing charges and any other expenses incurred by the Lender in connection with the seizure of the Asset and for its sale etc.

14.3 After seizure of the Asset by the Lender or surrender by the Borrower, the Lender's authorised representatives, employees, officers and agents will prepare an inventory of the Asset. The Lender will send a notice, after seizure or surrender of the Asset by the Borrower granting the Borrower 10 days time to settle the contract and to take back the vehicle. The Borrower shall, in the event of failing to settle the contract within the time limit mentioned above, deliver all original documents relating to the Asset, including the RC book, Tax token, Permit and Insurance Certificate/Policy etc., in the case Asset being vehicle, if the said documents were not available in the vehicle at the time of seizure or surrender and shall render all assistance including execution of necessary documents for transfer of the Asset in favour of the Lender or his nominees or his agents or the purchaser of the Asset identified by the Lender. If however, the Borrower fails to render necessary assistance for transfer of the Asset, the Lender shall be entitled to take all such steps unilaterally as may be necessary to facilitate early sale of the Asset.

14.4 Neither the Lender, nor his agents, officers, nominees shall be in any way responsible and liable and the Borrower hereby agrees not to make the Lender or his officers, agents or nominees liable for any loss, damage, limitation, or otherwise for any belongings and articles that might be kept or lying in the hypothecated Asset at the time of taking charge and / or possession or seizure of the hypothecated Asset.

14.5 The Borrower shall pay the costs of seizure / surrender, the expenses incurred by the Lender after seizure / surrender, including garage rent etc. The Borrower shall acknowledge delivery of the Asset together with the documents if the Borrower repays the amount due to the Lender in full to the satisfaction of the Lender and the Lender agrees to return the Asset to the Borrower. The Lender may,

at his sole discretion, also agree to release the Asset on part payment of the dues on such undertaking/ conditions which the Lender may prescribe after obtaining delivery receipts addressed to the Lender which is an acknowledgement that the Borrower has taken delivery of the Asset in the same condition in which it was seized / surrendered together with the documents. The Borrower shall not raise any dispute nor make any claim regarding seizure of the Asset or condition of the Asset or any documents and articles kept in the Asset at the time of seizure / surrender of the Asset.

- 14.6 The Lender shall, in any / all the aforesaid events of default, be entitled to and the Borrower hereby irrevocably authorizes the Lender to sell / transfer / assign the Asset either by public auction or by private treaty or otherwise and appropriate the proceeds thereof towards repayment of all the outstanding amounts from the Borrower to the Lender under this agreement.
- 14.7 If the sale proceeds are not sufficient to meet all the dues of the Lender, the Borrower shall be liable to pay for any deficiencies after the said appropriation. In case there is any surplus after adjusting the dues of the Lender, the same shall be refunded to the Borrower. Nothing contained in this Article shall oblige the Lender to seize or sell the Asset and the Lender shall be entitled to proceed against the Borrower or Guarantor(s), if any, independently of such security, particularly when the Lender is deprived of seizing the Asset for any reason whatsoever.
- 14.8 The Borrower shall not be entitled to raise any objection regarding the regularity of the sale and / or actions taken by the Lender nor shall the Lender be liable / responsible for any loss that may be occasioned from the exercise of such power and / or may arise from any act or default on the part of any broker or auctioneer or other person or body engaged by the Lender for the said purpose.
- 14.9 The Lender shall be entitled to recover from the Borrower all expenses (including legal costs on full indemnity basis) incurred by or on behalf of the Lender in ascertaining the whereabouts of the Asset, taking possession, garaging, insuring, transporting and selling the Asset and of any legal proceedings that may be filed by or on behalf of the Lender to enforce the provisions of the agreement. It is expressly clarified that the remedies referred to hereinabove shall be in addition to and without prejudice to any other remedy available to the Lender either under this agreement, or under any other Agreement / undertaking, or in law or equity.
- 14.10 Notwithstanding anything to the contrary contained in the Indian Contract Act, the Lender or his officers, agents or nominees shall not be in any way responsible for any loss, damage, limitation, or depreciation that the hypothecated Asset may suffer or sustain on any account whatsoever whilst the same is in the possession of the Lender or its officers, agents or nominees or because of exercise or non-exercise of the rights, powers, or remedies available to the Lender or its officers, agents or nominees and all such loss, damage or depreciation shall be debited to the account of the Borrower howsoever the same may have been caused.

ARTICLE 15 GUARANTEE

If the Lender requires, the Borrower shall furnish guarantee(s) issued by a third party acceptable to the Lender, as and by way of additional security, in the Form provided by the Lender.

ARTICLE 16 PREPAYMENT

If the Borrower desires to prepay the Loan earlier than as indicated in the second Schedule, foreclosure/prepayment charges as indicated in the first Schedule shall be payable by the Borrower on the balance outstanding on the date of such foreclosure/prepayment in addition to the Loan. The prepayment shall take effect only when cash has been paid in or cheques have been cleared.

ARTICLE 17 SECURITISATION

The Borrower expressly recognizes and accepts that the Lender shall be absolutely entitled and has full power and authority to sell, assign or transfer in any manner, in whole or in part, and in such manner and on such terms as the Lender may decide, including reserving a right to the Lender to retain his power hereunder to proceed against the Borrower on behalf of the purchaser, assignee or transferee, any or all outstanding and dues of the Borrower, to any third party of the Lender's choice without reference to or ;without written intimation to the Borrower. Any such action and any such sale, assignment or transfer shall bind the Borrower to accept such third party as creditor as exclusively or as a joint creditor with the Lender, or as creditor with the right to the Lender to continue to exercise all powers hereunder on behalf of such third party and to pay over such outstandings and dues to such third party and or to the Lender as the Lender may direct. The Borrower acknowledges and undertakes to pay to third parties the difference between the Loan amount outstanding and the amount received by the Lender in the event of transfer of the portfolio to a third party. The third party shall have authority of the Borrower(s) to collect the due amounts.

ARTICLE 18 LENDER'S RIGHT TO APPOINT AGENCY

The Borrower expressly recognizes and accepts that the Lender shall, without prejudice to his right to perform such activities himself or through his officers or servants, be absolutely entitled and shall have full powers and authority to appoint one or more third parties of the Lender's choice and to transfer and delegate to such third parties the right and authority to collect on behalf of the Lender the instalments / interest other charges due to the Lender under this Agreement and to perform and execute all acts, deeds, matters and things connected therewith or incidental thereto including sending notices of demand, visiting the residence or office of the Borrower or otherwise contacting the Borrower for receiving the amount due.

ARTICLE 19 SET-OFF AND LIEN

- 19.1 Notwithstanding anything contained in this Agreement, the Lender shall have a lien over all the Assets of the Borrower(s) in the Lender's possession and control and a right of set off against any monies due to the Lender from the Borrower and to combine all accounts of the Borrower(s) for recovery of the Lender's dues hereunder.
- 19.2 The Borrower agrees to the right of the Lender to retain and hold all the securities till repayment of the entire dues or till realization of outstanding amount of loans subject to any legitimate right, claim or lien or any other claim the Lender may have against the Borrower. The Lender shall be entitled to retain the securities till all the claims are settled / paid subject to the notice sent to the Borrower with particulars about the remaining claims.
- 19.3 It is hereby agreed and understood by the Borrower that, In the event of Borrower(s) defaulting in payment of the instalments/ charges / fees, without prejudice to the right of termination, the Lender shall have the right to set-off the amount in the Borrower's account that it may be holding with the Lender with the amount in respect of which the default has been committed under this agreement.

**ARTICLE 20
NOTICES**

- 20.1 A certificate / notice in writing signed by an officer of the Lender stating the amount at any particular time due shall be conclusive evidence both against the Borrower and Guarantor(s), if any.
- 20.2 Any change in address of the Borrower, shall be notified to the Lender in writing within one week. Any notice, letter and other documents shall be sent to the address as stated in this Agreement, or the address notified by the Borrower, by registered post with acknowledgement due or by post or by courier or by any other means of transmission of documents like fax message or electronic mail service. The notice, letter, other documents sent by registered post with acknowledgement due or by post shall be deemed to have been received by the addresses 48 hours after it has been despatched.
- 20.3 In all correspondence, the Agreement number / vehicle number should be quoted.
- 20.4 All correspondence shall be addressed to the Lender mentioned in the description of parties appearing in the preamble to this Agreement.

**ARTICLE 21
PARTIAL INVALIDITY**

If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent for any reason including by reason of any law or regulation or government policy, the remainder of this Agreement and the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. Any invalid or unenforceable provision of this Agreement shall be replaced with a provision, which is valid and enforceable and most nearly reflects the original intent of the unenforceable provision, in a mutually agreeable manner.

**ARTICLE 22
LAW, JURISDICTION, ARBITRATION**

- 22 (a) All disputes, differences and / or claim arising out of or in connection with this Agreement whether during its subsistence or thereafter shall be settled by arbitration in accordance with the provision of the Arbitration and Conciliation Act, 1996, or any statutory amendments thereof and shall be referred to the sole arbitration of an Arbitrator nominated by the Lender. The award given by such an Arbitrator shall be final and binding on the parties to this Agreement.

It is a term of this agreement that in the event of such an arbitrator to whom the matter has been originally referred dying or being unable to act for any reason, the Lender, in such circumstances, shall appoint another person to act as arbitrator. Such a person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor.

- (b) The venue of arbitration proceedings shall be at_____.

- (c) The arbitrator so appointed herein above, shall also be entitled to pass an Award on the hypothecated asset and also on any other securities furnished by or on behalf of the Borrower.

ARTICLE 23
ENTIRE AGREEMENT

This Agreement (including the first and the second Schedules) along with the documents executed or to be executed by the Borrower in favour of the Lender pursuant to this Agreement shall constitute the entire agreement between the Parties hereto with respect to its subject matter.

ARTICLE 24
DISCLOSURE BY THE LENDER

It is acknowledged by the Borrower that the Lender shall be entitled to make such enquiries about the Borrower by themselves or through their authorized person and also to disclose the information pertaining to the Borrower to any credit bureau, or other Person as the Lender may deem fit, and the Borrower hereby agrees and undertakes not to dispute or question the same in any manner whatsoever. The borrower unconditionally agrees and acknowledges that, in case of any default in the repayment the principal amount or interest or any other dues on the due dates, the lender/ RBI/Civil shall have the right to disclose details of the default and /or other information and the name of the borrower as defaulter.

ARTICLE 25
TERM AND TERMINATION

This Agreement shall come into effect from the date of this Agreement and shall terminate only upon the Borrower making full repayment to the Lender of the Loan, interest thereon and all other charges and the dues payable by the Borrower, to the Lender under this Agreement.

ARTICLE 26
MISCELLANEOUS

26.1 Any letter or statement exchanged between the parties herein with reference to this agreement shall be treated as part and parcel of this agreement.

26.2 Amendments

“No modification or amendment of the terms of this agreement except to the alteration or rescheduling of the installments as provided under article 2.8(a) herein and no waiver of any of the terms or conditions hereof shall be valid or binding unless made in writing and duly executed by the lender and the borrower:.

26.3 Cumulative Rights

All remedies of Lender under this Agreement whether provided herein or conferred by statute, civil, law, common law, custom, trade, are cumulative and not alternative and may be enforced successively or concurrently.

26.4 Benefit of the Loan Agreement

The Loan Agreement shall be binding upon and to enure to the benefit of each party thereto and its successors or heirs, administrators, as the case may be.

26.5 Any delay in exercising or omission to exercise any right, power or remedy accruing to the Lender under this agreement or any other agreement or document shall not impair any such right, power or remedy and shall not be construed to be a waiver thereof or any acquiescence in any default, nor shall the action or inaction of the Lender in respect of any default or any acquiescence in any default, affect or impair any right, power or remedy of Lender in respect of any other default.

26.6 The Borrower's liability under this Agreement shall be joint and several.

**ARTICLE 27
ACCEPTANCE**

The Borrower hereby declares as follows:

27.1 He has read the entire Agreement and the details given in the Schedules. He shall be bound by all the conditions of the Agreement.

27.2 This Agreement and other documents have been explained to him in the language understood by him and he has understood the entire meaning of all the clauses herein.

27.3 He agrees that this Agreement shall be concluded and become legally binding on the date when the Borrower signs this Agreement.