

WEST BENGAL STATE WAREHOUSING CORPORATION



NOTICE INVITING EXPRESSION OF INTEREST

FOR

**OFFER OF VACANT GODOWN SPACE AT VARIOUS WAREHOUSE SITUATED AT DIFFERENT DISTRICTS OF
WEST BENGAL**

**West Bengal State Warehousing Corporation
Administrative Wing, Khadya Bhavan, Block B (4th Floor),
11 A, Mirza Ghalib Street, Kolkata, West Bengal, 700 087**

Nodal Officer:

General Manager (Commercial)
West Bengal State Warehousing Corporation
Contact: 9432876087
E-mail ID: com-swc@wb.gov.in

Eol Notification No.: 3647/13012(31)/1/2019 COMM SEC/Advt.

Dated: 09th day of February, 2023

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DISCLAIMER

This Expression of Interest (“**EoI**”) outlines, *inter alia*, the Scope of Work for offer of vacant space at various warehouses situated at different districts of West Bengal. The information contained in this EoI or subsequently provided to the prospective applicants, whether verbally or in writing or in any other form, by or on behalf of West Bengal State Warehousing Corporation (“**WBSWC**”), or any of its employees or advisors, is provided to such prospective applicants on the terms and conditions set out in this EoI or in the form of any addendum or corrigendum or otherwise.

This EoI is neither an agreement nor an offer by WBSWC to the prospective applicants or any other person. The purpose of this EoI is to provide prospective applicants with information that may be useful to them in the making of their applications pursuant to this EoI. This EoI may not be suitable or advisable for all persons, and it may not be possible for WBSWC, its employees and/or advisors to consider the investment objectives, financial situation and particular needs of all the prospective applicants who read and/or use this EoI.

The assumptions, assessments, statements and information contained in this EoI may not be complete, accurate, adequate or correct. Each applicant should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability, legality and completeness of the assumptions, assessments, statements and information contained in this EoI, and each applicant should obtain independent advice from appropriate sources. WBSWC accepts no responsibility for the accuracy of or for any interpretation or opinion on law expressed herein.

WBSWC, its employees and advisors make no representation or warranty and shall have no liability to any person, including any applicant, under any law, statute, rules or regulations or tort, principles of restitution of unjust enrichment or otherwise for any loss, damage, cost or expense which may arise from or be incurred or suffered on account of anything contained in this EoI or otherwise, including the accuracy, adequacy, correctness, completeness, reliability or legality of this EoI and/or any statement or information contained herein or deemed to form part of this EoI or arising in any way whatsoever, for participation in the Tender Process. WBSWC shall not entertain or be liable for any claim for costs or losses or damages or expenses in relation to the preparation of the applications to be submitted pursuant to this EoI.

WBSWC may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this EoI or change any or all conditions or information set forth in this EoI by way of any revision, deletion, updation or annulment or otherwise through any issuance of appropriate addendum or corrigendum as WBSWC may deem fit and proper without assigning any reason thereof.

The information contained in this EoI or subsequently provided to the applicants, whether verbally or in writing or in any other form by or on behalf of WBSWC or any of its employees or advisors, shall be confidential and is not to be reproduced or adopted or displayed for any purpose whatsoever.

WBSWC absolves any liability of any nature whatsoever, whether resulting from negligence or otherwise howsoever caused, arising from reliance of any applicant upon the statements contained in this EoI.

This EoI is for informative purposes only and the issue of this EoI does not imply that WBSWC is bound to select any of the applicants for the purposes of this EoI as per the terms and conditions of this EoI. WBSWC reserves the right to reject all or any of the applications of the applicants or to terminate the process under this EoI at any time without assigning any reason whatsoever. Additionally, WBSWC may terminate the Tender Process at any time and without assigning any reason thereof.

Each applicant shall be solely liable to bear all its costs and expenses associated with or related to the preparation and submission of its application, including but not limited to the preparation, copying, postage, delivery fees, document fees, and/or expenses associated with any demonstrations or presentations which may be required by WBSWC, or any other costs incurred in connection with or relating to its application, submission, or selection.

In this EoI, unless the context otherwise requires, capitalised terms defined by inclusion in quotations and/or parentheses shall have the meaning so respectively ascribed to each of such terms.

Unless the context otherwise requires, a term or a phrase used as a heading or sub-heading in this EoI in capitalised terms, if appearing anywhere else in this EoI shall refer to the said heading or sub-heading and shall be construed accordingly.

Unless the context otherwise requires, any capitalised term used in any section of this EoI but not defined therein, but defined in any other section of this EoI shall have the meaning assigned thereto.

Section I

Notice Inviting Expression of Interest

**West Bengal State Warehousing Corporation
Administrative Wing, Khadya Bhavan, Block B (4th Floor),
11 A, Mirza Ghalib Street, Kolkata, West Bengal, 700 087**

Tel: [033 4001 9846/4001 9834], E-mail: [com-swc@wb.gov.in/swc@wb.gov.in]

Expression of Interest for offer of vacant godown space at various warehouse situated at different districts of West Bengal as is where is basis.

Eoi Notification No.: 3647 dated 09th day of February 2023

WBSWC, having its administrative control vested with the Department of Food and Supplies of the Government of West Bengal (“GoWB”), was established under the provisions of the Warehousing Corporation Act, 1962. Since its inception, WBSWC has been fulfilling the objective of providing ideal and scientific storage facilities for agricultural produce and inputs like cereals, oil seeds, jute, fertilisers, etc. and notified commodities like industrial equipment, chemicals, construction materials, etc. through a network of different category of warehouses throughout West Bengal at affordable rates.

In view of the above, WBSWC is publishing this Eoi and hereby invites applications from interested and eligible applicants for submission of bid for taking of such vacant warehouse (s) on short/long term basis. The applicants are advised to peruse this Eoi carefully before submitting their applications in response to this Eoi.

This Eoi may be downloaded from the e-procurement portal of GoWB, i.e., www.wbtenders.gov.in (“Portal”). For participating in the process for selection as the selected applicant to express their willingness to hire the warehouse space on short/long term basis (“Tender Process”), the terms and conditions provided in this Eoi as well as the e-procurement guidelines and instructions as provided on the Portal shall be applicable. The applicants, who fulfil the eligibility criteria as specified hereinafter in this Eoi, may submit their applications by registering themselves on the Portal using valid Digital Signature Certificates (“DSCs”).

The applicants are requested to visit the Portal on a regular basis to remain informed of and updated about any and all developments with respect to this Eoi and the Tender Process and WBSWC, any of its employees or advisors shall bear no responsibility or liability in case the applicants fail to do so.

The timelines and other important information in connection with this EoI are as hereunder:

Sl. No.	Information	Details
1.	EoI Inviting Authority	West Bengal State Warehousing Corporation, General Section, Khadya Bhavan, Block B (4 th Floor), 11 A, Mirza Ghalib Street, Kolkata, West Bengal, 700 087
2.	Nodal Officer	Name: Mr. Sandip Sarkar, General Manager (Commercial) Contact: 9432876087 E-mail ID: com-swc@wb.gov.in
3.	Earnest Money Deposit (“EMD”) Amount and Mode	INR 5,000.00 [(Indian Rupees Five Thousand only) (through electronic mode) per godown
4.	Date of uploading (publishing) of N.I.T. and other Documents	15.02.2023 ; 18:55 Hrs.
5.	Documents download start date	15.02.2023 ; 18:55 Hrs.
6.	Pre-Bid meeting	22.02.2023 ; 15:00 Hrs.
7.	Bid proposal submission start date	23.02.2023 ; 16:00 Hrs.
8.	Bid proposal submission end date	08.03.2023 ; 18:55 Hrs.
9.	Date and Time of Opening of Technical Bids	10.03.2023 ; 18:55 Hrs.
10.	Date and Time for Opening of Financial Applications	Will be notified later on the Portal
11.	Performance Bank Guarantee (“PBG”) to be Submitted by the Selected Applicant	INR 1,00,000.00 (Indian Rupees One Lakh only)

Section II
Instructions to Applicants

1. Scope of Applications

- 1.1 Each applicant shall submit its application of willingness to hire the entire warehouse or the part/specific part of the Warehouse.
- 1.2 Each applicant shall be permitted to submit only 1 (one) application pursuant to this EoI, whether as an individual applicant or as a part of any consortium. In the event any applicant submits more than 1 (one) application, WBSWC shall have the right to reject all applications of such applicant.

2. Preparation and Submission of Applications

- 2.1 The applicants are responsible for registration on the Portal at their own cost using valid DSCs. The applicants are advised to go through all the e-procurement guidelines thoroughly and instructions provided on the Portal and accordingly submit their applications. WBSWC shall not be liable for any delay or difficulty faced by any applicant on the Portal or failure of any applicant to comply with the guidelines and instructions provided on the Portal.
- 2.2 The applicants shall submit their applications online through the e-Portal as described below:
 - (a) Technical application – Scanned copy (in PDF format) of technical application digitally signed, as per the formats provided in this EoI in Annexures I to V of Section IV should be uploaded on the Portal in the allocated Technical Folder as specified in Annexure VI of Section IV; and
 - (b) Financial application – The Bill of Quantities (BOQ) quoting the Annual/Monthly Fee .should be uploaded on the Portal in the allocated Financial Folder as specified in Annexure VII of Section IV.
- 2.3 The applicants shall authenticate their respective applications with their respective DSCs for submitting the applications online through the Portal. The applications not authenticated by DSCs of the applicants shall be rejected.
- 2.4 Following are certain key considerations to be kept in mind by the applicants while submitting their applications:
 - (a) Applications that are incomplete or not in prescribed format or conditional in nature shall be rejected;

- (b) If any clarification is required, the same should be obtained before submission of the applications as per Clause 6.1 of this EoI;
- (c) No physical submission of applications shall be acceptable;
- (d) The applications shall necessarily contain a table of contents along with page numbers;
- (e) The applications and accompanying information shall be complete and strictly as per the requirements in this EoI;
- (f) Erasing and overwriting shall be avoided in the applications. All the alterations, omissions, additions or any other amendments made to the applications shall be neatly written and duly attested by the person signing the applications;
- (g) The applications shall be duly signed by an authorised person who shall also put her/his initials on each page; and
- (h) The applicants are advised to upload the applications well before time to avoid last minute issues and applications uploaded after the last date and time for submission of applications shall not be accepted.

3. Completeness of Applications

- 3.1 The applicants are advised to study all instructions, forms, terms, requirements and other information in this EoI carefully and thoroughly. Submission of the applications shall be deemed to have been done after careful study and examination of this EoI with full understanding of its implications.
- 3.2 The response to this EoI should be full and complete in all respects. Failure to furnish the information required by this EoI or submission of any application not substantially responsive to this EoI in every respect will be at the applicant's risk and may result in rejection of the same.
- 3.3 The applicants must:
 - (a) Submit all documents specified in this EoI;
 - (b) Follow the format of this EoI and respond to each element in the manner as set out in this EoI; and
 - (c) Comply with all requirements as set out in this EoI.

4. Cost of Submission of Applications

Each applicant shall solely liable to bear all its costs and expenses associated with or related to the preparation and submission of its application including but not limited to the preparation, copying, postage, delivery fees, document fees, and/or expenses associated with any demonstrations or presentations which may be required by WBSWC or any other costs incurred in connection with or relating to its application, submission, or selection. All such costs and expenses shall be exclusively borne by the applicant, regardless of the conduct or outcome of the process of evaluation of application.

5. Period of Validity of Applications

The applications shall be valid for a period of 180 (one hundred eighty) days from the last date for submission of applications. WBSWC will make its best effort to complete the Tender Process within the validity period. If required, WBSWC may request the applicants to extend the validity period of their applications. The applicants who do not agree shall have the right to refuse to extend the validity of their application and under such circumstances WBSWC shall not consider such applications for further evaluation.

6. Pre-Application Conference and Clarifications

6.1 Pre-Application Conference

- (a) WBSWC shall hold a pre-application conference with the applicants on 23.02.2023 at 15:00 HRS;
- (b) The applicants will have to ensure that their queries, if any, for the pre-application conference should be sent to 27.02.2023 by 17:00 HRS;
- (c) The queries should necessarily be submitted in a word or excel file in the following format:

Sl. No.	EoI Document Reference(s) (Clause and Page Number(s))	Content of EoI Requiring Clarification(s)	Point(s) of Clarification(s)

- (d) Any requests for clarifications submitted post the indicated date and time shall not be entertained by WBSWC.

6.2 Responses to Pre-Application Queries and Issue of Corrigendum/Addendum (if any)

- (a) WBSWC will endeavour to provide timely response to all queries of the applicants. However, WBSWC neither represents nor warrants as to the completeness or accuracy of any response made in good faith, nor does WBSWC undertake to answer all the queries that have been submitted by the applicants. At any time prior to the last date for submission of applications, WBSWC may, for any reason and without assigning any reason thereof, whether at its own initiative or in response to a clarification requested by an applicant, modify this EoI by a corrigendum or addendum;
- (b) Any such corrigendum/addendum shall be deemed to be incorporated into this EoI and shall form part of this EoI;
- (c) The applicants while submitting the applications should also submit duly digitally signed copy of such corrigendum/addendum, if any, along with a duly digitally signed copy of this EoI; and
- (d) In order to provide the applicants reasonable time for taking the corrigendum/addendum into account, WBSWC may, at its discretion, extend the last date for submission of the applications.

7. Language

The applications as well as all correspondence and documents relating to the applications exchanged by the applicants and WBSWC shall only be in the English language.

8. Compliance with Applicable Law(s)

The applicants shall, in addition to the terms and conditions of this EoI, have to comply with all applicable law(s) in India, including acts, ordinances, rules, regulations, bye laws and/or notifications, orders, circulars, practices and/or procedures of the Government of India and the GoWB in connection with public tenders, generally, or the Scope of Work, specifically, including but not limited to the Warehousing Corporations Act, 1962.

9. Accuracy of Information

During evaluation of the applications, if any information submitted by any applicant including the selected applicant, is found to be incorrect, misleading, manufactured and/or fabricated, the application of such applicant will be rejected, and if such applicant has already been selected then such selection shall be cancelled, after giving an opportunity of hearing to the selected applicant, without prejudice to any other rights of WBSWC.

10. Authorised Representative of the Applicant

Where an individual as a director/promoter/designated partner/authorised representative, uploads any application for and on behalf of the applicant, such person shall, upload the board resolution (in case the applicant is a company or in case the applicant is a consortium having a company as such consortium's lead member) and/or the authorisation letter (in case the applicant is an LLP or in case the applicant is a consortium having an LLP as such consortium's lead member) authorising him/her to act on behalf of the applicant for the purpose of the Tender Process. WBSWC may reject, outright any application unsupported by the adequate proof of the signatory's authority. The decision of WBSWC in this connection is final and binding on the applicant.

11. Construction of EoI

The statements and explanations contained in this EoI and any addenda or corrigenda hereto are intended to provide a better understanding to the applicants about this EoI and should not be construed or interpreted as limiting in any way or manner the Scope of Work and obligations of the selected applicant or WBSWC's rights to amend, alter, change, supplement and/or clarify this EoI. Consequently, any omissions, conflicts or contradictions in this EoI are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be considered by WBSWC.

12. Interpretation of Clauses in this EoI

In case of any ambiguity in the interpretation of any of the clauses of this EoI, WBSWC's interpretation of the clauses shall be final and binding on the applicants. The decision taken by WBSWC in the process of evaluation of applications shall be full, final and binding.

13. Corrupt Practices

WBSWC requires applicants to observe the highest standard of ethics during the Tender Process. WBSWC may, if it determines that an applicant has directly or through an agent, affiliate or associate engaged in corrupt, fraudulent, coercive or restrictive practices in competing for selection by WBSWC in terms of this EoI, take any or all of the following actions:

- (a) Reject such applicant's application;
- (b) Declare the applicant indefinitely or for a specific period of time ineligible to participate in any tender/bidding process of WBSWC; and/or
- (c) Cancel the selection, if such applicant is already selected.

14. Blacklisting

In order to be eligible for selection by WBSWC as the selected applicant, an applicant or in case the applicant is a consortium any of its members or any of its/their promoters, controlling shareholders, designated partners shall neither be barred/blacklisted from participating in any assignment or project nor shall have any pending disputes with WBSWC and/or any department of the GoWB, as on the date of submission of its application.

15. Anti-Collusion

- 15.1 WBSWC reserves the right at its discretion to report suspected collusive or anti-competitive conduct by applicants to the appropriate regulatory authority and to provide the authority with all relevant information in relation to the same. In the event of any suspected collusive or anti-competitive conduct by any applicant, WBSWC shall have the right to reject the application of such applicant.
- 15.2 Each applicant represents and warrants that the application has been prepared and submitted without any consultation, communication, contract, arrangement or understanding with any of its competitors.

16. Conflict of Interest

WBSWC considers a conflict of interest to be a situation in which a party has an interest that could improperly influence that party's performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws, and that such conflict of interest may contribute to or constitute a prohibited practice by WBSWC which requires that applicants, bidders, suppliers, and contractors under contracts with WBSWC observe the highest standard of ethics and will take appropriate actions if it determines that a conflict of interest has flawed the integrity of the Tender Process. Consequently, all applicants found to have a conflict of interest shall be disqualified. An applicant may be considered to have a conflict of interest with one or more parties in this Tender Process, if, *inter alia*:

- (a) They have promoters/controllers/shareholders/designated partners/management in common;
- (b) They receive or have received any direct or indirect subsidy or financial grant or financial assistance from any of them;
- (c) They have the same legal representative for purposes of this Tender Process; and/or
- (d) They have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the application of another applicant, or influence the decisions of WBSWC regarding this Tender Process.

17. Amendment of this EoI

- 17.1 At any time prior to the last date for submission of applications, WBSWC may, for any reason, whether at its own initiative or in response to clarifications requested by an applicant, modify this EoI by the issuance of any addenda/corrigenda.
- 17.2 Any addendum/corrigendum issued hereunder shall be posted on the Portal. No newspaper advertisement shall be issued in this regard.
- 17.3 WBSWC also reserves the right to modify or alter this EoI and also to withdraw or cancel the Tender Process at any stage, without assigning any reason thereof.

18. Earnest Money Deposit

- 18.1 The applicants are required to pay EMD of INR 5,000 (Indian Rupees Five Thousand only) per godown through NEFT/RTGS/Net Banking on the Portal. Applications without EMD shall be rejected.
- 18.2 Proof of payment of the EMD through NEFT/RTGS/Net Banking shall be uploaded by the applicant on the Portal along with the application.
- 18.3 The EMD of unsuccessful applicants will be returned upon finalisation of the Tender Process through the Portal and shall bear no interest thereon. In case of the selected applicant, the same shall not be refunded but shall be adjusted towards the PBG.
- 18.4 The EMD shall be forfeited by WBSWC, in any of the following events:
- (a) If an applicant breaches the terms and conditions of this EoI;
 - (b) If an applicant engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice;
 - (c) If an applicant withdraws its application during the validity period of the application as specified in this EoI, or as extended by the mutual consent of the applicant and WBSWC;
 - (d) If the selected applicant fails to form a Company or LLP in case such selected applicant is a consortium;
 - (e) If the selected applicant fails to accept the Letter of Intent; and/or
 - (f) If the selected applicant fails to furnish the PBG.

19. Late Applications

- 19.1 The applications received after the last date for submission of applications will be outright rejected. The applicants are advised in their own interest to ensure that their applications are submitted and documents are uploaded on the Portal well before the last date and time for the submission of applications.
- 19.2 WBSWC at its sole discretion may extend the deadline for submission of application by issuing a corrigendum on the Portal in which case all rights and obligations of WBSWC and applicants previously subject to the original last date for submission of applications shall thereafter be subject to the new last date(s) for submission of applications, as extended.

20. Withdrawal of Applications

No application shall be withdrawn in the interval between the submission of application and expiry of validity period of the application as specified in this EoI. Any such withdrawal of application shall result in forfeiture of the EMD.

21. Right to Accept or Reject Applications

WBSWC reserves the right to accept or reject any application and to annul the entire Tender Process and reject all applications at any time prior to selection of the selected applicant without incurring any liability or any obligation to inform the affected applicants of the grounds of its action.

22. Eligibility Criteria

The applicants shall be eligible to submit applications for the purpose of being selected only if they meet the following requirements and submit the necessary documents. It is hereby clarified that in case of an applicant being a consortium, each of the members of such consortium are required to submit the individual documents, as specified hereinafter, along with the application of the said consortium.

Sl. No.	Eligibility Criteria	Documents to be Submitted
1.	The applicant must be: (i) a company within the meaning of Companies Act, 1956; or (ii) a limited liability partnership (“LLP”) registered under the Limited	In case of a company: (i) Certificate of Incorporation; (ii) Memorandum of Association; (iii) Articles of Association; and (iv) last filed annual

Sl. No.	Eligibility Criteria	Documents to be Submitted
	<p>Liability Partnership Act, 2008; or (iii) a valid consortium of companies and/or LLPs only, and must, on the date of submission of the application, have been in existence for last 5 (five) years having its registered office and/or principal place of business in India.</p> <p>However, it may be noted that the applicant or in case of a consortium any of its members shall not have any shareholders/designated partners, as the case may be, whether directly or indirectly, who belong to or are incorporated or registered in any of the country(ies) sharing geographical land border with India.</p> <p>Note: In case of a consortium, each of the members of such consortium must have been in existence for the last 5 (five) years. Further, in case of a consortium, the maximum number of members shall be restricted to a maximum of 4 (four) members of which 1 (one) member shall be selected as the lead member.</p>	<p>return.</p> <p>In case of an LLP: (i) Registration Certificate; (ii) LLP Agreement (including any amendments thereto); and (iii) last filed statement of account and solvency.</p> <p>In case of a consortium: (i) Consortium agreement; (ii) the aforesaid documents for a company and/or an LLP, as may be applicable; and (iii) authorisation letter in favour of the lead member of the consortium by the remaining members of the consortium.</p>
2.	<p>The applicant must have an average annual turnover of INR 12,00,000 (Indian Rupees Twelve Lakh) only during the 3 (three) financial years of 2018-2019, 2019-2020 and 2020-2021.</p> <p>Note: In case of a consortium, each of the members of such consortium must have at least 30% (thirty per cent) of desired average annual turnover during the 3 (three) financial years of 2019-2020, 2020-</p>	<p>Audited financial statements of the 3 (three) financial years of 2019-2020, 2020-2021 and 2021-2022.</p> <p>Filed income tax returns for the 3 (three) financial years of 2019-2020, 2020-2021 and 2021-2022.</p> <p>The details of the financials of the applicant are to be submitted in the format of Annexure V.</p>

Sl. No.	Eligibility Criteria	Documents to be Submitted
	2021 and 2021-2022.	
3.	<p>The applicant must have a positive net worth as on 31 March 2022.</p> <p>Note: In case of a consortium, each of the members of such consortium must have a positive net worth as on 31 March 2022.</p>	<p>Certificate by a practising Chartered Accountant registered with the Institute of Chartered Accountants of India certifying positive net worth as on 31 March 2022.</p>
4.	<p>The applicant shall be registered for Goods and Services Tax (“GST”) and shall have valid Permanent Account Number (“PAN”) and valid Tax Deduction and Collection Account Number (“TAN”).</p> <p>Note: In case of a consortium, each of the members of such consortium must be registered for GST and shall have valid PAN and TAN.</p>	<p>GST registration certificate and PAN and TAN.</p>
5.	<p>The applicant or in case of a consortium any of its members should not have been blacklisted for fraudulent and corrupt practices by the Central Government or any State Government department/public sector undertaking/agency/organisation in India at the time of submission of the application.</p>	<p>Notarised affidavit on non-judicial stamp paper of INR 100 (Indian Rupees One Hundred only) as per the format provided in Annexure VI of this EoI.</p>

23. Opening of Submitted Applications

- 23.1 The application along with the EMD shall be considered for opening through the Portal, as per the timelines mentioned in this EoI.
- 23.2 In case, the EMD is not received as per the timeline mentioned in this EoI, then the application submitted in the Portal shall be rejected.

23.3 During the opening of the application, preliminary scrutiny of the documents submitted in support of the application shall be carried out to determine: (a) whether the applications and documents supporting thereto are complete; (b) whether required EMD has been furnished; and (c) whether the applications are otherwise generally in order. Applications not conforming to such preliminary scrutiny shall be rejected.

24. **Evaluation of Technical Applications**

WBSWC shall evaluate the technical applications as per the following process:

- (a) WBSWC shall evaluate and compare the technical applications that have been determined to be substantially responsive.
- (b) WBSWC shall review the technical applications on the basis of the eligibility criteria. To assist in the examination, evaluation, and comparison of the applications and qualification of the applicants, WBSWC may, at its discretion, ask any applicant for a clarification of its application.
- (c) The applications for only those applicants who have been found to be in compliance with the eligibility criteria mentioned above would be considered by WBSWC for further evaluation.
- (d) To assist in the scrutiny, evaluation and comparison of applications, WBSWC may, at its discretion, seek clarification or further documentation and/or information as well as the original hard copy(ies) of any of the document(s) uploaded by the applicant on the Portal, from any or all applicants, in connection with their application, on any of the points mentioned therein, and the same may be sent through e-mail address provided by the applicant in its application.
- (e) The technical applications of only those applicants which have been found to be in compliance with all the eligibility criteria as provided in Clause 23 of this Section to the satisfaction of WBSWC shall be considered for financial evaluation.

25. **Evaluation of Financial Applications**

25.1 The applicants will be required to quote in the BOQ the Storage Charge, i.e., a fixed lump sum amount and duly upload the BOQ along with their technical applications.

- 25.2 The Storage Charge quoted by the applicants shall be exclusive of all applicable rates, levies, taxes (including GST), cess, and other statutory duties and impositions, of whatsoever and howsoever nature.
- 25.3 WBSWC shall evaluate the financial applications of only those applicants who have qualified the technical evaluation as per the process laid out in this EoI.
- 25.4 WBSWC shall have the right to reject any application that has qualified the technical evaluation criteria if the applicant has failed to quote the Royalty in such application.

26. Selection of Applicant

- 26.1 The identification of the applicant with the highest Storage Charge (“H1”) will be determined as follows:
- (a) The applicant who has quoted the highest Storage Charge shall be identified and termed as the H1 applicant;
 - (b) A confirmation on the Storage Charge quoted will be sought from the H1 applicant and if the H1 applicant fails to accept the Storage Charge quoted along with the stipulated terms and conditions the application will be treated as cancelled and the EMD of the H1 applicant shall be forfeited;
 - (c) In such a scenario, the applicant which has quoted the next highest Storage Charge may be called for negotiation and for matching the H1 applicant’s Storage Charge quoted;
 - (d) In the event the Storage Charge of two or more applicants are at par, WBSWC shall hold an *inter se* option amongst such applicants to quote further higher Storage Charge and shall declare the applicant who has offered the highest Storage Charge in such auction to be the H1 applicant and the process mentioned in sub-clause (b) and sub-clause (c) of this Clause hereinabove shall be repeated, as applicable.
 - (e) In case of Tie – Lottery , selected bidder will have to pay the entire Storage Charges within the 1st month of each contract period.

27. Letter of Intent

- 27.1 The selected applicant will be notified of its selection by WBSWC *vide* a letter (“**Letter of Intent**”), prior to the expiry of the validity period of applications, by uploading such information on the Portal.

27.2 If the selected applicant is a consortium, then after selection in the bidding process and prior to issuance of the Letter of Intent, such consortium shall be required to form a Company or an LLP in and upon such formation of a Company or an LLP, such Letter of Intent shall be issued in favour of the same.

27.3 Until the execution of the Contract, the Letter of Intent shall constitute a binding direction on the selected applicant to perform its obligations.

28. **Performance Bank Guarantee (PBG)**

28.1 Within 7 (seven) business days of the receipt of Letter of Intent from WBSWC, the selected applicant shall furnish the PBG of an amount equivalent to INR 1,00,000 (Indian Rupees One Lakh) only.

28.2 The PBG shall be in the form of a bank guarantee and in accordance with the terms of this EoI, issued by any scheduled commercial bank drawn in favour of “West Bengal State Warehousing Corporation”, payable at Kolkata, India. Such bank guarantee towards the PBG shall remain valid, enforceable and in full force for the entire duration of the Contract, including any renewal(s) thereof.

28.3 In case the selected applicant fails to execute the Contract or breaches the terms and conditions of the Contract, the entire PBG of the selected applicant shall stand forfeited.

29. **Signing of Contract**

29.1 Promptly after receipt of the PBG from the selected applicant, WBSWC shall send to the selected applicant, the contract to be executed for the Project (“**Contract**”). Each page of the Contract should be signed by WBSWC’s authorised signatory and the selected applicant’s authorised signatory. If there are any corrections, cuttings, omissions, over writings, insertions, etc. (after issue of the Contract) the same shall be clearly mentioned on each page of the Contract and the parties will have to counter sign against the same, at the place of any such correction(s) or modification(s).

29.2 Within 3 (three) days of receipt of the Contract from WBSWC, the selected applicant shall sign and date the Contract and return it to WBSWC.

29.3 The Contract shall be in the format as specified in Annexure VII.

30. **Failure to Agree with the Terms and Conditions of the EoI/Contract**

The failure on part of the applicants/selected applicant/Operator to agree and comply with the terms and conditions of the EoI/Contract, as may be applicable, shall constitute sufficient grounds for WBSWC to reject the applicant's application or cancel the Letter of Intent issued to the selected applicant or terminate the Contract executed with the Operator, as the case may be and in such an event WBSWC shall be entitled to forfeit the EMD/PBG, as may be applicable.

Section III

Annexures

Annexure I: Application Letter by Applicant/Lead Member of Consortium

(On the letterhead of the applicant/lead member of consortium)

Date: [●]

To

West Bengal State Warehousing Corporation
Administrative Wing, Khadya Bhavan, Block B (4th Floor),
11 A, Mirza Ghalib Street, Kolkata, West Bengal, 700 087

Sub: Application Letter

Ref: EoI Notification No: [●] dated [●]

Dear Sir,

With reference to EoI Notification No: [●] dated [●], I, having examined this EoI and understood its contents, hereby submit my application for selection as the selected applicant. Capitalised expressions used in this letter shall have the same meaning as ascribed thereto in this EoI.

1. The application is unconditional and unqualified.
2. We have reviewed the terms of this EoI and hereby unconditionally and irrevocably accept, agree and acknowledge the terms thereof.
3. We acknowledge that WBSWC will be relying on the information provided in the application and the documents accompanying the application for selection as the selected applicant. We certify that all information provided therein is true and correct, nothing has been omitted which renders such information misleading and all documents accompanying the application are true copies of their respective originals.
4. This statement is made for the express purpose of our participation in the Tender Process and prospective selection as the selected applicant.
5. We hereby confirm that we satisfy all the eligibility criteria prescribed in this EoI.

6. We hereby acknowledge that if we submit or produce any document and it is discovered subsequently that such document was false or incorrect then we shall be liable under all applicable laws.
7. We shall make available to WBSWC any additional information or document it may find necessary or require to supplement or to authenticate the application.
8. We acknowledge the right of WBSWC to reject our application without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
9. We declare that:
 - (i) We have examined and understood this EoI and have no reservations thereto, including any amendments issued by WBSWC *vide* corrigenda/addenda from time to time.
 - (ii) We have not directly or indirectly or through an agent engaged or indulged in any corrupt, fraudulent, coercive, undesirable or restrictive practice, as defined in this EoI, in respect of any tender or request for proposal issued by or any agreement entered into with the State Government or any other public sector enterprise or any Government(s), Central or State.
 - (iii) We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf has engaged or will engage in any corrupt, fraudulent, coercive, undesirable or restrictive practice.
 - (iv) We hereby certify that we are not in violation of any applicable laws.
10. We understand that you may cancel this process at any time and that you are neither bound to accept any application that you may receive nor to invite the applicants to submit their applications, without incurring any liability to the applicants, in accordance with this EoI.
11. We hereby irrevocably waive any right or remedy which we may have at any stage under applicable laws or howsoever otherwise arising to challenge or question any decision taken by Government of West Bengal in connection with the selection of the selected applicant, or in connection with the selection process itself, in respect of this EoI and the terms and implementation thereof.

In witness thereof, we submit this letter forming part of our application under and in accordance with the terms of this EoI.

Thanking You
Yours Faithfully

For *[Name of Applicant/Lead Member of Consortium]*

[Authorised Signatory]

[Designation]

[Date and Place]

[Seal and Sign]

[Business Address]

Annexure II: Checklist of Documents to be enclosed along with the Application

(On the letterhead of the applicant/lead member of consortium)

Date: [●]

Sl. No.	Documents to be submitted	Submitted (Yes /No)
1.	<p>In case of a company: Certificate of Incorporation, Memorandum of Association and Articles of Association and last filed annual return.</p> <p align="center">OR</p> <p>In case of an LLP: Registration Certificate, LLP Agreement (including any amendments thereto) and last filed statement of account and solvency.</p> <p align="center">OR</p> <p>In case of a consortium: Consortium Agreement, the aforesaid documents for a company and/or an LLP, as may be applicable, and authorisation letter in favour of the lead member of the consortium by the remaining members of the consortium.</p>	
2.	<p>Document(s) evidencing completion of construction and development of warehouse(s) and commencement of operations of such warehouse(s), including but not limited to completion certificate(s) and commencement certificate(s) issued by the concerned client organisation.</p> <p align="center">OR</p> <p>Document(s) evidencing completion of civil construction works, including but not limited to completion certificate(s) issued by the concerned Government authority.</p>	
3.	Audited Financial Statements of the 3 (three) financial years of 2019-2020, 2020-2021 and 2021-2022.	
4.	Filed Income-Tax Returns for the 3 (three) financial years of 2019-2020, 2020-2021 and 2021-2022.	
5.	Certificate by a practising Chartered Accountant registered with the	

Sl. No.	Documents to be submitted	Submitted (Yes /No)
	Institute of Chartered Accountants of India certifying positive net worth as on 31 March 2022.	
6.	GST registration certificate	
7.	PAN	
8.	TAN	
9.	Board resolution (in case the applicant is a company or in case the applicant is a consortium having a company as such consortium's lead member) and/or the authorisation letter (in case the applicant is an LLP or in case the applicant is a consortium having an LLP as such consortium's lead member) authorising him/her to act on behalf of the applicant for the purpose of the Tender Process.	
10.	Annexure I: Application Letter by Applicant/Lead Member of Consortium	
11.	Annexure II: Checklist of Documents to be enclosed along with the Application	
12.	Annexure III: Details of Applicant/Members of Consortium	
13.	Annexure IV: Financials of Applicant/ Member of Consortium	
14.	Annexure VI: Declaration against Blacklisting by Applicant/Member of Consortium	
15.	Scanned copy of this EoI, including any corrigendum or addendum, each digitally signed.	
16.	Scanned copy of the NEFT/RTGS Challan or Net Banking Receipt towards the payment of EMD.	

Thanking You
Yours Faithfully

For *[Name of Applicant/Lead Member of Consortium]*

[Authorised Signatory]

[Designation]

[Date and Place]

[Seal and Sign]

[Business Address]

Annexure III: Details of Applicant/Members of Consortium

(On the letterhead of the applicant/lead member of consortium)

Date: [●]

Sl. No.	Particulars	Details
1.	Name of the Applicant (Individual Entity/Consortium)	
2.	Name of All Members including the Lead Member (In case of a consortium)	
3.	Legal Status of Applicant	
4.	Address of Registered Office/Place of Business	
5.	Address for Correspondence	
6.	Year of Incorporation	
7.	Corporate Identification Number/LLP Identification Number	
8.	Telephone/Contact No.	
9.	E-mail Address	
10.	Website URL/Address	
11.	Brief Description of the Business	
12.	Names of Directors/Designated Partners with their Present and Permanent Address	
13.	Name of Person Authorised by Board Resolution and/or Authorisation Letter (To be enclosed)	
14.	PAN of the Applicant (To be enclosed)	
15.	TAN of the Applicant (To be enclosed)	

Sl. No.	Particulars	Details
16.	GST Registration No. (Certificate to be enclosed)	

Thanking You
Yours Faithfully

For *[Name of Applicant/Lead Member of Consortium]*

[Authorised Signatory]
[Designation]
[Date and Place]
[Seal and Sign]
[Business Address]

Note: In case of a consortium, the aforesaid details should include the details of all members of the consortium in this format, as applicable.

For *[Name of Applicant/Member of Consortium]*

[Authorised Signatory]
[Designation]
[Date and Place]
[Seal and Sign]
[Business Address]

Note: In case of a consortium, the aforesaid details are to be submitted in this format by each of the members of such consortium.

Annexure IV: Financials of Applicant/Member of Consortium

(On the letterhead of the applicant/member of consortium)

Date: [●]

Sl. No.	Item	2019-2020	2020-2021	2021-2022
1.	Total Income			
2.	Profit before Depreciation			
3.	Profit before Tax			
4.	Profit after Tax			
5.	Net Worth			

Thanking You
Yours Faithfully

For *[Name of Applicant/Member of Consortium]*

[Authorised Signatory]

[Designation]

[Date and Place]

[Seal and Sign]

[Business Address]

Note: In case of a consortium, the aforesaid details are to be submitted in this format by each of the members of such consortium.

Annexure V: Declaration against Blacklisting by Applicant/Member of Consortium

(On Non-Judicial Stamp Paper of INR 100 and Duly Notarised)

Date: [●]

To

West Bengal State Warehousing Corporation
Administrative Wing, Khadya Bhavan, Block B (4th Floor),
11 A, Mirza Ghalib Street, Kolkata, West Bengal, 700 087

Sub: Declaration against Blacklisting

Ref: EoI Notification No: [●] dated [●]

Dear Sir,

I, *[Name of Authorised Signatory]*, as the *[Designation]* of *[Name of Applicant/Member of Consortium]* state that our Company/our LLP and all our Shareholders/Directors/Designated Partners are having unblemished past record and our Company/our LLP is not blacklisted or declared ineligible to participate for bidding by the Central Government or any State Government, including any departments thereof, or public sector undertaking/agency/organisation in India for corrupt/fraudulent or any other unethical business practices or for any other reason(s).

We do not have any order/declaration of insolvency, judgement or order of punishment/sentence by any court of law or any judicial/quasi- judicial body restraining us from participating in this Tender Process.

This declaration is true to the best of our knowledge and we accept and acknowledge that, the WBSWC may, at its sole discretion, disqualify our application/our Consortium's application if it finds that the above-mentioned declaration is false.

Thanking You

Yours Faithfully

For *[Name of Applicant/Member of Consortium]*

[Authorised Signatory]

[Designation]

[Date and Place]

[Seal and Sign]

[Business Address]

Note: In case of a consortium, this declaration shall be submitted in this format by each of the members of such consortium.

Annexure VI: Manner of Uploading Application

Name of Folder	Documents to be Uploaded
Technical Folder	<p>1. In case of a company: Certificate of Incorporation, Memorandum of Association and Articles of Association and last filed annual return.</p> <p style="text-align: center;">OR</p> <p>In case of an LLP: Registration Certificate, LLP Agreement (including any amendments thereto) and last filed statement of account and solvency.</p> <p style="text-align: center;">OR</p> <p>In case of a consortium: Consortium Agreement, the aforesaid documents for a company and/or an LLP, as may be applicable, and authorisation letter in favour of the lead member of the consortium by the remaining members of the consortium.</p> <p>2. Document(s) evidencing completion of construction and development of warehouse(s) and commencement of operations of such warehouse(s), including but not limited to completion certificate(s) and commencement certificate(s) issued by the concerned client organisation.</p> <p style="text-align: center;">OR</p> <p>Document(s) evidencing completion of civil construction works, including but not limited to completion certificate(s) issued by the concerned Government authority.</p> <p>3. Audited financial statements for the 3 (three) financial years of 2019-2020, 2020-2021 and 2021-2022.</p> <p>4. Filed income tax returns for the 3 (three) financial years of 2019-2020, 2020-2021 and 2021-2022.</p> <p>5. Certificate by a practising Chartered Accountant registered with the Institute of Chartered Accountants of India certifying positive net worth as</p>

Name of Folder	Documents to be Uploaded
	<p>on 31 March 2022.</p> <ol style="list-style-type: none"> 6. GST registration certificate. 7. PAN. 8. TAN. 9. Board resolution (in case the applicant is a company or in case the applicant is a consortium having a company as such consortium's lead member) and/or the authorisation letter (in case the applicant is an LLP or in case the applicant is a consortium having an LLP as such consortium's lead member) authorising him/her to act on behalf of the applicant for the purpose of the Tender Process. 10. Annexure I: Application Letter by Applicant/Lead Member of Consortium 11. Annexure II: Checklist of documents to be enclosed along with the Application. 12. Annexure III: Details of Applicant/Members of Consortium 13. Annexure IV: Financials of Applicant/Member of Consortium 14. Annexure V: Declaration against Blacklisting by Applicant/Member of Consortium.
Financial Folder	BOQ
Eoi Folder	Scanned copy of this Eoi, including any corrigendum or addendum, each digitally signed.
EMD Folder	Scanned copy of the NEFT/RTGS Challan or Net Banking Receipt towards the payment of EMD.

Annexure VII: Format of Contract

AGREEMENT

THIS AGREEMENT (“Contract”) is made on this [●] day of [●], 2023 (“Execution Date”) at Kolkata, West Bengal

BETWEEN

WEST BENGAL STATE WAREHOUSING CORPORATION, having its office at Khadya Bhawan, Block – B, 4th Floor, 11A, Mirza Ghalib Street, Kolkata – 700 087 (hereinafter referred to as the “**WBSWC**”, which term or expression shall, unless repugnant to the context or meaning thereof, include its successors-in-interest and/or assigns) of the **FIRST PART**;

AND

[If the selected applicant is a company]

[●], a company incorporated within the meaning of the Companies Act, 1956, having PAN [●] and CIN [●], and having its registered office at [●], represented by its director/authorised signatory, [●] (Aadhaar No.: [●], PAN: [●]) son/daughter/wife of [●], residing at [●], duly authorised by the Board Resolution dated [●] (hereinafter referred to as the “**Operator**”, which term or expression shall, unless repugnant to the context or meaning thereof, include its successors-in-interest and/or permitted assigns) of the **SECOND PART**.

[OR]

[If the selected applicant is a limited liability partnership]

[●], a limited liability partnership registered under the Limited Liability Partnership Act, 2008, having PAN [●] and LLPIN [●], and having its principal place of business at [●], represented by its authorised partner [●], duly authorised by the Resolution of Partners dated [●] (hereinafter referred to as the “**Operator**”, which term or expression shall, unless repugnant to the context or meaning thereof, include its successors-in-interest and/or permitted assigns) of the **SECOND PART**.

[OR]

[If the selected applicant is a consortium]

[●], a company/limited liability partnership within the meaning of the Companies Act, 1956/registered under the Limited Liability Partnership Act, 2008, having PAN [●] and CIN [●]/LLPIN [●], and having its

registered office/principal place of business at [●], represented by its director/authorised partner [●], duly authorised by the Board Resolution/Resolution of Partners dated [●] (hereinafter referred to as the “Operator”, which term or expression shall, unless repugnant to the context or meaning thereof, include its successors-in-interest and/or permitted assigns) of the **SECOND PART**.

AND

[If the selected applicant is a consortium]

(1) [●], a company/limited liability partnership within the meaning of the Companies Act, 1956/registered under the Limited Liability Partnership Act, 2008, having PAN [●] and CIN [●]/LLPIN [●], and having its registered office/principal place of business at [●], represented by its director/authorised partner [●], duly authorised by the Board Resolution/Resolution of Partners dated [●]; (2) [●], a company/limited liability partnership within the meaning of the Companies Act, 1956/registered under the Limited Liability Partnership Act, 2008, having PAN [●] and CIN [●]/LLPIN [●], and having its registered office/principal place of business at [●], represented by its director/authorised partner [●], duly authorised by the Board Resolution/Resolution of Partners dated [●]; (3) [●], a company/limited liability partnership within the meaning of the Companies Act, 1956/registered under the Limited Liability Partnership Act, 2008, having PAN [●] and CIN [●]/LLPIN [●], and having its registered office/principal place of business at [●], represented by its director/authorised partner [●], duly authorised by the Board Resolution/Resolution of Partners dated [●] (hereinafter collectively referred to as the “**Confirming Parties**”, which term or expression shall, unless repugnant to the context or meaning thereof, include their respective successors-in-interest and/or permitted assigns) of the **THIRD PART**.¹

WBSWC, the Operator and [the Confirming Parties] shall be individually referred to as a “**Party**” and collectively referred to as “**Parties**”.

WHEREAS:

- A. WBSWC had prescribed certain financial and technical criteria and invited applications from interested and eligible applicants by its expression of interest bearing number [●] dated [●] (“**EOI**”) for selection of the Operator for undertaking the occupation of the warehouse.
- B. After evaluation of the Technical Proposals and Financial Proposals received, WBSWC has accepted the application of the Operator (being the selected applicant) and notified such Operator’s selection *vide* the Letter of Intent to the Operator which has been duly accepted by the Operator.

OR

¹ **Note:** In the event the selected applicant is a consortium then along with the Operator the Confirming Parties shall also be required to execute this Contract.

After evaluation of the Technical Proposals and Financial Proposals received, WBSWC has accepted the application of [●] <insert the name of the consortium> (being the selected applicant) and notified such consortium's selection *vide* the Letter of Intent to the consortium which has been duly accepted by the consortium. Subsequently, the said consortium has incorporated/registered a company/limited liability partnership in terms of the requirements of the EOI being the Operator.

- C. Further on, the Operator has submitted the PBG in accordance with Clause 29 of Section III of the EOI and accordingly, WBSWC and the Operator have mutually agreed to enter into and be legally bound by the terms and conditions recorded in this Contract and hereby record their respective rights, powers, duties and obligations in connection therewith.

NOW THEREFORE THIS CONTRACT WITNESSETH AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATIONS

- 1.1 In this Contract, unless the context otherwise requires, capitalised terms defined by inclusion in quotations and/or parentheses shall have the meaning so respectively assigned and ascribed to each of such terms.
- 1.2 All capitalised terms which are not expressly defined herein but are defined in the EOI, shall have the meaning ascribed to them under the EOI. This Contract shall always be read in conjunction with the EOI.
- 1.3 Clause headings in this Contract are inserted for convenience only and shall not be restricted to the extent herein, for use in its interpretation.
- 1.4 In this Contract, unless the context clearly indicates a contrary intention, a word or an expression which denotes a natural person shall include an artificial person (and *vice versa*), any one gender shall include the other genders and the singular shall include the plural (and *vice versa*).
- 1.5 If any provision in this Clause 1 is a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to it as if it were a substantive provision in the body of this Contract.
- 1.6 When any number of days is prescribed, the same shall be reckoned exclusive of the first day and inclusive of the last day.
- 1.7 The expression "in writing" and "written" includes any communication made by letter or e-mail.

- 1.8 The expression “this Clause” shall, unless followed by reference to a specific provision, be deemed to refer to the whole Clause (not merely the sub-Clause, paragraph or other provision) in which the expression occurs.
- 1.9 Time is of the essence in the performance of the Operator’s obligations. If any time period specified herein is extended in writing by WBSWC, such extended time shall also be of the essence.
- 1.10 The Schedule(s) to this Contract shall be deemed to be incorporated in and form an integral part of this Contract.
- 1.11 Reference to a “person” includes (as the context requires) an individual, proprietorship, partnership firm, limited liability partnership, company, body corporate, co-operative society, trust, entity, authority or anybody, association or organization of individuals or persons whether incorporated or not.
- 1.12 References to any deed, document, instrument, rule, regulation, notification, statute or the like shall mean a reference to the same as may have been duly amended, modified or replaced. For the avoidance of doubt, a document shall be construed as amended, modified or replaced only if such amendment, modification or replacement is executed in compliance with the provisions of such document(s) and/or in terms of applicable laws.
- 1.13 References to any clause, article or section shall mean a reference to a clause, article or section of this Contract, unless specified otherwise.

2. **GRANT**

The Grant does not confer the Operator any right, title, interest, tenancy or incumbency of any nature in the Warehouse.

3. **TERM**

- 3.1 This Contract shall be valid from the Execution Date for a period of maximum three years [3 (three)], i.e., up to [●], unless terminated in accordance with Clause 14 (“**Term**”). Upon expiry of the Term, this Contract may be extended at the sole discretion of WBSWC for a further period of 2 (Two) years, subject to the performance of the Operator to the fullest satisfaction of WBSWC (“**Renewal**”).
- 3.2 WBSWC shall intimate the Operator for the Renewal at least 90 (Ninety) days prior to the expiry of the Term and the Operator shall communicate its acceptance towards such Renewal within 30 (Thirty) days from the date of the receipt of the intimation of the Renewal but in no event later than 45 (Forty Five) days prior to the expiry of the Term. The Renewal of this Contract shall be

carried out by execution of a fresh contract on such terms and conditions as WBSWC may deem fit and which shall be binding on the Operator.

4. STORAGE CHARGE

- 4.1 It is hereby agreed by and between the Parties that in lieu of the Grant, the Operator shall be required to pay to WBSWC, during the Term, an amount being storage charges to be calculated as per accepted quoted rate i.e. per sq. ft. per month for a godown. It is pertinent to mentioned here that no bidder can quote storage charges rate less than Rs.12.00 per sq. ft. per month (exclusive GST and other Govt. duties if applicable) ("**STORAGE CHARGES**").
- 4.2 The Storage Charges payable by the Operator to WBSWC shall be exclusive of all applicable taxes (including Goods and Services Tax (GST)), levies, and/or charges.
- 4.3 It is hereby further agreed that the Operator shall pay the storage charges to WBSWC in advance, within 30 (thirty) days of such storage charges becoming due, failing which an interest at the rate of 18% (eighteen per cent) per annum (calculated and compounded on a monthly basis) shall be applicable on the outstanding storage charges.
- 4.4 The storage charges shall be payable by the Operator to WBSWC by way of RTGS/NEFT to the designated bank account of WBSWC.

5. PERFORMANCE BANK GUARANTEE

- 5.1 The Operator acknowledges and agrees that the PBG shall remain in full force and effect for the entire Term and an additional period of 180 (one hundred eighty) days after the expiry of the Term.
- 5.2 It is hereby agreed that upon occurrence of any default on the part of the Operator under this Contract or failure to fulfil any obligation specified in this Contract, including failure of the Operator to pay the Storage Charge for any calendar month, WBSWC shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to invoke and appropriate the PBG for such default or failure by the Operator. Upon such appropriation from the PBG, the Operator shall within 30 (thirty) days thereof, replenish, in case of partial appropriation, to the original amount of the PBG, and in case of appropriation of the entire PBG provide a fresh PBG, as the case may be.

6. CHANGE IN MANAGEMENT CONTROL

- 6.1 The Operator shall ensure that the existing shareholders/designated partners, as the case may be, of the Operator maintain the shareholding or ownership interest as well as management control,

as existing on the date on the submission of the Operator's application pursuant to the EOI, for the Term.

- 6.2 The Operator shall not undertake or permit any change in the shareholding or ownership interest as well as management control (whether by any transfer of or change in shareholding/ equity/ ownership interest in the Operator, including by way of a restructuring or amalgamation), except with the prior written approval of WBSWC.
- 6.3 The Operator shall at all times ensure that it shall not have any shareholder(s)/designated partner(s) (as the case may be), whether directly or indirectly, who belongs to or is incorporated or registered in any of the countries sharing geographical land border with India.

7. DISCLAIMER BY THE OPERATOR

- 7.1 The Operator acknowledges that prior to the execution of this Contract, the Operator has undertaken a complete and careful examination and an independent evaluation of the EOI, the Scope. The Operator further acknowledges that it has determined to its satisfaction the accuracy thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder.
- 7.2 WBSWC makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumption, statement or information provided by it and the Operator confirms that it shall have no claim whatsoever against WBSWC in this regard.
- 7.3 The Operator acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 9.1 and hereby acknowledges and agrees that WBSWC shall not be liable for the same in any manner whatsoever to the Operator and/or the Confirming Parties (if applicable) or any person claiming through or under it.
- 7.4 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 9.1 above shall not vitiate this Contract or render it voidable.

8. GENERAL OBLIGATIONS OF THE OPERATOR

- 8.1 The Operator shall be solely responsible for the due payment of storage charges bills at the Warehouse and the same shall be payable at actuals.
- 8.2 Subject to the provisions of this Contract, the Operator shall discharge its obligations in accordance with good industry practice, i.e., the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Contract and in accordance with this Contract and applicable

laws in reliable, safe, economical and efficient manner, and includes prudent utility practices generally accepted by storage and warehousing utilities for ensuring safe, economic, reliable and efficient construction, operation and maintenance of a warehouse and for providing safe, economic, reliable and efficient storage services (“**Good Industry Practice**”).

- 8.3 The Operator shall ensure that any and all personnel engaged by it or by its contractors in the performance of its obligations under this Contract are at all times properly trained for their respective functions.
- 8.4 The Operator shall pay, at all times during the Term, all taxes (including GST), levies, duties, cesses and all other statutory charges payable in respect of the Project.
- 8.5 The Operator shall at all times operate the Warehouse in accordance with applicable laws, Good Industry Practice and the provisions of this Contract.
- 8.6 The Warehouse or any part thereof shall not be branded in any manner whatsoever and howsoever by the Operator to advertise, display or reflect the name or identity of the Operator or any of its directors/shareholders/partners/members (as may be applicable) or any prospective user(s) of the Warehouse.
- 8.7 The Operator shall not in any manner whatsoever and howsoever use or permit to be used the name and/or identity of the Warehouse or for promotion of the identity, brand equity or business interests of itself, including those of its directors/shareholders/partners/members (as may be applicable) and/or of any prospective user(s) of the Warehouse.
- 8.8 During the Term, the Operator shall protect the Warehouse from any and all occupations, encroachments or encumbrances, and shall neither create nor permit any prospective user(s) of the Warehouse to create any encumbrance over all or any part and/or the Warehouse assets.
- 8.9 The Operator shall bear all costs and expenses for any special or temporary right of way required by it in connection with access of the Warehouse. The Operator shall obtain at its own cost such facility(ies) on or outside the Warehouse as may be required by it and the performance of its obligations under this Contract.
- 8.10 The Operator shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Contract:
 - (a) Make, or cause to be made, necessary applications to the relevant Government authority(ies) with such particulars as may be required for obtaining any permit(s)/ approval(s)/ license(s)/ registration(s) under the applicable laws for undertaking the storage occupation and shall keep in full force and effect for the Term such permit(s)/ approval(s)/ license(s)/ registration(s) in conformity with the applicable laws;

- (b) Procure, as required, the appropriate proprietary rights, licenses, agreements and/or permissions for materials, methods, processes and systems used or incorporated into the Warehouse;
 - (c) Maintain harmony and good industrial relations among the personnel employed by it or its contractors in connection with the performance of its obligations under this Contract;
 - (d) Ensure that its contractors comply with all applicable laws in the performance by them of any of the Operator's obligations under this Contract;
 - (e) Not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Contract or any applicable laws; and
 - (f) Ensure that all equipment(s) and facility(ies) in the Warehouse are operated and maintained in accordance with Good Industry Practice; and
- 8.11 Upon expiry of the Term, the Operator shall transfer along with all facilities, infrastructure, and developments made thereon and assets therein, to WBSWC without claiming any payment or consideration from WBSWC for the same. Upon such transfer, all the Operator's rights and interests in the Warehouse shall pass to and vest in WBSWC free and clear of all liens, claims and encumbrances, without any further act or deed on the Operator's part or that of WBSWC, and none of the Warehouse assets shall be acquired by the Operator.
- 8.12 The Operator shall not sub-let or license in any manner whatsoever or part with the possession of the Warehouse or any portion thereof without the prior written consent of WBSWC.
- 8.13 The Operator shall not transfer, assign, or create any encumbrance by way of mortgage, charge, sale, etc. or allow or purport to do the same in respect of the Warehouse or any part thereof.
- 8.14 The Confirming Parties (if applicable) hereby confirm, agree and covenant that they shall be jointly and severally liable for the performance of the obligations of the Operator specified in this Contract.

9. **COMMERCIAL UTILISATION OF THE WAREHOUSE**

- 9.1 The Operator shall commence the commercial utilisation of the Warehouse within 1 (one) month from the date of issuance of the offer letter.
- 9.2 It is hereby agreed that the Operator shall commercially utilise the Warehouse either by itself and/or, subject to the prior written approval of WBSWC, by way of granting licence or permissive

possession in respect of the spaces comprised in the Warehouse to any prospective user(s) on rental basis, in compliance with any and all applicable law(s).

9.3 It is hereby clarified that at no point of time the Warehouse shall be used to store any hazardous and/or inflammable goods and/or products.

10. OPERATION AND MAINTENANCE OF THE WAREHOUSE

10.1 Operation and Maintenance Obligations of the Operator

- (a) The Operator shall operate and maintain the Warehouse in accordance with this Contract and if required, modify, repair or otherwise make improvements to the Warehouse to comply with the provisions of this Contract and any applicable laws, and conform to Good Industry Practice. The obligations of the Operator hereunder shall include:
 - (i) Ensuring safe, hygienic and efficient storage in the Warehouse, including prevention of loss or damage thereto, during normal operating conditions;
 - (ii) Ensuring compliance with the provisions of this Contract and any applicable law(s), in conformity with Good Industry Practice, for securing the safety of the Warehouse, its assets, its prospective users and/or other persons present in the premises at its own cost and expense;
 - (iii) Minimising disruption to storage and movement of products stored in the Warehouse in the event of accidents or other incidents affecting the safety and use of the Warehouse by providing a rapid and effective response and maintaining liaison with emergency services of the Government;
 - (iv) Preventing, with the assistance of the concerned law enforcement agencies, any obstructions to or encroachments on or unauthorised entry to the Warehouse;
 - (v) Operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Warehouse and for providing storage services;
 - (vi) Operation and maintenance of all assets on the Warehouse diligently and efficiently and in accordance with Good Industry Practice.
- (b) The Operator shall remove promptly from the Warehouse all surplus waste materials (including hazardous materials and waste water, if any), rubbish and other debris (including, without limitation, accident debris) and keep the Warehouse in a clean, tidy and orderly condition, and in conformity with the applicable laws and Good Industry Practice.

- (c) If the Operator fails to comply with any instructions and/or directions issued by WBSWC or any Government authority acting under any applicable laws, as the case may be, and is liable to pay a penalty under the provisions of applicable laws, such penalty shall be borne solely by the Operator, and shall not be claimed from WBSWC. For the avoidance of doubt, payment of any penalty under the provisions of applicable laws shall be in addition to, and independent of the damages payable under this Contract.

10.2 Safety, Breakdowns and Accidents

- (a) The Operator shall ensure safe conditions for WBSWC and prospective users of the Warehouse, and in the event of unsafe conditions, damage, breakdowns and accidents, it shall follow the relevant operating procedures and undertake removal of obstruction and debris without delay. Such procedures shall conform to the provisions of this Contract, applicable laws and Good Industry Practice.
- (b) The Operator's responsibility for rescue operations on the Warehouse shall include safe evacuation of all persons from the affected area as an initial response to any particular incident and shall also include prompt removal of debris or any other obstruction, which may endanger or interrupt the safe operations of the Warehouse.

10.3 Modifications to the Warehouse

The Operator shall not carry out any material modifications to the Warehouse save and except where such modifications are necessary for the Warehouse to operate in conformity with the Good Industry Practice and applicable laws. Provided that the Operator shall obtain the prior written approval of WBSWC of the proposed modifications along with particulars thereof at least 30 (thirty) days before commencing work on such modifications and shall consider any suggestions that WBSWC may make. For the avoidance of doubt, all modifications made hereunder shall comply with the safety requirements, applicable laws, Good Industry Practice and the provisions of this Contract.

11. INSURANCE

- 11.1 WBSWC will insure the warehouse building, office building, boundary wall and the entire cost of insurance premium for the said structures will be borne by the WBSWC.
- 11.2 The Operator shall at all times insure and keep insured with insurance company acceptable to WBSWC, all stored stocks against theft, accidents, earthquake, terrorism, riot, strikes, loss or damage from environmental, fire and such other hazards or risks as are customarily insured

against by companies in the business of constructing, developing, operating and maintaining warehouses Clause 14.4.

- 11.3 All charges and premiums of stored goods shall be borne by the Operator and WBSWC shall in no way be liable for the same.
- 11.4 Without prejudice to the provisions contained in Clause 14.1, the Operator shall, during the Term, procure and maintain insurance including but not limited to the following:
- (a) Loss, damage or destruction of the Warehouse assets, including assets handed over by WBSWC to the Operator, at replacement value;
 - (b) Comprehensive third-party liability insurance including injury to or death of personnel of WBSWC or others caused as a result of any activities of the Warehouse;
 - (c) The Operator's general liability arising out of the Grant;
 - (d) Liability to third parties for goods or property damage;
 - (e) Workmen's compensation insurance; and
 - (f) Any other insurance that may be necessary to protect the Operator and its employees, including any Force Majeure Event that are insurable at commercially reasonable premiums and not otherwise covered in items (a) to (e) above.

12. REPRESENTATIONS AND WARRANTIES

The Operator and the Confirming Parties (if applicable) hereby represents and warrants to WBSWC that:

- (a) The Operator is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Contract;
- (b) The Operator has taken all necessary corporate and other actions under applicable laws to authorise the execution and delivery of this Contract and to validly exercise its rights and perform its obligations under this Contract;
- (c) This Contract constitutes a legal, valid and binding obligation, enforceable against the Operator and the Confirming Parties in accordance with the terms hereof, and the Operator's obligations under this Contract will be legally valid, binding and enforceable obligations against the Operator in accordance with the terms hereof;

- (d) The Operator is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Contract or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (e) The information furnished in the application pursuant to the EOI is true and accurate in all respects as on the Execution Date;
- (f) The execution, delivery and performance of this Contract will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of the Operator's/any of the Confirming Party's Memorandum and Articles of Association/limited liability partnership agreement (as may be applicable) or any applicable laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (g) There are no actions, suits, proceedings, or investigations pending or threatened against the Operator and/or the Confirming Party at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Contract or which individually or in the aggregate may result in any material impairment of the Operator's ability to perform any of its obligations under this Contract;
- (h) There is no violation or default with respect to any order, writ, injunction or decree of any court or Government authority which may result in any material adverse effect on the Operator's ability to perform its obligations under this Contract and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of the Operator's obligations under this Contract;
- (i) The Operator and the Confirming Parties have complied with all applicable laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on the Operator's ability to perform its obligations under this Contract; and
- (j) No representation or warranty by the Operator and/or the Confirming Party contained herein or in any other document furnished by the Operator and/or the Confirming Party to WBSWC or to any Government authority in relation to applicable laws contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;

13. **SPECIFIC PERFORMANCE**

The Operator and the Confirming Parties (as may be applicable) acknowledge and agree that the covenants in this Contract were negotiated at arm's length and are fair and reasonable. The Operator and the Confirming Parties (as may be applicable) further acknowledge that any breach

or threatened or attempted breach of any provision of this Contract would cause irreparable, material, immeasurable, continuing and immediate harm to WBSWC and the monetary damage would not be sufficient or adequate to protect WBSWC's interests. WBSWC will be entitled to institute and prosecute proceedings in any court of competent jurisdiction to prevent the Operator and/or the Confirming Parties (as may be applicable) from violating any contractual or legal obligation or to compel performance of the Operator's obligations hereunder. Any relief of injunction and/or specific performance against the Operator and/or the Confirming Parties (as may be applicable) shall be in addition to any remedy for damages which WBSWC may be entitled to.

14. **TERMINATION**

14.1 **Termination by WBSWC**

- (a) Without prejudice to any other right or remedy which WBSWC may have in respect thereof under this Contract, upon the occurrence of any breach of this Contract by the Operator (including any breach of the representations, warranties and obligations of the Operator) and failure of the Operator to cure such breach within a cure period of 30 (thirty) days, WBSWC shall be entitled to terminate this Contract forthwith by issuing a termination notice to the Operator. The following shall apply in respect of cure of any breach of this Contract:
 - (i) The said cure period shall commence from the date on which the written notice of the breach of this Contract is sent by WBSWC to the Operator asking the Operator to cure the breach specified in the said notice; and
 - (ii) The aforesaid notice or the cure period shall not relieve or waive or shall be deemed to relieve or waive the Operator from any liability for damages caused by its default.
- (b) WBSWC may at any time terminate this Contract only for reasons beyond the control of WBSWC, other than events mentioned as per Clause 16 of this Contract (Force Majeure) , by giving at least 90 (ninety) days' prior notice in writing to the Operator.
- (c) WBSWC reserves the right to terminate this Contract by giving 30 (thirty) days' prior notice in writing to the Operator in the event:
 - (i) The Operator gets blacklisted by the Government of India, or any other Ministry of Government of India, or any other State/Union Territory; or
 - (ii) The Operator is convicted by a competent court or authority on grounds of tax evasion, criminal misconduct etc.;

- (iii) If any person initiates against the Operator or if the Operator initiates against itself any proceeding seeking relief as insolvent or adjudication as bankrupt or any other relief under the applicable laws affecting the rights of the creditors, or a petition is presented for the winding up and/or liquidation of the Operator, and in the case of any such proceeding or petition or application instituted or presented against the Operator in any court of law or tribunal or statutory authority, such proceeding or petition or application results in a judgment of insolvency or bankruptcy of the Operator.
- (iv) Defaults on payment of the Storage Charge for any year within the timeline as specified in Clause 4.3 of this Contract (Annexure VII) and if such default continues for a period of 90 (ninety) days thereafter ; and/or

14.2 Liability for Defects after Termination

The Operator shall be responsible for all defects and deficiencies in the Warehouse for a period of 120 (one hundred and twenty) days after the expiry of the Term, and the Operator shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by WBSWC in the Warehouse during the aforesaid period.

In the event that the Operator fails to repair or rectify such defect or deficiency within a period of 30 (thirty) days from the date of notice issued by WBSWC in writing in this behalf, WBSWC shall be entitled to get the same repaired or rectified at the Operator's risk and cost. All costs incurred by WBSWC hereunder shall be reimbursed by the Operator to WBSWC within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, WBSWC shall be entitled to recover the same from the PBG.

14.3 Consequence of Termination

- (a) In the event of any termination of this Contract in terms of Clause 14.1(b), WBSWC shall return the PBG to the Operator after deducting therefrom any amount due to WBSWC from the Operator no later than 180 (one hundred eighty) days from the date of termination.
- (b) In the event of any termination of this Contract in terms of Clause 14.1(a) or Clause 14.1(c), WBSWC shall be entitled to forfeit the entire amount of the PBG.

15. EXIT MANAGEMENT

Upon expiry of the Term:

- (a) Transfer the Warehouse to WBSWC along with all facilities, infrastructure, and developments made thereon and assets therein, without claiming any payment or consideration from WBSWC for the same in accordance with Clause 8.11;
- (b) The Operator shall remove all its employees and personnel from the work locations forthwith;
- (c) The Operator shall transfer or cause to be transferred to WBSWC any agreements or contracts which the Operator might have entered into with third parties relating to performance of this Contract or for meeting any of its other obligations under this Contract, which are:
 - (i) valid and subsisting;
 - (ii) capable of being transferred to WBSWC; and
 - (iii) agreed to be taken over by WBSWC as per its discretion.

The Operator shall terminate or cause to be terminated such agreements or contracts which are not transferred to WBSWC.

- (d) WBSWC shall be entitled to restrain the Operator and any person claiming through or under the Operator from the Warehouse;
- (e) All the cost, expense and other amount due to the Operator's employees or any other personnel engaged by the Operator in connection with or in relation to performance of this Contract shall be the sole responsibility of the Operator even after the expiry or termination of this Contract; and
- (f) The Operator shall execute all such documents as directed by WBSWC in order to give effect to transfer of licenses, registrations, approvals, consents etc., acquired in favour of the new system integrator appointed by WBSWC.

16. **FORCE MAJEURE**

16.1 Neither Party shall be liable for any delay in performing its obligations under this Contract caused by circumstances beyond its reasonable control, provided that, such circumstances substantially affect or impair the ability of the Party to perform its obligations under this Contract. These circumstances shall only mean act of God and natural calamities ("**Force Majeure Event**").

16.2 Each Party whose performance of any obligations under this Contract is affected by a Force Majeure Event shall:

- (a) Promptly notify the other Party of the occurrence of a Force Majeure Event including the nature, extent, effect and likely duration of the circumstances constituting the Force Majeure Event; and
 - (b) Use its reasonable endeavours to remedy or mitigate the effect of the Force Majeure Event.
- 16.3 In the event that a Force Majeure Event continues for more than 30 (thirty) days, the Parties shall enter into discussions to agree, in good faith, the best way forward.
- 16.4 In the eventuality that a Force Majeure Event, persists for a period of more than 60 (sixty) days, WBSWC shall have a right to terminate this Contract by giving 7 (seven) days' prior notice in writing to the Operator.

17. **ASSIGNMENT**

17.1 **Restriction on Assignment by Operator**

This Contract shall not be assigned by the Operator to any person, save and except with the prior consent in writing of WBSWC.

17.2 **Assignment by WBSWC**

Notwithstanding anything to the contrary contained in this Contract, WBSWC shall have the right but not the obligation to, after giving 7 (seven) days' written intimation to the Operator, assign and/or transfer any of its rights and benefits and/or obligations under this Contract to any third person.

18. **WAIVER**

No waiver of any term or condition or breach thereof by WBSWC shall be valid unless expressed in writing and signed by WBSWC and communicated by WBSWC to the Operator. A waiver by WBSWC of any term or condition or breach thereof in a given case shall not be deemed or construed as a general waiver of such term or condition or breach thereof in the future or waiver of any other term(s) or condition(s) or breach thereof.

19. **INDEMNITY**

- (a) Notwithstanding anything contained in this Contract, the Operator and the Confirming Parties (as may be applicable) agree to indemnify and hold harmless WBSWC and its managers, officers, directors, employees and advisors ("**Indemnified Party**") forthwith upon demand at any time and from time to time, from and against any and all claims to which

the Indemnified Party may become subject, in so far as such claims arise out of, in any way relate to, or result from:

- (i) any mis-statement or any breach of any representation or warranty or obligation as specified in this Contract made by the Operator and/or Confirming Parties (as may be applicable) or any other person claiming through or under the Operator and/or Confirming Parties (as may be applicable), including sub-contractors or agents appointed by it, and their respective employees, agents, and representatives, etc.; or
 - (ii) the failure, negligence, fraudulent omissions, wilful misconduct by the Operator to fulfil any agreement, covenant or condition contained in this Contract, including without limitation the breach of any terms and conditions of this Contract by any employee or sub-contractor or agent of the Operator or person claiming through or under the Operator; or
 - (iii) failure by the Operator or any other person claiming through or under it, including sub-contractors or agents appointed by it, and their respective employees, agents, and representatives, etc. to comply with the applicable laws, including acts, ordinances, rules, regulations, bye laws or notifications, orders, circulars; or
 - (iv) failure by the Operator or any other person claiming through or under it, including sub-contractors or agents appointed by it, and their respective employees, agents, and representatives, etc. to pay any applicable rates, levies, taxes, cess and statutory duties and impositions of whatsoever and howsoever nature; or
 - (v) any claims made by any third party against WBSWC arising out of any act, deed or omission by the Operator and/or persons claiming through or under the Operator; or
 - (vi) any damage or defect to the structure of the Warehouse on account of any act or omission on the part of the Operator or any other person claiming through or under it, including sub-contractors or agents appointed by it, and their respective employees, agents, and representatives, etc.; or
 - (vii) any injury or loss of life caused by any act or omission on the part of the Operator or any other person claiming through or under it, including sub-contractors or agents appointed by it, and their respective employees, agents, and representatives, etc.; or
 - (viii) performance of this Contract by the Operator.
- (b) For the avoidance of doubt, indemnification of claims shall be made in amount(s) sufficient to restore the Indemnified Party to the financial position it would have been in had the claims not occurred.

20. DEFENCE OF CLAIMS

- 20.1 In the event that the Indemnified Party receives a claim from a third party in respect of which it is entitled to be indemnified under Clause 19 of this Contract, it shall notify the Operator within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Operator, which approval shall not be unreasonably withheld or delayed. In the event that the Operator wishes to contest or dispute the claim it may conduct the proceedings in the name of the Indemnified Party subject to the Indemnified Party being secured against any costs involved, to its satisfaction.
- 20.2 If the Operator exercises its rights to contest or dispute the claim, then the Indemnified Party shall nevertheless have the right to employ its own counsel/law firm and such counsel/law firm may participate in such action, and the fees and expenses of such counsel/law firm shall be borne by the Operator, when and as incurred. The counsel/law firm engaged by the Indemnified Party shall have the right to direct the defence of such claim, action, suit or proceeding on behalf of the Indemnified Party.

21. CONFIDENTIALITY

- 21.1 The Operator and the Confirming Parties (as may be applicable) undertake that they shall not at any time during the Term, as may be applicable and at all times after the Term, disclose to any person any Confidential Information which has been disclosed to the Operator and the Confirming Parties (as may be applicable) by WBSWC, its employees, agents, consultants or subcontractors or any other confidential information concerning WBSWC's activities and functions which the Operator and the Confirming Parties (as may be applicable) may obtain from WBSWC or any third person.
- 21.2 The Operator and the Confirming Parties (as may be applicable) shall use the Confidential Information only for the purposes of this Contract and shall protect such Confidential Information from disclosure to others using the same degree of care used to protect their own proprietary information of like importance but in any case, using no less than a reasonable degree of care.
- 21.3 The Operator and the Confirming Parties (as may be applicable) may only disclose the Confidential Information it receives to their team or personnel only on a need-to-know basis for the purpose of performing the Operator's obligations under this Contract and the Operator and the Confirming Parties (as may be applicable) shall ensure that the team or personnel to whom such Confidential Information has been disclosed also complies with the provisions of this Clause.
- 21.4 For the purpose of this Contract, "**Confidential Information**" shall mean information including transaction data published in the public domain (whether in oral, written, electronic or other format) which relates to the technical, financial and business affairs, dealers, suppliers,

developments, operations, processes, data, trade secrets, know-how, plans, budgets and personnel of WBSWC and its affiliates which may be disclosed or otherwise learned by the Operator and/or the Confirming Parties (as may be applicable) in course of or in connection with this Contract, including information received during negotiations, location visits and meetings in connection with this Contract.

22. **GOVERNING LAW AND JURISDICTION**

This Contract shall be governed by the laws of India and, subject to Clause 23, any dispute arising out of this Contract, shall be exclusively subject to jurisdiction of courts in Kolkata, West Bengal.

23. **DISPUTE RESOLUTION**

23.1 Any or all disputes, differences or claims arising out of the performance of this Contract or construction, interpretation or application of any terms and conditions or any matter or thing in any way connected with or in connection with or arising out of this Contract, or the rights, duties or liabilities of any Party under this Contract, at any time, whether relating to law or fact or both, shall at first be attempted to be resolved between WBSWC and the Operator amicably through mutual discussion and negotiation. Either of the Parties shall be entitled to give notice of such dispute to the other Party requesting for bi-partite discussion between them. Upon receiving such notice, the other Party shall forthwith enter into discussions with the Party issuing the said notice in an attempt to resolve such dispute, within a period of 30 (thirty) days from the date of issuance of such notice.

23.2 In the event any dispute between the Parties cannot be amicably settled within the period of 30 (thirty) days as specified above, then either of the Parties shall be entitled to approach relevant court(s) in Kolkata, West Bengal, which shall have the exclusive jurisdiction over all matters relating to or arising out of this Contract.

24. **SURVIVAL OF OBLIGATIONS**

24.1 Notwithstanding anything contained to the contrary in this Contract, the expiry of the Term shall not affect the effectiveness of the provisions of Clause 13 (*Specific Performance*), Clause 14.3 (*Consequences of Termination*), Clause 15 (*Exit Management*), Clause 19 (*Indemnity*), Clause 20 (*Defence of Claims*), Clause 21 (*Confidentiality*), Clause 25 (*Notices*) and this Clause, and the said provisions shall be specifically enforceable by WBSWC, independent of this Contract, for any breach thereof.

24.2 Any cause of action which may have occurred in favour of WBSWC or any right which may have accrued or vested in WBSWC during this Contract, as a result of any act, omission, deed or matter done or omitted to be done by the Operator, shall survive beyond the Term.

25. **NOTICES**

All notices, requests, demands or other communications required and permitted under the provisions of this Contract shall be delivered in person or sent by courier or by registered post or speed post with acknowledgement or electronic mail. The same shall be addressed at the designation, address and electronic mail, mentioned hereunder unless changed by written notification to be given at least 15 (fifteen) days in advance by letter sent through registered post, prior to proposed date of change of address and/ or electronic mail. Any such notice or communication shall be deemed to have been delivered and received on the date of such delivery.

If to WBSWC:

**Attention: Secretary
WEST BENGAL STATE
WAREHOUSING CORPORATION
West Bengal State Warehousing
Corporation
E-Mail: com-swc@wb.gov.in**

If to the Operator:

**Attention: [●]
[●]
[●]
E-Mail: [●]**

26. **MISCELLANEOUS**

- 26.1 Without affecting the generality of any other provisions contained herein, in the event a Party commits a default or breach of the terms of this Contract then, the non-defaulting Party shall be entitled to such remedies, including remedies by way of specific performance, as may be permitted under the applicable laws, in addition to its rights and remedies under this Contract.
- 26.2 Any and all damages payable under this Contract shall be in addition to, and not in substitution for, or derogation of WBSWC's right of termination under this Contract.
- 26.3 Each Party shall bear the fees and expenses of its respective advocates and experts and all other costs and expenses incurred by them, incidental to the negotiation, preparation, execution and delivery of this Contract.
- 26.4 WBSWC and the Operator are independent parties and under no circumstances shall this Contract be construed as one of agency, partnership or joint venture between the Parties herein. The relationship between the WBSWC and the Operator under/or in pursuance of this Contract is on a principal-to-principal basis. Consequently, neither Party shall be entitled to represent the other and/or make any commitment on behalf of and/or in the nature of the other to or before any

Government authority or any other public body. Furthermore, no relationship in the nature of partnership or association of persons is hereby being created or intended to be created between WBSWC on one hand and the Operator on the other hand in connection with and/or relating to the Warehouse.

- 26.5 At all times including during any pending dispute between the Parties, the Operator shall continue to perform its obligations under this Contract and as directed by WBSWC and shall be governed by the terms and conditions of this Contract.
- 26.6 No press release in relation to this Contract or the transactions and/or activities contemplated herein or any other announcement will be issued by the Operator without the prior written consent of WBSWC.
- 26.7 The Parties shall with reasonable diligence, do all such things, take all such actions and provide all such reasonable assurances as may be required to consummate the transactions and/or activities contemplated by this Contract and each Party shall provide such further documents or instruments required by the other Party as may be reasonably necessary to give effect to the purpose and intent of this Contract and carry out its provisions.
- 26.8 This Contract, including the Schedule(s), and the documents related hereto set forth the entire understanding of the Parties relating to the Warehouse and all other and/or prior understandings, agreements, whether written or oral, are hereby nullified.
- 26.9 This Contract may not be modified, amended or supplemented except in accordance with its express terms and in writing executed by WBSWC and the Operator.
- 26.10 Any provision of this Contract, which is or may become prohibited or unenforceable in law, shall be ineffective only to the extent of such prohibition or unenforceability without invalidating or affecting the remaining provisions of this Contract.
- 26.11 Each of the rights of the Parties hereto under this Contract are independent, cumulative and without prejudice to all other rights available to them, and the exercise or non-exercise of any such rights shall not prejudice or constitute a waiver of any other right of the Parties hereto, under this Contract.
- 26.12 No delay of any condition or covenant contained in this or failure to exercise a right or remedy by the Parties shall be construed or implied as a waiver or acquiescence by the Parties of the same or any other condition, covenant, right, or remedy. Any cause of action which may have occurred in favour of any Party or any right which is vested in any Party under any of the provisions of this Contract during the Term as a result of any act, omission, deed, matter or thing done or omitted to be done by any Party before the expiry of this Contract by efflux of time or termination or

otherwise in accordance with the provisions of this Contract, shall survive the expiry or termination of this Contract.

26.13 This Contract may be executed in 2 (two) counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF the Parties hereto have hereunto set and subscribed their respective hands and seals, the day, month and year first above written.

<p>SIGNED AND DELIVERED by WEST BENGAL STATE WAREHOUSING CORPORATION, being the within named WBSWC in the presence of:</p>	<p>For WEST BENGAL STATE WAREHOUSING CORPORATION</p> <hr/> <p>Secretary (Authorised Signatory)</p>
<p>Witness:</p> <hr/> <p>Name:</p> <p>Address:</p>	
<p>SIGNED AND DELIVERED by [●], being the within named Operator in the presence of:</p>	<p>For Operator 1</p> <hr/> <p>[●] (Authorised Representative)</p>
<p>Witness:</p> <hr/> <p>Name:</p> <p>Address:</p>	
<p>SIGNED AND DELIVERED by [●], being the within named Confirming Parties in the presence of:</p>	<p>For Operator 2</p> <hr/> <p>[●] (Authorised Representative)</p>

	<p style="text-align: center;">For Operator 3</p> <hr/> <p style="text-align: center;">[•] (Authorised Representative)</p> <p style="text-align: center;">For [•]</p> <hr/> <p style="text-align: center;">[•] (Authorised Representative)</p>
<p>Witness:</p> <hr/> <p>Name:</p> <p>Address:</p>	