

Tyre Loan Agreement

This Agreement made at Kolkata this..... day of Two Thousand and between MAGMA Fincorp Limited, a Public Limited Company incorporated under the Companies Act, 1956 and having its Registered Office at “Magma House” 24, Park Street, Kolkata – 700016 (hereinafter called “the LENDER”) which expression shall mean and include its successors and assigns of the FIRST PART

 _____ (Borrower), and _____

 _____ (Co-Borrower),

(Hereinafter called “the Borrower/s”) which expression shall mean and include the Co-Borrowers and each of its/his/their legal heirs, successors, administrators, executors, assigns and legal representatives of the SECOND PART
 AND

 (Hereinafter called “the Guarantor”) which expression shall mean and include its legal heirs, successors, administrator, executors, assigns and legal representatives of the THIRD PART.

WHEREAS

1. The Borrower/s is the existing customer of the Lender and has taken asset(s) on finance from the Lender under finance agreement more specifically mentioned in **Schedule -I** hereto, the repayment of which the Borrower/s is making as per the repayment schedule of that agreement (hereinafter called “the Existing Agreement”);
2. The Guarantor has offered to stand as a guarantor for the due performance of the terms and conditions of this Agreement by the Borrower/s;
3. The Borrower/s has requested the Lender to grant to the Borrower/s additional credit facilities/loan to be secured by the hypothecation of the existing asset(s) taken by him from the Lender under the said Agreement particulars of both where of are given in the **Schedule – I** hereto and which are hereinafter referred to as the “earlier credit facilities” and the “said Asset(s)”;
4. The Borrower/s has requested for the additional credit facilities (the “said credit facilities”) for the purpose of purchasing tyres of the assets financed under the finance agreement mentioned in schedule I hereto and has undertaken not to utilise the said credit facilities for any other purpose.
5. One of the conditions stipulated by the Lender for sanction and grant of the said credit facilities is that the Borrower/s shall execute in favor of the Lender an agreement, being these presents, to record, inter all the terms and condition of the said sanction, and in consideration of the Lender having agreed to sanction the said credit facilities the Borrower/s hereby executes these presents;

NOW THIS AGREEMENT WITNESSETH AND THE BORROWER/S HEREBY AGREES AND UNDERTAKES AS FOLLOWS:

1. LOAN AMOUNT, INTEREST AND REPYAMENT:

- 1.1 Subject to the other terms and conditions herein contained, the Lender shall grant/has granted to the Borrower/s the said credit facilities/loan for the purpose of purchasing tyres of the assets financed under the finance agreement, particulars whereof are given in Schedule – I hereto.
- 1.2 The Borrower/s has secured the earlier credit facilities by way of hypothecation and/or charge of the said asset(s) described in Schedule-I hereto as first, exclusive and paramount security the repayment of the dues under the Existing Agreement. The charge/hypothecation existing in favor of the Lender over and in respect of the said asset(s) shall be extended in order to act as security for repayment of the said credit facilities granted and/ or to be granted under these presents. In other words, the asset(s) described in Schedule – I hereto shall be charged and/or hypothecated unto and in favour of the Lender as security of repayment of the indebtedness of the Borrower/s under the Existing Agreement as well as under these presents. It is clarified that on repayment of the dues of the Borrower/s under the Existing Agreement, the charge/hypothecation over and in respect of the said assets(s) shall not stand discharged/released but shall continue to secure the balance sum due and payable under these presents for the said credit facilities. Likewise on repayment of the dues of the Borrower/s under this Agreement the charge/hypothecation over and in respect of the said asset(s) shall not stand discharged/released but shall continue, as before, to secure the balance sum due and payable under the Existing Agreement. The lender shall have the right to withhold NOCs of the said asset(s) till all the dues are paid under the credit facilities extender under these presents and the Existing Agreement.
- 1.3 (A) The Borrower/s shall pay interest on any overdue amount of the said credit facilities at the rate specified in the Schedule III hereto at such rate as may be decided by the Lender from time to time subject to the applicable directives issued by the Reserve Bank of India, if any.
 (B) The Borrower/s shall, in the addition to interest on any overdue amount, pay or reimburse to the Lender, as the case may be, interest tax and any other tax or other levy as may be levied on or in respect of the interest payment under these presents.
 (C) Notwithstanding anything to contrary herein contained, Lender shall be entitled to increase the rate of interest or any charges payable by the Borrower/s in terms of this Agreement after giving prior written notice to Borrower/s, subject to such increase not being contrary to directives, if any, issued by the Reserve Bank of India from time to time no further consent or concurrence of the Borrower/s shall be required in respect thereof. Such revision in the interest rate or charges shall take effect only prospectively. For the purposes of this Clause 1.3 (C), notice to the Borrower/s with respect to any changes or increase in the rate of interest or charges shall be communicated vide written notice to the Borrower .
- 1.4 The Borrower/s agrees and consents to receive tele calls, letters from MAGMA and/or its officials for informing about due

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dates, insurance renewal dates, outstanding amount under the Existing Agreement as well as under these presents and also to update or to pay the instalments and other dues under this Agreement and to renew the insurance of the said assets).

- 1.5 The Borrower/s agrees that the said credit facilities shall be repayable on demand and that Lender can, at any time, in its discretion, recall the said credit facilities by giving to the Borrower/s 7 (seven) clear working days' notice in writing. It is clarified that the repayment schedule provided in Schedule III is without prejudice to Lender's aforesaid right to call in the entire loan amount to be paid on demand along with all other dues in respect thereof arising in pursuance thereof.
- 1.6 The EMIs shall be repayable as per the Schedule – III and strict compliance with the repayment scheme is an essential condition for the grant of the said credit facilities. Time is of the essence of the contract in so far as it relates to the punctual and timely payment of the installments specified in Schedule – III of these presents.
- 1.7 **The Borrower/s agrees to pay MAGMA interest on any overdue amount at the rate of 3 percent per month compounded monthly as compensation on the amount of any sum overdue including any sums including that on any sums overdue on account of taxes, fees, fines, penalties, insurance premium(s), duties, repairs and supplies which may become due from the Borrower/s to MAGMA in respect of the vehicle. But this provision shall not in any way affect or prejudice the right of MAGMA as provided herein and specifically with respect to Clause (5) "Event of Default, Rights & Remedies thereon" of the Agreement to recover possession of the said asset.**
- 1.8 In the event of the Borrower/s committing a default in the payment of any sum due under this agreement, whether by way of payment of any installment specified in Schedule – III hereof or any part or portion thereof or payment of any sum towards interest on any overdue amount, costs and/ or other charges as may be levied by the Lender or if the Borrower/s commit default or breach of any other terms and conditions of this Agreement or under any instrument executed in respect of the said facilities the Lender shall, without prejudice to its other rights and liabilities and in addition to being entitled to terminate this Agreement, also be entitled to terminate the Existing Agreement and to demand payment of all sums due and payable there under. For the purpose of clarification, any default committed by the Borrower/s in connection with this Agreement as specified herein above shall also be deemed to be an event of default under the Existing Agreement thereby entitling the Lender to all rights and privileges resulting and/or being a concomitant to and/or associated with the termination of the Existing Agreement as mentioned in Schedule – I hereto.
- 1.9 The Borrower/s shall also execute a Demand Promissory note as and by way of security.

2. CONSIDERATION – OBLIGATION TO PAY INSTALMENTS ABSOLUTE AND NOT CONDITIONAL

- 2.1 The Borrower/s shall pay to Lender on the execution hereof, amounts as per Schedule-III hereto, punctually and promptly at the Registered Office of the Lender at 'Magma House', 24 Park Street, Kolkata- 700016 on the due dates, whether previously demanded or not.
- 2.2 The Borrower/s shall duly perform and observe all the terms and conditions contained in this Agreement and the covenants on his part to be performed and observed and shall in the manner aforesaid, pay to the Lender the agreed monthly/bimonthly/ quarterly sums by way of installment s and shall also pay to the Lender all other sums of money which may become due and payable by the Borrower/s under this Agreement.
- 2.3 The Borrower/s shall pay the installments along with all interest on any overdue amount and other amounts payable under this Agreement as specified in the Repayment Clause in the Schedule III hereto to Lender at its registered office mentioned herein above. The Borrower/s confirms having perused, understood and agreed to the Lender's method of calculation installments and agrees/ undertakes to abide by the same without any demur or objection.. The Lender shall be entitled to re-compute the installment if the Lender varies the interest rate. The payment of installments shall commence and continue as per the Schedule – III hereto. Any dispute or difference whatsoever shall not entitle the Borrower/s to withhold or delay payment of any installment or other sum. The Borrower/s shall make payment of all amounts payable under this Agreement without any set off.
- 2.4 The Borrower shall pay all Installments and other amounts under this Agreement free and clear of, and without deductions or withholding tax unless the Borrower is required to do so, in which case the amount of the installments and any other amounts under this Agreement (in respect of which such deduction or withholding for Tax is required) shall be increased to the extent necessary to ensure that the Lender receives an amount net of any deduction or withholding, that is equal to the amount the Lender would have received if no such deduction for Tax was made from the Borrower's payment.
- 2.5 All the payments, if the Lender so decides, may be collected through post-dated cheques handed over at the registered office of the Lender towards any payment due to the Lender and submission of such post-dated cheques shall be deemed to be an unconditional and irrevocable authority given by the Borrower/s to the Lender to present the cheques delivered in advance on their respective dates and/or within the period of their validity. The Lender shall be entitled to present the said post-dated cheques for payment on or after their respective due dates and the Borrower/s shall not in any event and in any circumstance instruct the Lender not to deposit the said cheques or any of them or stop payment of any of the cheques and if notwithstanding the above the Borrower/s issue any such instruction, the same shall be considered null and void. **In the event of any dishonor of a cheque, without prejudice to the other rights of Lender, Borrower/s shall be liable to pay to the Lender penalty at the rate as mentioned herein below in Schedule – III hereto or such other amount as may be stipulated by the Lender from time to time in accordance with the Lender's policies, guidelines, etc.**
- 2.6 The Borrower may, if he so chooses, issue standing instructions to the bank in which the Borrowers has an account, to debit the account of the Borrower/s every month and credit such account as directed by the Lender for the value of the installments due through Electronic Clearing System (Debit Clearing) as notified by the RBI ("ECS Method")
- 2.7 The Lender may also consider a request of the Borrower/s not to take -post dated cheques for the full amount as stated in clause 2.5 above covering all the installments but instead take only a few post dated cheques which can be used in case of any outstanding payment of dues under this Agreement by Borrower/s after prior intimation of the said dues. Such post dated cheques may also be used by the Lender in case of failure of ECS System of payment by Borrower/s for any reason whatsoever. For such post dated cheques the Borrower/s gives all undertaking as mentioned in clause 2.5 above with respect to post dated cheques.
- 2.8 The Borrower/s has agreed to deliver and has delivered to the Lender post-dated cheques drawn on an acceptable Bank for the monthly/ quarterly installments and the Borrower/s warrants that the cheques will be honored on first presentation. Any non-presentation of the cheque(s) due to any reason/or any omission on part of the Lender to collect the said cheques from the Borrower/s shall not affect the liability of the Borrower/s to pay the installments or other dues. The Borrower/s agree/s to replace the said cheques/issue fresh cheques if required by the Lender and/or pay the installment(s) by draft/cash, and replaced cheque shall also form security for repayment of the loan.
If any cheque given by the Borrower/s to the Lender is dishonored for any reason whatsoever then without prejudice to the Lender's other rights (including those under chapter XVII of the Negotiable Instruments Act, 1881) for every cheque which is dishonored the Borrower/s shall be liable to pay to the Lender a sum as specified in Schedule-III hereto as penalty for the dishonor of the cheque on its first and its every subsequent presentation. Dishonor of any cheque(s) may be treated as an event of default by the Lender making the Borrower liable for 'Cheque Bouncing Penalty'.
- 2.9 The acceptance by the Lender of any payment which is less than payment in full of any amount due and owing at such time shall not constitute a waiver of the Lender's right to receive payment in full at such time or at any prior or subsequent time, along with interest on any overdue amount and other charges as may be applicable to the balance amount.
- 2.10 Notwithstanding any instructions issued to the contrary by the Borrower/s, the Lender may appropriate, at its absolute discretion, any money/ installment received from the Borrower/s as follows:-
FIRSTLY, towards the costs, charges and expenses incurred by the Lender for receipts of recovery of such sums;
SECONDLY, towards interest on any overdue amount and other money payable but unpaid;
THIRDLY, toward the installments due and payable under this Agreement;

LASTLY, towards any other dues owed by the Borrower/s under any other agreement entered into with the Lender as a Borrower/s/hirer/guarantor.

- 2.11 Magma may at its sole discretion, from time to time, under written intimation to the Borrower/s engage various external agencies and/or third parties (hereinafter to be referred as "identified agencies") for carrying out various functions on its behalf. In the event of receipt of such intimation by the Borrower/s on engagement of identified agencies, the various amounts, alongwith applicable service tax and other statutory charges, payable by the Borrower/s to MAGMA in terms of this agreement, as may be Identified In the said written intimation, (hereinafter to be referred as "identified charges/costs") may be paid by the Hirer/s to such identified agencies. Such payment of identified charges/costs to identified agencies shall be deemed to be sufficient discharge of the Borrower/s liability in terms of this Agreement with respect to those identified charges/costs. The identified agencies shall issue valid acknowledgment to the Borrower/s towards receipt of identified charges/costs by them
- 2.12 Any Indulgence granted by the Lender to the Borrower/s shall not constitute waiver of any right of the Lender which shall apply with equal force until payment of all the dues of the Lender by Borrower/s.

3. INSURANCE

- 3.1 The Borrower/s shall insure and keep the said asset(s) insured at its/his own cost in the joint names of the Borrower/s and the Lender and the name of the Lender shall be shown as "the Loss Payee". The Borrower/s shall insure the said asset(s) covering comprehensive risk including all risks including third party risks, earthquakes, riots, civil commotions, additional risk like floods and such wider liability to which the said asset(s) is normally exposed and unlimited third party liability to the Lender, failing which the Lender may (but shall not be bound to) insure the said asset(s) at the Borrower/s' cost. If the Lender pays the insurance premium or any other sum for insurance of the Asset(s) the Borrower/s shall forthwith reimburse the same to the Lender on demand and till such time shall be liable to pay interest on any overdue amount thereon till repayment. The first claim on any insurance proceeds shall be that of the Lender. The Borrower/s irrevocably authorizes the Lender to act at the Borrower/s risk and cost and on the Borrower/s behalf and take all necessary steps, action and proceedings and compromise any claim as the Lender deems fit to safeguard the interest on any overdue amount of the Lender and received the claim proceeds of the insurance policy. The Borrower/s shall not be entitled to raise any claim against the Lender in case the Lender chooses not to take any action. The Borrower/s will comply with all directions of the Lender with respect to the insurance policy, its renewal and proceeds as may be stipulated by the Lender from time to time.
- 3.2 Notwithstanding anything contained hereinabove the Lender shall have the option to insure the said asset(s) at the cost of the Borrower/s.
- 3.3 The Lender shall at its sole discretion appropriate the insurance claim proceeds.
- 3.4 In case of the total loss to the said Asset(s) or theft, if the amount settled by the insurance company is less than the amount due and payable by the Borrower/s under this agreement and under the Existing Agreement, the Borrower/s hereby undertake to immediately pay to the Lender the balance outstanding amount. In case of total loss to the said asset(s) of theft, if the claim with respect of the said asset(s) is not entertained and settled by insurance company within a reasonable period, then without prejudice to other rights of the Lender under this Agreement the Borrower/s undertakes to immediately pay to the Lender, on demand, all the amount due including future dues under this Agreement.

4. TERMS OF HYPOTHECATION

- 4.1 Despite the Borrower/s having possession of the said asset, the Lender shall continue to hold lien over the Asset and Borrower/s shall be deemed to hold possession in trust for the Lender.
- 4.2 During the subsistence of these presents the Borrower/s will not create any other debt or any mortgage, pledge, hypothecation, charge, lien or encumbrance upon or in respect of the said asset(s) or any part thereof in any manner whatsoever in favour of any person, firm or company or bank. The Borrower/s will not part with the possession, give on hire, lease leave and license or conducting arrangement or otherwise deal with the said asset(s) or any part thereof without intimation to the Lender and will not permit, suffer to be done any act, deed, matter or thing which may adversely affect or in any way prejudice the security created in favour of the Lender.

5. EVENTS OF DEFAULT, RIGHTS AND REMEDIES THEREON

- 5.1 The Borrower/s shall be deemed to have committed an act of default hereunder on the happening of , inter-alia, any or more of the following events, namely:
- Failure to make payment to the Lender of any part of the loan amount(s) or the installments or any part thereof under this Agreement or under the Existing Agreement or any other rate or charge or interest on any overdue amount due and payable under these presents or in respect of the said credit facilities or in respect of the earlier credit facilities.
 - The Borrower/s misusing the said credit facilities or the earlier credit facilities or any part thereof for any purpose other than for which the said credit facilities or the earlier credit facilities have been sanctioned.
 - The representations made by the Borrower/s being found to be untrue in any manner whatsoever.
 - The Borrower/s committing a breach of any of the terms, covenants and conditions herein contained or those contained in the Existing Agreement.
 - The Borrower/s committing a default in respect of any of the other obligations of the Borrower/s either under this Agreement and/or under the Existing Agreement and/or under the law or otherwise howsoever
 - The Borrower/s committing a breach of any other agreement entered into by the Borrower/s with the Lender including but not limited to the Existing Agreement mentioned in Schedule-I&II Hereto.
 - An insolvency notice or a winding-up notice is served on the Borrower/s or a receiver is appointed or attachment is levies on any of the Borrower/s's properties or asset(s);or
 - Whenever in the absolute discretion of Lender there is a likelihood of the due money not being paid and/or the hypothecated said assets(s) are likely to be transferred to defeat the security and the due amount of Lender.
 - On the Lender being informed or in the event that information comes to the knowledge of Lender that there is change in the constitution of the Borrower/s or that there is likely to be changed in the constitution of the Borrower/s and such change in the opinion of Lender would adversely affect the interest of Lender.
 - There existing any other circumstances which in the sole opinion of the Lender, jeopardizes the Lender's interests.
 - The Borrower/s transporting goods generally not permitted by law.
 - The Borrower/s not obtaining comprehensive insurance policy and into renewing it whenever due.

On the occurrence of any event of default as described herein above,, the rights of the Borrower/s under this Agreement as well as the Existing Agreement shall forthwith stand terminated with or without any notice to the Borrower/s and further all arrear installments and other dues and the installments due for the balance term of the Loan under this Agreement as well as under the Existing Agreement shall without any abatement thereupon become due and payable immediately by the Borrower/s and it shall be lawful for the Lender without prejudice to its any other right including right of suit, without notice to the Borrower/s to enter into any premises of the Borrower/s or at such other place the said asset(s) may be lying and to remove to take possession of the Asset(s), and sell or cause to be sold or otherwise dispose of all or any part of the said asset in such manner and/or mode as more particularly described in "Appendix A" hereto and apply the net sale proceeds of such sale in or towards liquidation of the amount outstanding to the Lender. In the event of the occurrence of an event of default under the Existing Agreement resulting in termination of the Existing Agreement the Lender shall, in addition to and without prejudice to the rights, powers and privileges specified in the Existing Agreement, have the rights and privileges as mentioned under Appendix A to this Agreement i.e. that of taking repossession of the said asset(s); disposing of the same and appropriating the net sale proceeds thereof in protanto satisfactions of the Lender's claim under this Agreement and the Existing Agreement as well as recovering all moneys due and payable to the Lender along with the interest on any overdue amount, costs, charges and expenses in consequence of and/or associated with the termination of this Agreement.

Likewise, in the event of the occurrence of an event of default under this agreement resulting in the termination of this agreement, the Lender shall, in addition to and without prejudice to the rights, powers and privileges as specified herein above, have and/or exercise and/or enjoy and exert all the rights and privileges reserved in favour of and enforceable by the Lender in consequence of and/or as a result of termination of the Existing Agreement.

Provided always that the Lender may at its sole option give back the possession of the said asset(s), whose possession has been retaken by it to the Borrower/s without affecting any of its rights hereunder or the Existing Agreement, without affecting the period, validity and enforceability of this agreement and all the terms and conditions of this Agreement and the Existing Agreement shall continue to be binding on the parties hereto.

- 5.2 Notwithstanding and without prejudice to the Lender's right to take possession/repossess the said asset(s) and dispose of it, the Lender shall have the right to sue the Borrower/s for all outstanding dues and payable hereunder this Agreement as well as under the Existing Agreement.
- 5.3 In the event of this Agreement or the Existing Agreement being determined as aforesaid, regardless whether the Lender has chosen to exercise any of its rights herein above contained, or those contained in the Existing Agreement, the Borrower/s shall on demand a) forthwith deliver to the Lender the said Asset(s) along with all certificates and policies of insurance and all other documents relating to the said asset(s) for the purpose of disposal thereof as if the same had been repossessed; b) forthwith pay and discharge to the Lender all outstanding dues and payable hereunder as well as under the Existing Agreement; c) pay all costs incurred or payable in putting the said asset(s) in a proper state of repair. It is expressly agreed that in no event will any sum already paid under the provisions of this Agreement or under the said Existing Agreement be refundable by the Lender to the Borrower/s;
- 5.4 Refusal of the Borrower/s or his men, agents or assigns or obstruction or delay in handing over to Lender the physical possession of the said asset(s) together with all documents/certificates relating thereto shall be deemed to be an unlawful detention and wrongful possession of the said asset(s) by the Borrower/s and shall constitute an offence under the applicable provisions of the Indian Penal Code besides such other actions or consequence that may lie against the Borrower under this Agreement or under law.
- 5.5 Any acceptance of payment by the Lender after determination of the Agreement as aforesaid, will not affect the determination of the Agreement as aforesaid the rights of the Lender following there from.
- 5.6 The Lender may at the risk and cost of Borrower/s engage one or more person(s) to collect the Borrower/s' outstanding and/or to enforce any security and may furnish to such person(s) such information, facts and figures as the Lender thinks fit and may delegate to such person(s) the right and authority to perform and execute all acts, deed matters and things connected therewith or incidental thereto as the Lender thinks fit.

6. GENERAL TERMS

- 6.1 If any provision of this Agreement is held by any court of law to be illegal, invalid or unenforceable under any present or future laws and if the other rights or obligations under this Agreement be not materially and adversely affected thereby.
- Such provision will be fully severable.
 - The remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or un-enforced able provision or by its severance here from.
- 6.2 Words in the singular shall include words in the plural and vice versa.
- 6.3 Words impairing the masculine gender shall include feminine and neutral gender and vice versa.

7. ASSIGNMENT

It is hereby mutually agreed and declared by the Lender and the Borrower/s as follows:-

- 7.1 The Lender shall be entitled to sell, assign, securitize or transfer, the Lender's rights and obligations hereunder including any security created by the Borrower/s for securing any of his obligation hereunder (including, without limitation, any interest that the Lender may have in any underlying asset that is the subject of this contract), to any Bank/FI/Entity of the Lender's choice in whole or in part and in such manner and on such terms as the Lender may decide (including reserving the right of the Lender to retain its power hereunder to proceed against the Borrower/s Guarantor on behalf of the purchaser, assignee or transferee) and the consent of the Borrower/s to such sale, assignment, securitization or transfer is hereby given and any notice in this regard to Borrower/s is hereby waived by the Borrower/s. Any such sale, assignment, securitization or transfer shall conclusively bind the Borrower/s and the Borrower/s shall treat such assignee as if such assignee were the Lender of the Borrower/s.
- 7.2 The Borrower/s shall not be entitled to the directly or indirectly assign his rights or obligations under this Agreement or under the Existing Agreement in part or in whole to any person. Both the parties understand, agree and take record of the fact that the Lender has approached Bank/ FI for financing of the transaction herein, which the Bank/FI have agreed subject, inter all, to the conditions as follows:-
- that in the installments payable hereunder shall be paid by the Borrower/s directly to the Bank/FI or its agents(s), If so required by the Bank/FI and this should be treated as valid discharge of the obligations of the Borrower/s under this Agreement.
 - that in the event of the Borrower/s failing to do so, the Bank/FI shall have against the Borrower/s, all the rights, which the Lender has against the Borrower/s and the Guarantor, including right to institute proceedings, recover rentals and possession of the said Asset(s) etc. more specifically enumerated in Clause 5 "Event of Default, Rights and Remedies thereon";
 - that the Bank/FI and/or its agent(s) shall have the sole right of collecting and enforcing payment of all the installments/outstanding dues from the Borrower/s in whatever manner, in its absolute discretion, it may consider necessary and prudent. The Lender shall, if so required by the Bank/FI, lend its name as plaintiff or co-plaintiff to any proceedings that the Bank/FI may institute against the Borrower/s/Guarantor, and
 - That the Borrower/s shall allow to the Bank/FI or any of their duly authorized representatives, to carry out diligence on the Borrower/s and inspection of the Asset(s) at all times till the Borrower/s has not discharged all his financial obligations under this Agreement;

8. PREPAYMENT OF THE LOAN

The Borrower/s may prepay the entire Loan under this Agreement and/ or under the Existing Agreement by giving minimum 30 days' notice in the writing of the Borrower/s' intention to prepay. The Lender shall be entitled to levy additional Interest at the rate stipulated in the Schedule- III hereto on the amount so prepaid. Prepayment will be the principal amount along with all the outstanding amount due and payable at the end of the month in which the repayment is made including additional interest on such principal amount prepaid. The repayment shall take effect only when cash has been paid or cheques have been cleared.

9. GUARANTEE

- 9.1 In consideration of the Lender giving loan to the Borrower/s under this Agreement as well as under the Existing Agreement and at the request of the Borrower/s, the Guarantor hereby guarantees repayment of the said loan together with all costs, charges and expenses payable hereunder and under Existing Agreement and agrees that his obligation shall be concurred with those of the Borrower/s in all respects as if he himself was the Borrower/s and hereby guarantees to the Lender:
- The regular and punctual payment of all sums due under this Agreement and under the Existing Agreement and the due performance and observance by the Borrower/s of the terms and conditions of this Agreement as well as under Existing Agreement;
 - To pay to the Lender all monies becoming due and payable to the Lender under this Agreement as well as under the Existing Agreement;
 - The liability of the guarantor in respect of the sums due and payable under this Agreement as well as under the Existing Agreement shall be joint and coextensive with that of the Borrower/s.

9.2 THE GUARANTOR HEREBY DECLARES

- a) that the Lender shall be at liberty to sue the Borrower/s and the Guarantor jointly and/ or severally shall be entitled to proceed against the Guarantor as if the guarantor is the principal debtor;
- b) that he/they shall have no claim against the Borrower/s and any other benefits to which sureties may otherwise be entitled.
- c) that the neglect or forbearance of the Lender in enforcing payment of any monies due under this Agreement or under the Existing Agreement of any other indulgence shown to the Borrower/s shall not release the Borrower/s or the Guarantor from the several obligations under this Agreement or in any way hereunder or under Existing Agreement and shall not in any way affect the rights of the Lender in respect thereof;
- d) that the indemnities/ guarantees contained herein shall remain in full force and effect for the entire period of this Agreement as well as the Existing Agreement and shall survive the termination of this Agreement as well as that of Existing Agreement in so far as they relate to events which occurred during the period of the aforesaid Agreement or any renewal hereof;
- e) not to assign, transfer, revoke, cancel, alter, modify or withdraw this guarantee without the prior written consent of the Lender.

10. ARBITRATION

All disputes, differences, claims and questions whatsoever arising out of this Agreement between the Lender and/or its representatives and/or its assigns on the one hand and the Borrower/s and the Guarantor(s) on the other hand touching and concerning these presents or anything herein contained or in any way relating to or arising from these presents shall be referred to a Sole arbitrator to be appointed by the Lender. The arbitrator so appointed shall formulate his own procedure and shall be entitled to dispense with filing of pleadings or taking of any evidence and shall be entitled to dispose off the proceedings in a summary manner. The arbitrator shall have summary powers. The proceeding of arbitration shall be in English language. The award of such arbitrator so appointed shall be final and binding on all the parties to this Agreement. Such arbitration proceedings will be at Kolkata. The sole arbitrator shall pronounce the award as expeditiously as possible after entering on the reference or within such time as he may deem expedient. Any notice by the arbitrator to the respondents by registered post at the address mentioned in the Agreement or to any changed address duly intimated in writing by the Borrower/s Guarantor(s), will be deemed to be sufficient notice to the parties. The costs and expenses of the arbitration proceedings shall be borne by the Borrower/s/ Guarantor(s). The arbitrator will not be required to give reasons in support of his award. The arbitrator shall hold his sittings at Kolkata.

11. The Borrower/s and the Guarantor(s) hereby agree, undertake and confirm that the terms and conditions of the existing Agreement dated _____ will be binding upon them including the Jurisdiction clause.

IN WITNESS WHEREOF the parities hereunto have set their respective hands the day, month and year herein above written

SIGNED AND DELIVERED by the Borrower
Above named

SIGNED AND DELIVERED by the Co-Borrower
Above name

SIGNED AND DELIVERED by the Guarantor
Above named

Witness:

- 1.
- 2.

SIGNED AND DELIVERED by MAGMA FINCORP LTD.
AS LENDER through its authorized representative.

Witness:

- 1.
- 2.

Date :

Place :

MFL/TYRE/0313/1/SKG/23513-2K/06514

CG

G

CB

B

SCHEDULE: I**DESCRIPTION OF CREDIT FACILITIES**

Loan of RS. _____ (words _____) disbursed in favour of Mr./Mrs./Ms _____ as per the instructions of the Borrower/s, the purpose of purchasing tyres (Details mentioned in Schedule II) of the assets financed under the finance agreement mentioned repayable in installments as per Schedule III hereto, secured by hypothecation of the following assets(s) which is/are already hypothecated to Magma Fincorp Limited under Loan cum Hypothecation/Hire Purchase Finance Agreement being proposal No.

_____ dated _____

S. No.	Registration No/ Machine SL.No.	Make _____	Chassis No. No	Engine No. No
1.				
2.				
3.				
4.				
5.				

BORROWER

CO-BORROWER

GUARANTOR (7 page)

SCHEDULE: II
(PLEASE SET OUT DETAILS OF THE TYRES)

SCHEDULE: III

- 1 Loan amount sanctioned : Rs. _____
(Words)
- 2 Rate of interest : % p.a.
- 3 **Interest on overdue amount : 3 % compounded monthly** :
- 4 Repayment:
- i No. of Monthly/quarterly installments
- ii Amount of each installment :

S.No.	No. of Installment	Amount of each Installment	Due Date (Period)	
			From	To
1				
2				
3				
4				
5				

- iii First Due Date _____
- iv Last Due Date _____
- v Advance Installment Rs. _____
- vi Processing and documentation Charges Rs. _____
- vii Prepayment Additional Interest @ _____%
- viii **Cheque Bouncing Penalty on each Presentation - RS. 1000/- per instrument**
- IN WITNESS WHEREOF the parties have executed three presents on the _____ day of _____ 20_____ in the member stated below.

Witness:

1. _____
BORROWER
2. _____
CO- BORROWER
- _____
GUARANTOR

(IN CASE THE BORROWER(S) IS/ARE NOT ABLE TO READ THE LANGUAGE IN WHICH THIS AGREEMENT IS DRAFTED)

Read, translated, explained to me/us by an independent third party in a language which I understand and I confirm that I have understood the contents hereof correctly and accurately

For

(Name of the Borrower)/ Co-Borrower/ Guarantor

LENDER

(if the Borrower/s/s Guarantor (s) is a Company, the person(s) authorized under the Board resolution, to sign on behalf of the Company under the Company as per the Articles of Association.)

APPENDIX, "A"

I. Process of Repossession, Release, Sale of the Asset

- (I) The Lender shall intimate the Borrower (s) of the occurrence of any of the events of default mentioned In Clause 5 (a) to (l) of this Agreement.
- (II) Any notice issued by the Lender to the Borrower (s) shall be deemed to have been received by the Borrower (s) on the expiry of 4 days from the date of dispatch of the said notice provided that such notice is sent by registered speed post and is addressed to the address of the Borrower (s) as mentioned in this Agreement or to any other address which the Borrower (s) may have duly communicated to the Lender as the alternative and/or altered postal address for receipt of communication.
- (III) Any change in the address of the Borrower (s) shall be notified to the Lender in writing. Any notice/letter/other communications/documents sent by the Lender to the Borrower (s) shall be posted/sent at the address as stated in this Agreement or the alternative/altered address notified by the Borrower (s) and shall be deemed to have received by the Borrower (s) in the manner mentioned in the preceding Clause hereof notwithstanding such notice/letter/other communications/documents being subsequently returned by the postal authorities for any reason whatsoever
- (IV) a) In the event the Borrower (s) fails and/or neglects and/or refuses to make payment of the entire outstanding' as communicated or rectify and/or remedy the default as stated in the aforesaid notice within a period of 7 days from receipt thereof, the Lender shall be entitled to take repossession of the said Asset (s)/ Vehicle (s) forthwith from whomsoever the same may be situated and for this purpose enter into any premises of the Borrower(s) or at such other places where the said asset(s)/vehicle(s) may be lying and to remove to take possession of the asset(s)/vehicle(s), without being liable or responsible to any person for trespass or otherwise, or take recourse to any of the other rights of the Lender as mentioned in Clause 5 of this agreement without being required to give any further or other notice, information, communication of any nature whatsoever and thereafter to sell and/or cause to be sold or otherwise dispose of all or any part of the said Asset (s)/Vehicle (s) or any fittings thereof in such manner as described more fully and particularly in Appendix 'A' hereto or exercise its other rights as mentioned in Clause 5 of this agreement.
- b) However, in case of any fraud detected by The Lender with respect to the Asset(s)/Vehicle(s) or in case the vehicle has been or is in imminent danger of being sold, transfer or alienated by the Borrower or is under threat of being confiscated for violation of any law of the land, then, under such circumstances The Lender shall not be under any obligation to give notice as per "Clause (IV) a" above ,before taking possession of the vehicle.
- (V) THE LENDER shall be entitled to take repossession of the said Asset, (a)vehicle (s) through its representative (s) duly authorized in that behalf or by any authorized representative (s) and/or agent (s) as it may appoint for the said purpose.
- (a) After taking possession, the authorized officer (s)/ authorized agent (s) shall make or cause to be made an inventory of the Asset (s)/vehicle (s) and deliver or cause to be delivered, a copy of such inventory to the Borrower(s) or to any person entitled to receive the same on behalf of the Borrower(s).
- (b) The authorized officer (s)/ authorized agent (s) shall keep the Asset (s)/Vehicle (s) taken possession either in his own custody or in the custody of any person authorized or appointed by him, who shall take as much care of the Asset (s)/Vehicle (s) in his custody as an owner of ordinary prudence would, under the similar circumstances, take of such property. Provided that if such Asset (s)/Vehicle (s) is subject to speedy -or natural decay, or the expense of keeping such Asset (s)/ Vehicle(s) in custody is likely to exceed its value, the authorized officer (s)/authorized agent (s) may sell it at once,
- (c) The authorized officer (s) /authorized agent (s) shall take steps for preservation and protection of the said Asset(s)/Vehicle (s) and insure them, if necessary, till they are sold or otherwise disposed of.
- (VI) After taking possession of the asset(s)/vehicle(s) as aforesaid The Lender will cause to send a pre-sale notice to the Borrower(s) calling upon the Borrower(s) to pay the entire dues specified in the notice, as per the agreement, within 7 days of receipt of the notice, failing, which the asset(s)/vehicle(s) will be sold as provided herein.
- (VII) If the Borrower (s) fails to comply with the pre-sale notice within the stipulated time and does not pay the entire outstanding dues the asset(s)/vehicle(s) will be sold in the manner provided herein and/or in a manner as closely resembling the same as possible.
- (VIII) In case the Borrower(s), for any reason, does not receive any notice of pre-sale within 7 days of repossession, the Borrower(s) is required to enquire about the status of the asset(s)/vehicle(s) from THE LENDER and also the total amount outstanding in the account of the said agreement and make payment thereof within 14 days of such repossession.
- (IX) In the event the Borrower (s) has any grievance with regard to any action initiated by the representative (s) authorized by the Lender and/or the agent (s) appointed for the purpose of taking repossession or the said Asset (s)/Vehicle (s) such grievance may be lodged with the Grievance Cell, Recovery at the Registered Office of the Lender at Magma House ,24 Park Street. Kolkata-700 016 within a period of not later than 7 days of the occurrence of such repossession.
- (X) The Grievance Cell, Recovery shall dispose of the grievances within a period of 7 days from the date of receipt of such complaint and communicate its decision to the Borrower.
- (XI) In the event the Borrower (s) makes payment of the entire 'Amount Outstanding' as communicated in the pre-sale notice mentioned hereinabove within the stipulated period, the Lender shall return back possession of the said Asset (s)/Vehicle (a) and also Issue a no-dues certificate to the Borrower(s).
- (XII) In the event the Borrower (s) fails and/or neglects and/or refuses to make payment of the entire 'Amount Outstanding' as communicated in the aforementioned pre-sale notice within the stipulated time the Lender shall be entitled to sell and/or otherwise dispose of the Asset(s)/ Vehicle(s) by adopting the following method and/or such procedure as may resemble the method specified below to the extent possible:-

II. Procedure of sale of asset(s)

- (1) The authorized officer (s) / authorized agent (s) may sell the Asset (s)/Vehicle (s) taken possession in one or more lots by adopting any of the following methods to secure maximum sale price for the Asset (s)/Vehicle (s), to be so sold :-
- (a) obtaining quotations from interested parties dealing in such assets in the usual course of its business or otherwise interested in buying such assets ; or
- (b) inviting tenders from the public ; or
- (c) holding public auction ; or
- (d) by private treaty.
- (e) by E- auction
- (2) The Borrower(s) will be entitled to refer to The Lender within 15 days of repossession of the vehicle(s) any prospective buyer(s) who are interested in purchasing the said vehicle along with their quotation. No reference shall be entertained after conclusion of the sale.
- (3) The Lender will ensure that, after considering all the quotations including the quotations of prospective buyers referred by the Borrower(s) as per the proceeding clause hereof, the said vehicle(s) is sold to the highest bidder.
- (4) The highest bidder will be asked to deposit the entire quoted amount with the Lender within a stipulated time failing which his bid will be cancelled.
- (5) On completion of the sale and realization of the sale proceeds, the net sale proceeds shall be first adjusted towards the liquidation of all outstanding then due to the Lender from the Borrower/s under the said Agreement and after such adjustment the surplus, if any towards the said credit facilities including interest on any overdue amount and other charges and expenses as per Clause 5 of this agreement and if any balance is left the same shall be refunded to the Borrower(s) within 30 days of receipt of the sale proceeds.
- (6) The Borrower (s) has made over to the Lender pre-signed transfer forms in order to enable the Lender to transfer the title in the said Asset (s)/Vehicle (s) in favour of the purchaser pursuant to the sale carried out in the aforesaid manner. The Borrower (s) has no objection to such pre-signed transfer form being utilized by THE LENDER even if the Borrower (s) had not participated in the sale and such sale took place by reason of the defaults committed by the Borrower (s).
- (7) Any form 35 and/or No. objection issued by The Lender in the name of Borrower(s) for the purpose of transfer of the said vehicle in the name of the purchaser and for deletion of the lien of The Lender shall not be construed as if The Lender has issued a no-dues letter to the Borrower(s) regarding payment of the amount outstanding under this agreement. If the sale proceeds of the said vehicle(s) is not sufficient to cover the outstanding dues, the Borrower(s) shall, as mentioned above, be liable to pay the balance outstanding to The Lender.
- (8) All parties agree, acknowledge and confirm that all disputes, differences, claims and counter claims arising out of and in connection with the repossession taken in respect of the Asset(s)/Vehicle(s) and/or the sale thereof in accordance with the procedure prescribed hereinabove and all actions taken by The Lender in terms of this agreement shall only be adjudicated in accordance with the Arbitration Clause forming part of this agreement. All parties agree, acknowledge and confirm that they shall not initiate any proceeding before any judicial or quasi-judicial or administrative authority including, inter-alia, the bodies constituted under the Consumer Protection Act ; the Motor Vehicle Act ; the Criminal Procedure Code or other Forums for Adjudication of disputes in connection with this Agreement.

ELECTRONIC CLEARING SERVICE (ECS Debit Clearing) Mandate Form

Authorization of the Borrower/s to make payment through ECS Debit Clearing from Salary/ Operating Account of the Borrower/s only.

1. Name of the Account Holder:

2. Particulars of Bank Accounts

i Bank Name: _____

ii Branch Name: _____

iii 9 digits MICR Code No. _____

iv Account Type (SB/CA/CC): _____

v Ledger No. / Folio No. _____

vi Account Number : _____

(As appearing on the cheque book)

I/We hereby declare that the particular given above are correct and complete. If the transaction is delayed or not affected at all the reasons of incomplete or incorrect information, I /we would not hold the user institution responsible. I/we agreed to discharge the responsibility expected of me as participant under the scheme.

I/ We hereby authorize the representative carrying this ECS Mandate Form to get it verified and executed.

Account Holder's Signature
(As in the Bank records)

Joint Account Holder's Signature
(All Joint Accounts Holder's are required to sign)
(As in the Bank records)

For Use of Account Holder's Bank only

We, hereby, certify that the particulars furnished above are correct as per our records, and we, hereby, declare that a copy of this form, duly complete, has been submitted to us.

Bank Stamp
:

Signature of the Authorized official of the Bank Branch

ELECTRONIC CLEARING SERVICE (ECS Debit Clearing) Mandate Form

Authorization of the Borrower/s to make payment through ECS Debit Clearing from Salary/ Operating Account of the Borrower/s only.

1. Name of the Account Holder:

2. Particulars of Bank Accounts

i Bank Name: _____

ii Branch Name: _____

iii 9 digits MICR Code No. _____

iv Account Type (SB/CA/CC): _____

v Ledger No. / Folio No. _____

vi Account Number : _____

(As appearing on the cheque book)

I/We hereby declare that the particular given above are correct and complete. If the transaction is delayed or not affected at all the reasons of incomplete or incorrect information, I /we would not hold the user institution responsible. I/we agreed to discharge the responsibility expected of me as participant under the scheme.

I/ We hereby authorize the representative carrying this ECS Mandate Form to get it verified and executed.

Account Holder's Signature
(As in the Bank records)

Joint Account Holder's Signature
(All Joint Accounts Holder's are required to sign)
(As in the Bank records)

For Use of Account Holder's Bank only

We, hereby, certify that the particulars furnished above are correct as per our records, and we, hereby, declare that a copy of this form, duly complete, has been submitted to us.

Bank Stamp
:

Signature of the Authorized official of the Bank Branch

