

Tripartite Agreement

(Among the (1) Successful Bidder (Borrower) (2) Bank and
(3) M.P. Ware Housing & Logistics Corporation

This Agreement made and executed at Bhopal on _____ day of _____
2022

BY AND AMONGST:

(1) Mr. _____ son of Mr. _____ an adult
Indian _____ Inhabitant
M/s _____ (Details of the Firm/Pvt. Ltd Company/ Partnership
Company etc.) Hereafter known as **Successful Bidder or Bidder (Borrower) or First
Party** (which shall, unless repugnant to the context or meaning thereof mean and
include his heirs, legal representatives/successors/executors or Administrator)

(which shall, unless repugnant to context or meaning thereof be deemed to mean
and include the Partners constituting the said Firm, the Survivors or Survivors of them
and Executor, Administrators or Assign of the last surviving partner.)

(which shall, unless repugnant to the context or meaning thereof be deemed to
mean and include its successors and assigns) **of the First Party.**

AND

(2) _____ Bank a Company incorporated under the Companies
Act 1956, hereinafter referred as '**Bank or Second Party**', carrying on its banking
business under the Banking Regulation Act 1949 and having its registered office
at _____

and having Branch Offices amongst other places at _____ District
represented through its Branch Head/Officer Shri. _____

(hereinafter called "the Bank", (which shall , unless repugnant to the context or meaning thereof include, its Successors and Permitted Assigns) of the **Second Party**:

AND

(3) MP Warehousing and Logistics Corporation (MPWLC), a body incorporated under the **Warehousing Corporation Act 1962** , having its Head office, **Office Complex, Block-A, Gautam Nagar, Bhopal**, hereinafter referred as '**MPWLC or Third Party**', duly represented by Shri..... vide the power granted of the **Third Party**:

(which shall, unless repugnant to the context or meaning thereof, mean and include, its **Legal Representatives/Successors/Executors or Administrator or Assigns**).

- A. WHEREAS, Pursuant to a notification bearing tender number _____ announcement date _____ a **Notices to the First Party, Inviting Tender, for Construction of Godown/Warehouse from existing CAP, to be constructed with private participation, was floated by the Third Party and Whereas, after the acceptance of the said Bid, the First Party, has been declared successful Bidder, for the construction of Godown/Warehouse at _____ within the stipulated timeline of _____ Months for the Capacity of_____.**
- B. WHEREAS, **the First Party** has been declared as a successful **Bidder** for the construction and maintenance of the **Godown/Warehouse** situate at _____ **and whereas**, the details of the property are mentioned in the Schedule marked as Annexure "A"
- C. WHEREAS, it has been agreed that, after the construction of the Godown, a lease agreement for a Guarantee period of _____ years binding between the **First Party** and the **Third Party** of this agreement, shall take place with the terms and conditions as mentioned in the Tender Document.

- D. WHEREAS, **The Thirty Party**, has satisfied **itself** with regard to capability for construction of **Godown** of the **First Party/successful Bidder** and also **his** ability for **completion of construction of Godown/Warehouse**, in view of terms and Condition of **Tender Documents**.
- E. WHEREAS, after being declared as successful **First bidder**, the **First Party** approached the **Second Party/Bank** for seeking Loan (Credit Facility) _____ for a amount of Rs. _____ for the construction of **Godown/Warehouse** and subsequently for the payment of the advance/payment to the Vendors/Suppliers/Contractors/ Labours etc.
- F. WHEREAS, the **Third Party** acknowledges, the application of the **First Party** to avail loan facility from the **Second Party/Bank** and has agreed to participate and execute this agreement to safeguard , the interest of the **Second Party/bank** & to protect the repayment of the public money being lent to the **First Party** to the extent of minimum guarantee provided.
- G. WHEREAS, it has been clearly understood by the **all the signatory parties to this agreement** that the ownership of the land on which Godown is developed shall, always vest with **Third Party/MPWLC** and the **First Party**, shall have only license rights of the premises for such license period as mentioned below in the tender/ Agreement. **The First Party shall have no rights whatsoever, to raise any dispute or claim any ownership rights or title over the constructed Godown, either during continuance of contract or agreement period or after expiry thereof. The First Party shall not sub-let the said Godown or it premises to anyone, during the currency of agreement period.**
- H . WHEREAS, the parties to this agreement, agree the benefit of moratorium period of maximum _____ months for **(Sanctioned Guarantee period)** the commencement of the EMI for the repayment of the availed Loan/**Credit facilities**, subject to the RBI guidelines in this regard. It is agreed between the parties that, in no circumstances the moratorium period will be extended any further.

- I. WHEREAS, it is agreed between the parties that, the rentals paid by **Third Party** shall be deposited with **in** theaccount maintained by the **2nd Party** and **it is only, after furnishing or realization of agreed EMI amount and other requirements in respect of availed Credit facility or Loan from the 2nd Party**, the **First Party** shall have the right on the Residual Monthly Rental.
- J. WHEREAS, It has been clearly understood and agreed upon, amongst the **Parties** to this agreement that **Second Party**, shall secure the loan on the **Constructed Godown/Warehouse Building** under finance and by way of mortgage of all rights, the benefits that would accrue from the said **Godown/warehouse** till the currency and form of the said loan to be advanced. The **Third Party** also agrees and confirm that, it shall **abide by the** said mortgage created by the **First Party** and undertake not to create any third party rights or security interest of any sort whatsoever, on the said **Godown** .
- K. WHEREAS, it has been clearly understood that **Third Party shall** provide the vacant land **which would be free from any** encroachment & encumbrances, **litigations and all sorts of disputes**, for the purposes of the project of **construction of Godown**, to the **First Party..**
- L. WHEREAS, **if the First Party** remains the only successful Bidder, **then also the Third Party** will not change or alter the condition of bid at any given point of time in future.
- M. WHEREAS, based on the representations made by the **First Party**, the **Second Party/bank** has granted a loan of Rs. _____ to the **First Party** in terms of the loan agreement dated _____ duly executed by the **First Party**.
- N. WHEREAS, the **Second Party/bank** based on such representation and at its sole discretion shall make the disbursements under the loan.
- O. WHEREAS, through this agreement **third party** agrees, to extend guarantee for the repayment of the loan amount including Principal , Interest , Incidental Charges etc

for a period ___ - _____ and Indemnify to protect & cover the Interest and risk of the **Second Party/bank** in the event of the failure of the **First Party** (Borrower/**Bidder**) in repayment of the Loan amount to the extent of Business Guarantee.

Salient Feature of the Tender inviting for Bid:-

- i) After the construction of the Godown, a lease agreement will be executed between **First and Third Party** to this agreement.
- ii) The said lease shall remain in force for tenure of 15 years, (Sanctioned Guarantee Period + AUB) and the **First Party** shall be bound to release the **Godown** after the concessional period of 15 years and handover the possession to **Third Party**.
- iii) The **First Party** shall be responsible to keep the godown fit for storage and shall be responsible for the maintenance of the Godown whereas **Third Party** will oversee the maintenance work directly with the **First Party**.

NOW THEREFORE THIS AGREEMENT DOES WITNESSETH AND IT IS HEREBY AGREED BY AND AMONGST THE PARTIES HERETO AS UNDER:

1. For the purposes of this Agreement "**Agreement**" means this Tripartite Agreement, and amendments if any thereto.
2. This Agreement constitutes its legal valid and binding **obligations**, enforceable against it, in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and obligations enforceable against it in accordance with its terms.
3. The Loan advanced to the **First Party** by the **Second Party/bank** shall be subject to the **First Party** repayment capacity as assessed by the **Second Party/bank** and shall be secured against the first and exclusive mortgage of the asset created out of loan

financed by the Bank inclusive of machinery and equipments etc. installed in favour of the **Second Party/bank** .

4. The Parties agree that the **First Party** may, in accordance with the provisions of this Agreement, raise funds through credit facility (TL/Construction linked term Loan) availed from the **Second Party/bank** after contribution of the margin of _____ forming part of the Total Project Cost of Rs. _____ and therefore the **Second Party/bank** extending the credit facility shall be deemed to be a lender and shall thereupon be entitled to all the rights and privileges of lender.
5. The Parties further agree and confirm that the **Second Party/bank** in its own discretion may conduct its own legal search, valuation of the premise and assess the credit appraisal of the **First Party** etc. before lending. The cost incurred in such processing and evaluation will solely be borne by **First Party** and the same shall never be reimbursed to the **First Party** even if the disbursement/ sanction is not been granted.
6. That as agreed the tenure of the loan is _____ with the disbursement terms and applicable interest rate as mentioned in the schedule subject to the completion of the milestones.
7. Any delay in the repayment of the principal or interest for and in respect of the Loan availed shall attract penal interest at a rate of _____ over and above the rate of interest applicable for the loan to the **First Party**.
8. That irrespective of the stages of construction of the project (Warehouse) the **First Party** shall be liable to pay to the **Second Party/bank** regularly & each month, the EMI/Pre-EMI as laid down in the loan agreement to be signed and executed by and between the **First Party** and the **Second Party/bank**. **As agreed, the Third Party** shall execute indemnity and such other documents, as may be required by the **Second Party/bank**, to ensure the Regular Repayment of the loan amount granted by the **Second Party/bank** to the **First Party** through EMI's/Pre-EMI's in this regard to the extent of **Business Guarantee** .

9. The **First Party** shall ensure to pay to the **Second Party/bank** his own contribution in full before availing disbursement from the **Second Party/bank**.
10. The parties further agree and confirm that **Third Party** will continue, deposition of monthly rentals ,to the extent of Business Guarantee given by it, even in the event of the death of the **First Party** or in the event of the cancellation of the project (Warehouse Construction) for any reason whatsoever. It is also agreed that agreement between **Third Party** and the **First Party** shall have provision pertaining to above condition.
11. Further, if the parties to this agreement commit any breach of any Terms And Conditions of this Tripartite Agreement, it shall be treated as an event of default and in such event, any amount payable to the parties (**First Party** or **Third Party**) shall be directly paid to the **Second Party/bank**. However, it is further agreed between the parties that, such payment made to the **Second Party/bank** shall not absolve the borrower **First Party** from liability of the residual amount.
12. The parties further agree and undertake, to submit to the **Second Party/bank** all documents for the Project as requested by the **Second Party/bank** and shall keep the **Second Party/bank** informed about the progress of the Project/Construction Stages.
13. The Parties further agree and confirm that, the provisions of any further Agreements such as the Concession Agreement and all other Agreements, including the ESCROW Agreement, Substitution Agreement AND Financing Agreements, shall be read and construed so as to give effect to the provisions of this agreement, but without increasing any financial obligations and/ or liabilities of the Authority, under the concession agreement.
14. By counter signing the Tripartite Agreement, the Representative, acting on behalf of their parties, confirms and undertakes that the *pari passu* Rights, Title or Interest of the **Second Party/bank**, to the extent such Rights, Title or Interest on the structure

built at any stage and stock lying for the purpose of the construction as the case may be, till the closure of the credit facility granted or may be granted in future.

15. By counter-signing the Tripartite Agreement, the Parties expressly agree that, the **Second Party/bank** shall have *pari passu* charge on the revenues of the **First Party** in accordance with the provisions of the commercial agreement or any other agreement reached between the **First Party** and the **Third Party**.
16. The Parties agree and confirm that in the event of default in repaying the Debt by the **First Party**, the **Second Party/bank** shall have the right to enforce against the assets, being financed by the **Second Party/bank** and recall the entire debt due to the **Second Party/bank** without any notice in accordance to the RBI policy and the Applicable Laws .
17. In the event of any occurrence or circumstance coming to the knowledge of the Party making any representation hereunder, which renders any of its aforesaid representations or warranties untrue or incorrect, at any time during the subsistence of this Agreement, such Party shall immediately notify the other Parties hereto about the same. Such notification shall not have the effect of remedying any such representation or warranty that has been found to be incorrect or untrue.
18. The Parties to this agreement, agree and confirm that this Agreement is in addition to the other documents executed or to be executed by the said **First Party** in favour of the **Second Party/bank** .
19. The Parties to this agreement agree and confirm that, the **First Party** may not create any third Party Right, Title or Interest in the Godown nor entered into any transaction / negotiations for the same as on date of execution hereof and shall be under obligation to intimate well in advance of his intention to do so to the **Second Party/bank** and the Collateral Manager. In case if the owner has mortgaged the Godown, he has to obtain requisite NOC from the lending bank and MPWCL prior to executing this agreement.

20. The parties to this agreement, agree and confirm that the **First Party** shall at all times and from time to time ensure that the Warehouse unit and the commodity shall be duly insured against all such risks as may be required by the law.
21. The parties to this agreement, agree and confirm that to the extent any dispute, difference and/or claim arising out of this letter or the agreement or arrangements contemplated herein shall be on first place referred to sole arbitrator appointed jointly by the **Second Party/bank, Third Party** and the **First Party**, in accordance with provisions of the Arbitration and Conciliation Act 1996, or any statutory amendments thereof. The language of proceeding shall be English and venue of the Arbitration shall be Bhopal and Courts of Bhopal will have exclusive jurisdiction for the same.
22. The Parties to this agreement agree and confirm that the **First Party** understands and agrees that, he shall be solely liable for the payment of all Taxes, Rates, Cesses, Duties and Levies that may be raised by any Statutory Body or other Authority with respect to the Private Licensed Warehouse including but not limited to any amounts due and payable as land revenue and/or other taxes that may be payable with respect to the land on which the Private Licensed Warehouse is situated ; any Municipal and other Taxes, Rates, Cesses duties and Levies on the Private Licensed Warehouse or any of the structures thereof (collectively Taxes")
23. The Parties to this agreement, agree and confirm that, this agreement shall be in operation until the entire dues under the said loan facilities are repaid and adjusted by the said **First party to Second Party/bank** . Notwithstanding the above, **Second Party/bank** shall be entitled to terminate the agreement with prior approval of **Second Party** contained herein and the said arrangements contemplated under this letter by giving the owner 15 day's written notice of its intention to do so .
24. The Parties to this agreement, agree and confirm that, any Notice, Demand or other Communication required or permitted to be given or made hereunder shall be in writing and shall be well and sufficiently given or made.

25. The Parties to this agreement, agree and confirm that, the failure by any Party to enforce at any time or for any period of time, any one or more of the terms and conditions of this agreement, shall not be construed as a waiver by such Party of the respective performance by the other Party of such terms and conditions or of such Party's right thereafter to enforce each and every term and condition of this Agreement .
26. No waiver, express or implied, by any Party of any rights hereunder, or of any failure to perform, shall be a continuing waiver or constitute or be deemed to constitute a waiver of any other right hereunder or of any claim or remedies available in law in respect of any other breach hereof by the other Party whether of similar or dissimilar nature.
27. This Agreement expresses fully, the understanding between the Parties and all prior understandings, representations, agreements, licenses or deeds, oral or written, are hereby cancelled. The terms or provisions of this Agreement may be modified, amended, supplemented, waived, and discharged only in writing signed by the Parties hereto.
28. It is hereby decided between all the parties that, schedule of disbursement of Credit Facilities to the **First Party** by the **Second Party/bank** shall be as under :-
- i) Construction completed upto plinth level : 30 % of sanctioned amount
 - ii) Construction completed upto roof level : 40 % of sanctioned amount
 - iii) On completion : Balance amount

Amount shall be released after site inspection by **Second Party/bank** and **Third Party** and final approval from **Third Party**

29. It is the sole responsibility of the **First Party** to store only the notified commodities. In any case **Third Party** shall not be held responsible or liable, for storing non notified Commodities.

30. Should any clause, sentence, provision, paragraph, or part of this agreement, for any reason whatsoever, be adjudged by any Court of Competent Jurisdiction, or be held by any other Competent Government Authority having jurisdiction over the parties to be invalid, unenforceable or illegal, such JUDGMENT or holding shall not effect, impair or invalidate the remainder of this agreement, but shall be confined in its operation to the Clause, Sentence, Provision, Paragraph or part of this Agreement directly involved in the matter, Controversy or Proceeding in which such judgment or holding shall have been rendered, and the remainder of this agreement shall remain in full force and effect .
31. This agreement together with any attachments herewith signed by all the Parties shall constitute the entire Binding Contract between the **Second Party/bank** and the **First Party** and **Third Party**. The terms and conditions of this agreement shall prevail notwithstanding any Terms and Condition in Oral Agreement or in any other Documents unless specifically agreed upon in writing and attached herein. Further any variation of the Terms and Conditions of this Agreement shall be in writing by way of Supplemental Agreement
32. This Agreement shall be governed by the laws of India.

SIGNED AND DELIVERED BY THE PARTIES

**(FIRST PARTY/SUCCESSFUL
BIDDER)**
With Name and seal

(Third Party/MPWLC)
(Regional Manager)
With Name and seal

(Second Party/bank)
With Name and seal